

IN THE COURT OF COMMON PLEAS OF
LYCOMING COUNTY, PENNSYLVANIA

RHONDA JENNINGS	: No. CV 23-00512
Plaintiff	:
VS	:
	:
LYCOMING COUNTY SPCA	:
Also known as LYCOMING COUNTY	:
SPCA AUXILLIARY	: Preliminary Objections
Defendant	:

OPINION AND ORDER

This matter came before the Court on July 20, 2023, for oral argument on Defendant's Preliminary Objections to the Amended Complaint, both in the nature of a motion to strike and a demurrer. For the reasons more fully set forth below, those Preliminary Objections are granted in part, and denied in part.

Plaintiffs' Amended Complaint

Plaintiff's Amended Complaint alleges that Plaintiff was in the lobby of Defendant SPCA on June 26, 2021, when she was attacked by an American Staffordshire Terrier named "Peanut." Plaintiff alleges that Peanut was formerly named "Cash," and that the dog was earlier adopted by a family, but returned to the SPCA after biting a young male child in the family. Plaintiff alleges that the dog bit an SPCA employee, and that the SPCA has actual knowledge that the dog was dangerous. Plaintiff claims both compensatory and punitive damages, both on the basis of a claim of negligence and vicarious liability.

Defendant has filed Preliminary Objections in the nature of a motion to strike some assertions of negligence set forth in Paragraph 20 of the Amended Complaint, claiming that they are non-specific allegations of negligence in violation of the rule of Connor v. Allegheny General Hospital, 501 Pa. 306, 461 A.2d 600 (Pa. 1983). Defendant has also filed Preliminary Objections in the nature of a demurrer to all of Plaintiff's claims for punitive damages.

The Test for Specificity in Allegations of Negligence

Rule 1019(a) of the Pennsylvania Rules of Civil Procedure requires that "the material facts upon which a cause of action or defense is based shall be stated in a concise and summary form." Court have recognized that the requirement for specificity in pleading applies to both the allegations of negligence set forth in a Complaint, *Connor v. Allegheny Hospital*, 501 Pa.

306, 461 A.2d 600 (1983), and the allegations of affirmative defense asserted in *New Matter, Allen v. Lipson*, 1990 W.L. 313425, 8 D.&C. 4th 390 (Lycoming County 1990).

Paragraph 20 of the Amended Complaint

Defendant contends that the assertions of negligence in subparagraphs a. through j. of Paragraph 20 of the Amended Complaint are insufficient to meet the requirements of Rule 1019(a). Subparagraphs a and j will be stricken as general allegations of negligence. Subparagraph d will be stricken as redundant of subparagraph g. In the view of the Court, the balance of Paragraph 20 meets the minimum required by Rule 1019(a).

The Test for Consideration of Preliminary Objections in the Nature of a Demurrer

Preliminary objections in the nature of a demurrer should be granted where the contested pleading is legally insufficient. *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa.Super.2001) (citing Pa.R.C.P. 1028(a)(4)). “Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.” *Hess v. Fox Rothschild, LLP*, 925 A.2d 798, 805 (Pa.Super.2007) (quoting *Cardenas*, 783 A.2d 317 at 321). All material facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true. *Id.*

Cooper v. Church of St. Benedict, 2008 Pa.Super. 171, 954 A.2d 1216 (Pa.Super. 2008).

In reviewing preliminary objections, “[a]ll well-pled facts in the complaint, *and reasonable inferences arising from those facts*, are accepted as true. However, unwarranted inferences, conclusions of law, argumentative allegations or expressions of opinion need not be accepted.” *Richardson v. Wetzel*, 74 A.3d 353, 356 (Pa. Cmwlth. Ct. 2013) (quoting *Wilson v. Marrow*, 917 A.2d 357, 361 n. 3 (Pa. Cmwlth.2007) (*emphasis added*)). “The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.” 16 Pa.R.C.P. § 1019(a). “The purpose of this rule is to require the plaintiff to disclose the material facts sufficient to enable the adverse party to prepare the case.” *Bennett v. Beard*, 919 A.2d 365, 367 (Pa.Cmwlth. 2007). “Pennsylvania is a fact-pleading jurisdiction; consequently, a pleading must not only apprise the opposing party of the asserted claim, ‘it must also formulate the issues by summarizing those facts essential to support the claim.’” *Wetzel*, 74 A.3d at 356–57 (quoting *Sevin v. Kelshaw*, 611 A.2d 1232, 1235 (Pa. Super.1992)).

The Conduct Upon Which a Claim of Punitive Damages May Be Based

In the matter of *SHV Coal, Inc. v. Continental Grain Company*, 526 Pa. 489, 587 A.2d 702 (1991), our Supreme Court thoroughly examined the type of conduct which may support a claim of punitive damages:

“punitive damages are awarded only for outrageous conduct, that is, for acts done with a bad motive or with a *reckless indifference* to the interests of others.” *Chambers v. Montgomery*, 411 Pa. 339, 344, 192 A.2d 355, 358 (1963) (quoting comment b to Section 908[1] of the Restatement of Torts) (emphasis added). See *Feld v. Merriam*, 506 Pa. at [393–95,] 485 A.2d at 747. Comment b to Section 500, read in light of preceding comment a to that section, indicates that Section 908 damages are not justified where the defendant's mental state rises to no more than gross negligence. *Accord Thomas v. American Cystoscope Makers, Inc.*, 414 F.Supp. 255, 267 (E.D.Pa.1976) (applying Pennsylvania law in a products liability action). See also *Campus Sweater & Sportswear v. M.B. Kahn Constr. Co.*, 515 F.Supp. 64, 104 (D.S.C.1979), *affirmed*, 644 F.2d 877 (4th Cir.1981) (“South Carolina, as do most other jurisdictions, requires misconduct above and beyond mere negligence or gross negligence”).

587 A.2d 702, 705, citing *Martin v. Johns–Manville Corp.*, 508 Pa. 154, 170–173, 494 A.2d 1088, 1097–1098 (1985)

Plaintiff's Claim for Punitive Damages

The test to be employed in judging Defendant's demurrer is whether the allegations set forth in the Amended Complaint are sufficient to establish with certainty that the law will permit no recovery on Plaintiff's claim of punitive damages. All doubt must be resolved in favor of the non-moving party. *Gregory v. Pennsylvania State Police*, 160 A.3d 274, 276 (Pa.Cmwlth. 2017), citing *Stilp v. Commonwealth*, 927 A.2d 707, 709 (Pa.Cmwlth. 2007), *aff'd*, 596 Pa. 493, 946 A.2d 636 (2008).

The Court is not satisfied that the facts alleged in the Amended Complaint are sufficient to allege that the Defendant's conduct demonstrated a reckless indifference to the interests of others. The Court is not yet convinced, however, that Plaintiff's claim for punitive damages could not be sufficiently asserted in an amended pleading. For that reason, the Court will permit the Plaintiff one additional opportunity to assert the claim.

ORDER

AND NOW, this 26th day of July, 2023, Defendant's Preliminary Objections to the Amended Complaint filed June 6, 2023, are granted in part and denied in part. Subparagraphs a. and j. and d. of Paragraph 20 of the Amended Complaint are stricken. Plaintiffs is directed to file a Second Amended Complaint within twenty (20) days of the date of filing of this Order, deleting those subparagraphs, and setting forth sufficient material facts to support Plaintiff's claim for punitive damages.

By The Court,

Hon. William P. Carlucci, Judge

CC.