

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

RONALD DAWES and
BARBARA DAWES, his wife,
Plaintiffs,

vs.

THE WILLIAMSPORT HOME,
Defendant.

: NO. 2025-00381

: CIVIL ACTION -

: Preliminary Objections

FILED
LYCOMING COUNTY
2025 JUN -6 PM 4:50
THOMAS W. HEAP
PROTHONOTARY

OPINION AND ORDER

This matter came before the Court on June 6, 2025, for oral argument on Defendant's Preliminary Objections to the Complaint, filed April 10, 2025. For the reasons more fully set forth below, those Preliminary Objections are granted in part, and denied in part.

BACKGROUND:

Plaintiffs' Complaint, filed March 19, 2025, is 85 paragraphs long, and asserts claims in four (4) counts. The gravamen of Plaintiffs' claim is that Ronald Dawes received negligent care from the Defendant regarding his thoracic surgical wound. At Count I, Plaintiffs assert a claim in negligence. Paragraph 59 contained within Count I alleges failure of the Defendant to comply with a variety of state and federal regulations, most of which have nothing whatsoever to do with wound care. Count II is also a claim in negligence, but appears to assert vicarious liability. In the view of the Court, vicarious liability is a theory of liability, as distinguished from a separate cause of action. Count III appears to assert a claim of corporate liability pursuant to *Scampone v. Highland Park Care Center, LLC*, 57 A.3d 582 (Pa. 2012). Count IV appears to assert a claim by Co-Plaintiff Barbara Dawes for loss of consortium.

Defendant's Preliminary Objections, filed April 10, 2025, seek relief in four (4) Counts. At Count 1, Defendants seek a demurrer to Plaintiffs' claims at Count I of the Complaint, which Defendant characterizes as a claim of negligence *per se*. In fact, Count I of the Complaint asserts a claim of common law negligence. Negligence *per se* (which is not the claim asserts at Count I) is a theory of negligence, and not a cause of action. At Count II of the Preliminary Objections, Defendant seeks a demurrer to Plaintiff's claims for punitive damages,

asserting that the Complaint lacks any allegations of material fact which would support a claim for punitive damages under 40 P.S. § 1303.505(b). At Count III of the Preliminary Objections, Defendant seeks a demurrer to Plaintiffs' claim asserting corporate liability. At Count IV, Defendant seeks to strike all allegations of non-feasance or mis-feasance listed in subparagraphs (a) through (pp) of Paragraphs 56 of the Complaint.

QUESTIONS PRESENTED:

- Count I: Whether a demurrer should be entered to Plaintiffs' claims at Count I of the Complaint.
- Count II: Whether a demurrer should be entered to Plaintiffs' claims for punitive damages.
- Count III: Whether a demurrer should be entered to Plaintiffs' claim of corporate liability at Count III of the Complaint.
- Count IV: Whether the Court should strike all allegations of non-feasance or mis-feasance listed in subparagraphs (a) through (pp) of Paragraphs 56 of the Complaint.

BRIEF ANSWERS:

- Count I: No demurrer shall be entered to Count I of the Complaint.
- Count II: No demurrer will yet be entered to Plaintiffs' claims for punitive damages, but Plaintiffs will be directed to file an Amended Complaint which either deletes any claim for punitive damages, or affirmatively sets forth material allegations of fact to support a claim for punitive damages under 40 P.S. § 1303.505.
- Count III: No demurrer shall be entered to Plaintiffs' claim of corporate liability.
- Count IV: Plaintiffs will be directed to file an Amended Complaint in which Plaintiffs limit allegations regarding acts or omissions by Defendant or its agents or employees, to those which were a substantial factor in causing Plaintiffs' damages.

DISCUSSION:

Count I: No demurrer shall be entered to Count I of the Complaint.

Generally speaking, the entry of a demurrer is disfavored at Pennsylvania law:

A demurrer can only be sustained where the complaint is clearly insufficient to establish the pleader's right to relief. *Firing v. Kephart*, 466 Pa. 560, 353 A.2d 833 (1976). For the purpose of testing the legal sufficiency of the challenged pleading a preliminary objection in the nature of a demurrer admits as true all well-pleaded, material, relevant facts, *Savitz v. Weinstein*, 395 Pa. 173, 149 A.2d 110 (1959); *March v. Banus*, 395 Pa. 629, 151 A.2d 612 (1959), and every inference fairly deducible from those facts. *Chappell v. Powell*, 303 A.3d 507, 511 (Pa.Super. 2023); *Hoffman v. Misericordia Hospital of Philadelphia*, 439 Pa. 501, 267 A.2d 867 (1970); *Troop v. Franklin Savings Trust*, 291 Pa. 18, 139 A. 492 (1927). The pleader's conclusions or averments of law are not considered to be admitted as true by a demurrer. *Savitz v. Weinstein, supra*.

Since the sustaining of a demurrer results in a denial of the pleader's claim or a dismissal of his suit, a preliminary objection in the nature of a demurrer should be sustained only in cases that clearly and without a doubt fail to state a claim for which relief may be granted. *Schott v. Westinghouse Electric Corp.*, 436 Pa. 279, 259 A.2d 443 (1969); *Botwinick v. Credit Exchange, Inc.*, 419 Pa. 65, 213 A.2d 349 (1965); *Savitz v. Weinstein, supra*; *London v. Kingsley*, 368 Pa. 109, 81 A.2d 870 (1951); *Waldman v. Shoemaker*, 367 Pa. 587, 80 A.2d 776 (1951). If the facts as pleaded state a claim for which relief may be granted under any theory of law then there is sufficient doubt to require the preliminary objection in the nature of a demurrer to be rejected. *Packler v. State Employment Retirement Board*, 470 Pa. 368, 371, 368 A.2d 673, 675 (1977); *see also, Schott v. Westinghouse Electric Corp., supra*, 436 Pa. at 291, 259 A.2d at 449.

Mudd v. Hoffman Homes for Youth, Inc., 543 A.2d 1092, 1093-94 (Pa. Super. Ct. 1988) (quoting *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)), *abrogated on other grounds; accord Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa. Super. Ct. 2023).

At Count I of the Complaint, Plaintiffs allege common law negligence by the Defendant, and claim that Defendant violated a variety of regulations applicable to the care of Ronald Dawes. While asserting those claims does not make it so, Plaintiffs are entitled to an opportunity to discover facts in support of those claims. Should discovery fail to produce any basis for the claims asserted at Count I, Defendant is entitled to seek relief pursuant to Pa. R. Civ. P. 1035.2.

Count II: No demurrer will yet be entered to Plaintiffs' claims for punitive damages, but Plaintiffs will be directed to file an Amended Complaint which either deletes any claim for punitive damages, or affirmatively sets forth material allegations of fact to support a claim for punitive damages under 40 P.S. § 1303.505.

Plaintiff's claim for punitive damages is controlled by 40 P.S. § 1303.505, which provides as follows:

(a) Award.--Punitive damages may be awarded for conduct that is the result of the health care provider's willful or wanton conduct or reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the health care provider's act, the nature and extent of the harm to the patient that the health care provider caused or intended to cause and the wealth of the health care provider.

(b) Gross negligence.--A showing of gross negligence is insufficient to support an award of punitive damages.

(c) Vicarious liability.--Punitive damages shall not be awarded against a health care provider who is only vicariously liable for the actions of its agent that caused the injury unless it can be shown by a preponderance of the evidence that the party knew of and allowed the conduct by its agent that resulted in the award of punitive damages.

(d) Total amount of damages.--Except in cases alleging intentional misconduct, punitive damages against an individual physician shall not exceed 200% of the compensatory damages awarded. Punitive damages, when awarded, shall not be less than \$100,000 unless a lower verdict amount is returned by the trier of fact.

(e) Allocation.--Upon the entry of a verdict including an award of punitive damages, the punitive damages portion of the award shall be allocated as follows:

(1) 75% shall be paid to the prevailing party; and

(2) 25% shall be paid to the Medical Care Availability and Reduction of Error Fund.

Defendant seeks a demurrer to Plaintiffs' entire claim for punitive damages. While the allegations set forth in the Complaint fall short of material allegations of "willful or wanton conduct or reckless indifference" to the rights of Plaintiff Ronald Dawes, the Court is not yet convinced that the Plaintiffs cannot plead sufficient material facts. For that reason, the Court will direct the Plaintiffs to file an Amended Complaint, which either deletes any claim for punitive damages, or sets forth sufficient material allegations of fact to support the claim that the Defendant acted willfully, or that Defendant's conduct was wanton or demonstrated reckless indifference to the rights of Plaintiff Ronald Dawes.

Count III: No demurrer shall be entered to Plaintiffs' claim of corporate liability.

It appears from the face of the Complaint that Plaintiffs claim that Defendant's agents and employees failed to provide Ronald Dawes with the proper and required treatment for his thoracic surgical wound. Assuming that to be true, and assuming that Plaintiffs establish agency, Plaintiffs may be entitled to judgment on Count I of their Complaint. The Court has not yet determined how that claim differs from the claim asserted at Count III. That fact notwithstanding, the Court cannot say with certainty that discovery will not reveal facts upon which Plaintiffs may rely to assert a separate claim for corporate liability under the rule established in *Scampone v. Highland Park Care Center, LLC*, 57 A.3d 582 (Pa. 2012). Should discovery fail to produce any basis for the claims asserted at Count III, Defendant is entitled to seek relief pursuant to Pa. R. Civ. P. 1035.2.

Count IV: Plaintiffs will be directed to file an Amended Complaint in which Plaintiffs limit allegations regarding acts or omissions by Defendant or its agents or employees, to those which were a substantial factor in causing Plaintiffs' damages.

Paragraph 56 contained alleges failure of the Defendant to comply with a variety of state and federal regulations, most of which have nothing whatsoever to do with wound care. On the contrary, the forty-four (44) subparagraphs address resident bed placement preferences (a); food storage (b); resident notification regarding payment coverage (c); supplemental oxygen provisions (d); and a variety of other concerns.

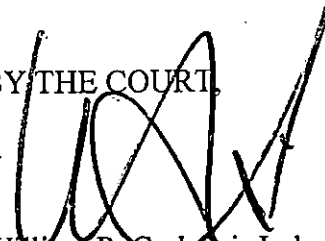
It is difficult for the Court to understand how the finder of fact could conclude that Defendant's alleged failure to properly store food, or provide timely resident notice of changes in payment coverage, or oxygen availability to other residents, could have been a substantial factor in bringing about Plaintiffs' claimed damages. Rather, Paragraph 56 appears to be a laundry list of Defendant's failures upon inspection, the vast majority of which were completely unrelated to Plaintiffs' claims. As such, they will be stricken, but for those related to Plaintiffs' claims.

ORDER

AND NOW, this 6th day of June, 2025, Defendant's Preliminary Objections to Plaintiffs' Complaint are **granted in part and denied in part**. Plaintiffs are directed to file an Amended Complaint within twenty (20) days of the date of filing of this Order, as follows:

- a. Defendant's demurrer to Plaintiffs' claims for punitive damages is denied, but Plaintiffs are directed to file an Amended Complaint, which either deletes any claim for punitive damages, or sets forth sufficient material allegations of fact to support the claim that the Defendant acted willfully, or that Defendant's conduct was wanton or demonstrated reckless indifference to the rights of Plaintiff Ronald Dawes.
- b. The Amended Complaint will limit allegations regarding acts or omissions by Defendant or its agents or employees, to those which Plaintiffs contend were a substantial factor in causing Plaintiffs' damages.
- c. Except to the extent expressly set forth above, Defendant's Preliminary Objections to Plaintiffs' Complaint are denied.

BY THE COURT,



William P. Carlucci, Judge

WPC/aml

cc: ~~/~~ Court Administrator
~~/~~ Sean P. McDonough, Esquire
459 Wyoming Street
Kingston, PA 18704
~~/~~ Gary L. Weber, Esquire