

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

KRISTY MARTIN	:	No. 2025-00988
Individually and as the Executor of the Estate	:	
Of JOHN ROSKOWSKI and	:	
ADAM ROSKOWSKI	:	
Individually and as the Executor of the Estate	:	
Of JOHN ROSKOWSKI	:	
Plaintiffs	:	
	:	
v.	:	CIVIL ACTION - LAW
	:	
CABLE SERVICES CO., INC.,	:	
KENNETH R. MICHAELS, JEREMY	:	
MICHAELS, and LYNETTE Y. MICHAELS	:	
Defendants	:	

OPINION AND ORDER ON PRELIMINARY OBJECTIONS OF DEFENDANTS CABLE SERVICES, CO., INC., AND JEREMY MICHAELS AND LYNETTE Y. MICHAELS, FILED MARCH 23, 2026

BACKGROUND:

On August 17, 2023, an incident took place at the business premises of Cable Services Co., Inc. (hereinafter “Cable Services”) situate at 2113 Marydale Avenue, Williamsport, Lycoming County, Pennsylvania 17701, which resulted in the death of John Roskowski. (hereinafter “Roskowski”). As a result of that incident and death, Kenneth R. Michaels (hereinafter “Michaels”) was charged with criminal homicide. Those charges are currently pending at Lycoming County docket 1224-CR-2023 (hereinafter the “Criminal Case”). No trial date has yet been set on the Criminal Case.

On July 3, 2025, the Executors of the Estate of Roskowski (hereinafter “Executors”) filed a Complaint to Lycoming County docket number 2025-00988, against Cable Services and Michaels and others, seeking damages arising out of the death of Roskowski (hereinafter “Executors Claim”). On August 15, 2025, Michaels and Cable Services and others filed a Complaint against Executors to the court term and number set forth above (hereinafter “Cable Services Claim”). On February 24, 2026, Executors filed their Second Amended Complaint. On March 23, 2026, counsel for Defendants Cable Services, Co., Inc., and Jeremy Michaels and Lynnette Y. Michaels filed Preliminary Objections to Executors’ Second Amended Complaint.

QUESTIONS PRESENTED:

1. WHETHER COUNT I OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS SHOULD BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).
2. WHETHER COUNT II OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS SHOULD BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).
3. WHETHER COUNT III OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS SHOULD BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).
4. WHETHER COUNT IV OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS SHOULD BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).

ANSWERS TO QUESTIONS PRESENTED:

1. COUNT I OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS WILL NOT BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).
2. COUNT II OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS WILL NOT BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).
3. COUNT III OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS WILL NOT BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).
4. COUNT IV OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS WILL NOT BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).

DISCUSSION:

1. AT THIS VERY EARLY STAGE OF THE LITIGATION, COUNT I THE SECOND AMENDED COMPLAINT WILL NOT BE DISMISSED.

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

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., 374 Pa.Super. 522, 524–25, 543 A.2d 1092, 1093–94 (1988) (quoting *County of Allegheny v. Commonwealth*, 507 Pa. 360, 372, 490 A.2d 402, 408 (1985)). *Accord*, *Ritz v. Ramsay*, 305 A.3d 1056, 1061 (Pa.Super. 2023).

Defendants have asserted their Preliminary Objections to Count I at Subsections A. and B. Subsection A, appears to suggest that the language of Paragraph 45 of the Second Amended Complaint regarding the Corporate Safety Manual is insufficient to establish any duty owed to Roskowski, because he was not an employee of Cable Services on the date of the incident. Defendants assert at Subsection B. of Count I that the allegations set forth in the Second Amended Complaint fail to establish that Roskowski was a public invitee, to whom Defendants owed a duty of care.

Defendants once again invite the Court to decide, as a matter of law, that Roskowski was owed no duty of care. The Court declines the invitation. “Generally, in premises liability cases, the determination of whether an individual is an invitee, licensee, or trespasser is a question of fact for the jury.” *Juszczyszyn v. Lind’s Lounge*, 2015 Pa.Super. 71, 113 A.3d 853, 856 (Pa.Super. 2015), citing *Palange v. City of Philadelphia Law Department*, 433 Pa.Super. 373, 640 A.2d 1305, 1307 (Pa.Super. 1994).

2. COUNT II OF THE SECOND AMENDED COMPLAINT FILED BY EXECUTORS WILL NOT BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).

It appears to the Court that the claims asserted at Preliminary Objection Count II are substantially redundant of those asserted at Subsections A and B of Count I. Once again, Defendants assert that the Second Amended Complaint lacks sufficient allegations of fact to support a finding of duty. In this Count, Defendants further assert that “Plaintiffs allege no facts from which it can be determined that Defendant Kenneth R. Michaels posed a danger to Roskowski that would result in foreseeable harm” (Preliminary Objections, Paragraph 47). Our Superior Court has observed that the issue of foreseeability, like the issue of duty, is ordinarily a question of fact for the jury.

Only when the question of foreseeability is undeniably clear may a court rule as a matter of law that a particular defendant did not have a duty to a particular plaintiff. *Migyanko v. Thistlewaite*, 275 Pa.Super. 500, 419 A.2d 12, 14 (1980); also see *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339, 162 N.E. 99, 100 (1928). Moreover, the question of foreseeability is not to be confused with the question of legal or proximate causation. *Little v. York County Earned Income Tax Bureau*, 333 Pa.Super. 8, 481 A.2d 1194, 1197 (1984). Even where harm to a particular plaintiff may be reasonably foreseeable from the defendant's conduct, and that conduct is the cause-in-fact of the plaintiff's harm, the law makes a determination that, at some point along the causal chain, liability will be limited. The term “proximate cause”, or “legal cause” is applied by courts to those considerations which limit liability, even where the fact of causation can be demonstrated. Because of convenience, public policy, or a rough sense of justice, the law arbitrarily declines to trace a series of events beyond a certain point, as no longer a “proximate” or “legal” consequence naturally flowing from the wrong-doer's misconduct. See *Mazzagatti v. Everingham by Everingham*, 512 Pa. 266, 516 A.2d 672, 676 (1986); see also *Palsgraf*, supra, 162 N.E. at p. 103. To put it simply, at a certain point, negligent conduct will be viewed as too remote from the harm arising to the plaintiff, and thus not a substantial factor in bringing about the plaintiff's harm.

Clearly, reasonable minds will often differ as to where to draw a cut-off line. Thus, whether in a particular case the plaintiff has demonstrated, by a preponderance of the evidence, that the defendant's negligent conduct was a substantial factor in bringing about the plaintiff's harm, is normally a question of fact reserved for the jury, and should only be removed from the jury's consideration where it is clear, as a matter of law, that reasonable minds could not differ on the issue. *Little*, supra, 481 A.2d at p. 1198.

Alumni Association, Delta Zeta Zeta of Lamda Chi Alpha Fraternity v. Sullivan, 369 Pa.Super. 596, 601-602, 535 A.2d 1095, 1098 (Pa.Super. 1987).

3. COUNT III OF THE SECOND AMENDED COMPLAINT FILED BY
EXECUTORS WILL NOT BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).

Defendants assert in Count III that the Court should dismiss Count III of the Amended Complaint because “Plaintiffs’ survival action is a derivative of the underlying negligence claims, which fail as a matter of law” (Preliminary Objections at Paragraph 51). For the reasons more fully set forth above, the Court will not dismiss the negligence claims as a matter of law. Similarly, the Court will not dismiss Count III.

4. COUNT IV OF THE SECOND AMENDED COMPLAINT FILED BY
EXECUTORS WILL NOT BE DISMISSED UNDER PA.R.C.P. 1028(A)(4).

It appears to the Court that the claims asserted at Preliminary Objection Count IV are substantially redundant of those asserted at Counts I and II and III. For the reasons more fully set forth above, the Court will not dismiss the negligence claims as a matter of law, nor will the Court will dismiss Count III or Count IV.

ORDER

AND NOW, this 23rd day of April, 2026, for the reasons more fully set forth above, the Preliminary Objections filed on March 23, 2026, by Defendants Cable Services, Co., Inc., and Jeremy Michaels and Lynnette Y. Michaels are **DENIED**, and those Defendants are directed to file an Answer to the Second Amended Complaint within twenty (20) days of the date of filing of this Order.

BY THE COURT:

WILLIAM P. CARLUCCI, JUDGE

cc: Court Administrator
See attached service list

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