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ELSIE L. BENSON AND WILLIAM BENSON V. LOWE'S
OF CHAMBERSBURG, LOWE'S OF PENNSYLVANIA, INC.
AND LOWE'S HOME CENTERS, INC., Franklin County
Branch, Civil Action - Law, No. A.D. 1995-410

*Personal injury: negligence; preliminary objections in the nature of a motion to strike for
lack of specificity; Pa.R.C.P. 1019(a).*

1. A complaint must allege the material facts on which the cause of action is based, in a concise and summary form. Pa.R.C.P. 1019(a).
2. Where a defendant files a motion to strike, or, in the alternative, a motion for a more specific pleading, the Court has broad discretion to decide the amount of factual detail which is required in an averment, because the standard of pleading set forth in the rule is incapable of precise measurement.
3. The pleadings must provide sufficient facts to enable the defendants to prepare their defense.
4. Amendment of the pleadings should be liberally granted, particularly where the defendants will not be unfairly prejudiced.
5. Where plaintiffs allege that the defendants were negligent in failing to inspect and maintain their premises in a safe condition and to warn members of the public of dangerous conditions they might encounter, the Court is not automatically required to strike an averment that the defendants "otherwise failed to use due care and caution under the circumstances."
6. Where meaningful discovery has not yet been conducted and neither party yet knows whether there is a basis for amplifying the negligence claim beyond the expiration of the statute of limitations, a motion to strike the averment will be denied.

Charles E. Ganley, Esquire, Counsel for Plaintiffs
Anthony W. Hinkle, Esquire, Counsel for Defendants

OPINION AND ORDER

Herman, J., November 12, 1996:

The plaintiffs, Elsie L. Benson and William Benson, filed a complaint against Lowes of Chambersburg and the appropriate parent corporations alleging the defendants were negligent. Mrs. Benson fell in the doorway of defendant's store and claims damages for injuries suffered in the fall. The complaint also brings a claim on behalf of William Benson for loss of consortium. The defendants have filed preliminary objections to the complaint claiming the complaint lacks the required specificity under Pa.R.C.P. 1019. Upon review of the written and oral argument of both parties, the Court must overrule the preliminary

objections of the defendants and deny the motion to strike subparagraph 23(F) of the complaint.

Specifically, the defendants request the Court strike paragraph 23 or require the plaintiffs to file a more specific pleading. Paragraph 23 of the complaint alleges the defendants failed to inspect and maintain their premises in a safe condition and to warn members of the public of dangerous conditions they might encounter. Subparagraph 23 (F) avers: "The carelessness, recklessness and/or negligence of the aforesaid Defendants consisted of, inter alia, the following...Otherwise failing to exercise due and proper care under the circumstances." The defendants filed a motion to strike that subparagraph, or alternatively, to have the plaintiffs provide a more specific pleading. In evaluation of the plaintiffs' allegation, we note the material facts on which the cause of action is based must be stated in concise and summary form. Pa.R.C.P. 1019(a). The court has broad discretion to decide the amount of detail which must be averred, because the standard of pleading set forth in the rule is incapable of precise measurement. *Pike County Hotels Corp. v. Kiefer*, 262 Pa. Super. 126, 396 A.2d 677 (1978). The pleadings must provide sufficient facts to enable the defendants to prepare their defense. *Smith v. Wagner*, 403 Pa. Super. 316, 588 A.2d 1308 (1991).

The defendants argue that the board averment in subparagraph 23 (F) would permit the plaintiffs to pursue new theories of negligence after the expiration of the statute of limitations. *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (1983). The defendants in that medical malpractice case did not file preliminary objections to an averment in the original complaint alleging they had "otherwise failed to use due care and caution under the circumstances." The plaintiff was later allowed to amend the complaint to allege an additional ground for the negligence claim. The Supreme Court held that a proposed amendment which does not change the cause of action, but merely amplifies averments already set forth in the complaint, should be allowed even though the statute of limitations has already run. Adhering to the principle that amendment should be liberally granted, particularly where the defendants will not be unfairly prejudiced, the Court reasoned that if the defendants were

unaware of how they "otherwise failed to use due care and caution under the circumstances," they should have moved to strike that averment or request a more specific pleading. *Id.* at 311, footnote 3.

Connor does not require a court to automatically strike such a broad averment from a complaint. Where meaningful discovery has not yet been conducted, neither the plaintiff nor the defendant can know whether there is a basis for amplifying the negligence claim. In *Connor*, discovery was complete. Discovery in the instant case is in only the initial stages and therefore striking subparagraph 23 (F) would be premature. Compelling the plaintiffs to plead that averment with greater specificity must also await further inquiry. If discovery yields no additional grounds for negligence, striking the averment may then be warranted.

For the reasons stated herein, an appropriate Order of Court will be entered as part of this Opinion.

ORDER OF COURT

NOW this 12th day of November, 1996, the defendants' preliminary objections in the nature of a motion to strike subparagraph 23 (F) of the plaintiffs' complaint, or, in the alternative, to have that subparagraph pled with greater specificity, are hereby DENIED .