

2010 WL 9105356 (Pa.Com.Pl.) (Trial Motion, Memorandum and Affidavit)  
Court of Common Pleas of Pennsylvania.  
Philadelphia County

Fred WATSON plenary guardian of Sallie Hunter an incapacitated person, Plaintiff,

v.

Evelyn SCOTT also known as Evelyn Davis, Defendant.

No. 03179.  
February Term, 2010.  
2011.

**Plaintiff's Memorandum Contra Preliminary Objections to the Second Amended Complaint**

Quinn Law Office, By: [Anthony Bernard Quinn](#) Esquire, Attorney Reg. #26931, 1420 Walnut Street Suite 1107, Philadelphia, PA 19102, Telephone #215-731-0340, Attorney for plaintiff.

***Matter Before The Court***

Before the Court are the preliminary objections filed by defendant to the second amended complaint.

***Statement of Questions Involved***

**I: Are the allegations of negligence of sufficient specificity?**

Suggested answer: Yes.

***Facts***

The amended complaint specifically alleges as follows.

Plaintiff, Fred Watson avers he is the duly appointed, qualified and acting plenary guardian of the person and the estate of Sallie Hunter an adjudged incapacitated person. Plaintiff was appointed by Final Decree of the Orphans Court Division of Philadelphia County on June 30, 2010. [Complaint, ¶2.] For a long time, Sallie Hunter resided as a tenant at 5220 N. American Street, one of defendant's properties. [Complaint, ¶6.] Sallie Hunter will be referred to herein as plaintiff or Sallie.

Evelyn Scott, who is also known as Evelyn Davis [Complaint, ¶5], owns 5223 N. American Street. [Complaint, ¶7.] Defendant is in possession and control of that property. [Complaint, ¶8.] Sallie was a regular daily visitor at the American Street property. [Complaint, ¶12.]

Sallie Hunter was an **elderly** disabled person at the time of the events in question. [Complaint, ¶13.] During all of that time, Sallie was disabled, suffering from mental deficiency due to **schizophrenia paranoid type, diabetes mellitus, essential hypertension**, altered mental status and was legally blind. [Complaint, ¶14.] Defendant consequently prevailed upon Sallie to sign a power of attorney which defendant retains. [Complaint, ¶¶15, 16.] After that, defendant no longer maintained a lease. [Complaint, ¶17.] As well defendant had herself appointed the representative payee for Sallie's social security disability benefits [Complaint, ¶18],

charged with using those proceeds for Sallie's benefit and not her own. [Complaint, ¶19.] As well, defendant received public welfare payments to be used for Sallie's benefit and not her own. [Complaint, ¶20.]

Sallie eventually became legally blind and unable to walk unassisted. [Complaint, ¶21.] Plaintiff contends that as her representative payee, defendant should and could have had knowledge of these conditions. [Complaint, ¶22.]

The property where Sallie spent her days as a regular daily visitor was deficient and defective, as the lavatory facilities were located on the second floor, the stairway was not adequately protected, the treads lacked adequate slip resistance, while Sallie Hunter was legally blind, suffered from ambulatory dysfunction and was physically incapacitated to traverse the stairs from the living and eating quarters to the necessary facilities. [Complaint, ¶¶23 to 26.]

Sallie began to experience falls on the stairs at the home as early as January 8, 2007 when she fell down the stairs and broke her clavicle. [Complaint, ¶27.] Not forewarned, defendant failed to provide appropriate safeguards for Sallie's safety. [Complaint, ¶¶28, 29.] As a result, plaintiff sustained subsequent falls. [Complaint, ¶30.]

On March 1, 2008 Sallie fell down fourteen steps at the home, sustaining an injury and [lacerations to the head](#) requiring the insertion of staple sutures. [Complaint, ¶31.] Once again, defendant failed to improve her property where she knew she had a regular disabled visitor to include the simple safeguards one would arm their own home. [Complaint, ¶¶32 to 34.]

Plaintiff's third injury occurred on May 25, 2008 when Sallie was descending the stairs. Sallie lost her footing on liquid puddling at the top of the stairs, throwing her backward where she struck the back of her head and landed on her right forearm, and then slid down the stairs to the first floor below [Complaint, ¶¶35-36], sustaining a [fracture to the right wrist](#), neck pain and [injuries to the cervical spine](#). [Complaint, ¶37.] Defendant knew that plaintiff was incontinent and blind, but allowed her to visit the property and traverse the stairs on her own. [Complaint, ¶38.]

After the fall, defendant delayed for hours before seeking medical care for Sallie [Complaint, ¶39], and delayed for days seeking orthopedic follow up care. [Complaint, ¶40.] While Sallie was legally blind and mentally unstable, defendant did not provide for her care, and allowed Sallie to remove the cast and splint, resulting in interval [dorsal displacement](#). [Complaint, ¶¶41, 42.]

Eventually, an open reduction and internal fixation was performed to repair the break. [Complaint, ¶¶43-47, 50.] Twice the subsequent day, Sallie was taken by rescue to hospital for bleeding at the surgical site. [Complaint, ¶¶48-49.]

Sallie was readmitted to hospital again on July 31, 2008 suffering from dehydration and a history of frequent falls and for failure to thrive [Complaint, ¶¶51-52] and underwent therapy and inpatient care. [Complaint, ¶¶53-58.] On August 8, 2008 Sallie was transferred to the Brighton nursing home in Ambler and has remained there since that time. [Complaint, ¶59.] Sallie's injuries are serious and permanent. [Complaint, ¶¶60 to 64.]

Plaintiff contends she had no notice or knowledge of the defects or that the defects presented a dangerous condition. [Complaint, ¶¶65.] Defendant as the responsible person was negligent in failing to provide a safe environment for Sallie for her mental and physical condition and were caused solely by the neglect of Sallie by the defendant. [Complaint, ¶¶66-67.]

Defendant's preliminary objection ¶10 contends the foregoing "is a disjointed compilation of allegations, none of which make sense legally". Defendant's tenor demonstrates she is clearly angered to be confronted by the truth of these matters.

### ***Argument***

The relationship between plaintiff and defendant is not that of merely property owner and visitor. Defendant is plaintiff's power of attorney. Defendant receives plaintiff's social security old age benefit as her representative payee without account, and as well receives public welfare entitlement including medicaid without account. Defendant is fully aware that plaintiff is legally

blind, suffers from an ambulatory dysfunction, and is schizophrenic. Yet defendant allows plaintiff to live alone in a second floor rented apartment with defendant's adult son. Defendant provides no aids for the disabled. Plaintiff is taken to another rented property owned by defendant during the day, where no supervisions for plaintiff's disabled status is provided, no aids are provided for the disabled, and plaintiff must traverse a flight of steps, albeit blind, on her own without aid or assistance. There are no slip-resistant treads on the stairs to the second floor. Consequently, plaintiff has had several serious falls.

Three of the plaintiff's injuries were detailed with specificity in the complaint and are set forth at length in the amended complaint. Defendant separates herself from the truth when she argues the case is "a routine slip/trip and fall by the Plaintiff when she was at the home of the Defendant on May 25, 2008." To the contrary, the complaint and the amended complaint allege injuries sustained by plaintiff on January 8, 2007, March 1, 2008 and May 25, 2008.

Defendant previously filed boilerplate preliminary objections to the complaint, randomly selecting paragraphs from the complaint to give an incomplete misrepresentation of the allegations of fact and negligence. Defendant's boilerplate brief exaggerated caselaw on the standards of pleading practice without a scintilla of a showing of the manner the complaint failed to meet those standards.

Repeatedly, plaintiff has alleged she is the victim of **elder abuse**. The relationship between plaintiff and defendant is founded not only on the fact that she was at one time a tenant in one of defendant's properties, but defendant has taken over control of plaintiff's resources and her ability to be independent, but has, as plaintiff's plenary guardian is informed, taken a power of attorney from her. In the complaint, plaintiff detailed in some 54 paragraphs of that long relationship and how it has devolved to plaintiff's everlasting misfortune. Defendant was clearly angered and asked the court to dismiss the complaint. Confronted with the boilerplate objections, the court ordered more specificity.

Now plaintiff has responded with a 67 paragraph amended complaint, as defendant points out in ¶8 of her preliminary objections; elucidating in minute detail the unfortunate relationship, how defendant has victimized plaintiff and the unfortunate consequences of that relationship.

Objecting once again, again in boilerplate fashion, defendant is unable to state what rules specifically are violated or how the amended complaint violates such rules. Defendant has thrown the original complaint, the original preliminary objections and a cursory memorandum against the wall in the hope something will once again stick.

### **I: Are the allegations of negligence of sufficient specificity?**

Pennsylvania pleading practice is governed by *Pa.R.C.P.* #1019.  
Rule 1019. Contents of Pleadings. General and Specific Averments.

- (a) The material facts on which a cause of action or defense is based shall be stated in a concise and summary form.
- (b) Averments of \* \* \* Malice, intent, knowledge, and other conditions of mind may be averred generally.
- (f) Averments of time, place and items of special damage shall be specifically stated.

Defendant's contention is that, "Defendant cannot discern whether the Plaintiff is asserting a landlord/tenant claim, a routine slip and fall claim, a breach of some fiduciary duty, **elder abuse** [sic] or a violation of a state/federal regulation or regulations." [Preliminary objections at ¶9.]

The polar opposite is true. As quoted in the statement of facts, above, the allegations of the complaint are specific and sufficient. Defendant, who is actually Sallie's landlady, had herself appointed the representative payee for both social security benefits

and public welfare benefits. As such, defendant assumed the duty to use those funds for Sallie's benefit for her ward, whom she knew or had reason to know had become blind, incontinent, mentally challenged and unable to ambulate on her own.

Defendant relies principally upon *Connor v. Allegheny General Hospital*, 501 Pa. 306, 461 A.2d 600 (1983) for the famous proposition that a general averment, "in otherwise failing to use due care and caution under the circumstances" is insufficient to sustain a cause of action. [Defense memo at 4th unnumbered page.]

Defendant objects bitterly that allegations of "otherwise failing to use due care and caution under the circumstances" fail to meet the standards of pleading, although defendant failed to show that such an allegation appeared at all in the complaint or the amended complaint. In general, defendant objects plaintiff made "unsupported allegations" which offended her, and that "facts either have not or cannot be pled."

Defendant relies as well upon *Linda Coal and Supply Company v. Tasa Coal Company*, 204 A.2d 451, 454 (Pa. 1964) for the proposition "this court cannot supply facts missing in the complaint." Defendant misrepresents the *Linda* case. In *Linda*, defendant demurred to the complaint, and to enhance its demurrer added a fact not plead, helpful to the defense, which did aim in sustaining the demurrer.

Nowhere in the allegations of the complaint does it appear that, at the time of and during the renegotiations, Linda knew, or even suspected, that the false representation as to the overburden had been made with a fraudulent purpose, to wit, to induce Linda to enter into a disadvantageous contract. In fact, it does not appear therein at what time Linda did acquire this knowledge. The court below incorrectly supplied this fact from the conclusion stated in Paragraph III of Tasa's preliminary objections.

It is fundamental that a demurrer cannot supply a fact missing in the complaint: *Bonnani v. Weston Hauling*, 392 Pa. 248, 140 A.2d 591 (1958). \* \* \* [I]n passing on a demurrer a court cannot consider matters collateral to the pleading opposed but only such matters as arise out of the statement of claim or complaint itself \* \* \*

Defendant has the *Linda* case backwards. Supreme Court reversed.

Defendant as well relies upon *Brisbine v. Outside In School of Experiential Education, Inc.*, 799 A.2d 89, 92 (Pa. Super. 2002) for the proposition that plaintiff failed to allege a "duty owed to the Plaintiff or that there was a breach of that duty." However, the *Brisbine* holds,

Generally, there is no duty to control the acts of a third party unless the "defendant stands in some special relationship with either the person whose conduct needs to be controlled or in a relationship with the intended victim of the conduct, which gives the intended victim a right to protection."

Defendant has the facts backwards. In this case, plaintiff does not allege defendant is obligated to control the action of some third person, but to maintain her own property safe for visitors such as herself.

Pleading practice in Pennsylvania requires the pleading party to set forth specific information to apprise the opposing parties of the issues which they must be ready to meet in order to prepare a case for trial. *Pa.R.C.P.* #1019(a); *Baker v. Rangos*, 324 A.2d 498 (Pa. Super. 1974); 5 Standard Pa. Practice 2d, §25.53.

In *Baker v. Rangos*, 324 A.2d 498 (Pa. Super. Ct. 1974), the court defined "material facts."

Rule 1019(a) requires fact pleading \* \* \*. It should formulate the issues by fully summarizing the material facts. "Material facts" are "ultimate facts," i.e., those facts essential to support the claim. Evidence from which such facts may be inferred not only need not but should not be alleged.

324 A.2d, at 505-506.

A pleading must achieve the purpose of informing the court and the adverse party or parties of the matters in issue. Rule 1019(a) is satisfied if allegations in a pleading (1) contain averments of all facts which the Plaintiff will eventually have to prove in order to recover, and (3) they are sufficiently specific so as to enable the party served to prepare a defense thereto. (Citations omitted; emphasis the court.)

*Com., Department of Transportation v. Shipley Humble Oil Co.*, 370 A.2d 438, 439 (Pa. Cmwlth. Ct. 1977).

[T]he ultimate test of controlling consideration is whether the amended complaint adequately informs the adverse party of the issues which it must be prepared to meet so that he may properly prepare his defenses for trial.

*Cabella v. Handy Andy Food Mart*, 44 D. & C. 2d 133 (1968). The amended complaint meets these criteria.

The amended complaint not only states plaintiff, a visitor in defendant's rental house, fell down the urine soaked stairs, but that plaintiff is a long time visitor, is taken by defendant to that house daily, is blind, is the defendant's ward, has fallen on three occasions, two within the statute of limitations, the defendant has taken a power of attorney from her, defendant has taken control of her finances, and defendant has not acted in plaintiff's best interest.

Defendant's "incorporated" memorandum disingenuously recites selected paragraphs of the complaint to falsely give the impression her frivolous objections have merit. The summary of the complaint, quoted above demonstrates the complaint has merit and defendant has ample factual contentions of **elder abuse** to inform the court and defendant herself of those facts for which she must defend herself.

As an afterthought, defendant objects the complaint fails to set forth an agreement between Sallie and the defendant whereby the defendant became obligated to use Sallie's social security payments for Sallie's benefit. Defendant further objects the complaint does not set forth an agreement that the housing provided by such payments would be safe and habitable. In support of such frivolity, defendant cites the allegations that defendant became Sallie's representative payee and also took a power of attorney from her and received her DPW benefits. [Complaint, ¶¶15-20.]

These allegations are relevant to show the long history between the parties and how defendant took advantage of plaintiff, leading to **elder abuse**.

The court ordered the complaint be plead with greater specificity. this has been accomplished without a modicum of analysis by the defense. The court did not sustain the defense' Rule 1020 objection. Nonetheless, the defense seems to repeat its objection.

In support of an objection under Rule 1020(a), defendant states, "The requirement that each cause of action against each defendant be set forth in separate counts is mandatory." [Defense memo at 10th unnumbered page.] Defendant fails to observe there is a single cause of action against a single defendant.

Defendant cites *Thebes v. Hazen*, 7 Pa. D&C 5th 376 (Perry County 2009) for "failing to plead causes of action in separate counts." However, that case holds for the proposition that plaintiff must "allege separate counts for lost profits and all other damages". Here, plaintiff claims a single for personal injury damages.

This is a case of **elder abuse** and the complaint sufficiently alleges the harm caused by Sallie's relationship with defendant.

***Relief***

For the reasons stated above, the preliminary objections by defendant to the second amended complaint must be overruled.

Respectfully submitted,

<<signature>>

Anthony Bernard Quinn

Attorney for plaintiff

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