

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

BARBARA LEARY,)
)
Plaintiff,)
)
v.)
)
ANDREW JOSEPH ESCHELWECK,)
CYNTHIA SCHENCK, CHRISTINA)
SCHOOL DISTRICT, MEGHAN)
ARLENE SMOLLEN, and)
WILLIAM SMOLLEN JR.,)
)
Defendants.)

C.A. No. N11C-12-153 PLA

ON DEFENDANT CYNTHIA SCHENCK’S MOTION FOR JUDGMENT ON
THE PLEADINGS
GRANTED

Submitted: March 15, 2012
Decided: May 8, 2012

This 8th day of May, 2012, it appears to the Court that:

1. The Court has before it a motion for judgment on the pleadings filed by defendant Cynthia Schenck (“Schenck”). At issue is whether a plaintiff may sustain a claim for negligent entrustment of a vehicle against an individual where the plaintiff has not alleged facts showing either that the driver of the vehicle was reckless or incompetent or that the individual had reason to know that the driver was reckless or incompetent. Under well-settled principles of Delaware law, the

answer is no. Accordingly, Schenck's motion for judgment on the pleadings is GRANTED.

2. On January 10, 2010, Plaintiff Barbara Leary ("Leary") was a passenger in a car with co-defendants Meghan Smollen and William Smollen (collectively, "the Smollens") traveling on Salem Church Road in Glasgow, Delaware. The Smollens owned the car. When Meghan Smollen, who was driving the Smollens' car, slowed to make a left turn onto Cornell Drive, another vehicle struck the rear of the Smollens' car. Co-defendant Andrew Eschelweck ("Eschelweck") was driving the other vehicle, which belonged to the State and the Christina School District. The authorized driver of Eschelweck's vehicle was defendant Cynthia Schenck ("Schenck"), who worked for the Christina School District at the time as a transportation specialist. Schenck, the mother of Eschelweck's girlfriend, had given Eschelweck permission to drive her vehicle to a nearby fire station to be washed. Leary filed a Complaint in this Court on December 8, 2011, which named Eschelweck, Schenck, Christina School District, and the Smollens as defendants. In Count Two of the Complaint, Leary alleges that Schenck was negligent to entrust her vehicle to an unauthorized driver and is thereby liable for Eschelweck's alleged negligence in driving the vehicle.

3. Schenck has filed a motion for judgment on the pleadings pursuant to Superior Court Civil Rule 12(c).¹ Schenck submits that the Complaint has failed to establish the existence of a genuine factual issue about whether Schenck had reason to know that Eschelweck was reckless or incompetent, which is a required element of a negligent entrustment claim. In fact, the Complaint does not include any allegation that Eschelweck was reckless or incompetent. As such, Schenck argues that the negligent entrustment claim cannot proceed as a matter of law. The other defendants do not oppose Schenck's motion.² In response, Leary asserts that she can prove the first and fourth elements of negligent entrustment (*i.e.*, entrustment of the automobile and resulting damages). She argues that she should be permitted to take discovery to determine whether she will be able to prove that Eschelweck was reckless or incompetent and, if so, that Schenck had reason to know of Eschelweck's recklessness or incompetence before entrusting her vehicle to him. Plaintiff argues that she could not have pled with greater specificity with the knowledge she had at the time she filed the Complaint.

¹ Super. Ct. Civ. R. 12(c) provides, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

² The Smollens filed a letter stating that they take no position on Schenck's motion. Eschelweck filed a brief stating that he did not oppose Schenck's motion and noting that Eschelweck had Schenck's permission to use the vehicle that was involved in the accident. Eschelweck submitted affidavit pages in support of his assertion. As the Court considers Eschelweck's argument outside the scope of this motion for judgment on the pleadings, the Court will not consider them and will not treat the present motion as one for summary judgment.

4. A motion for judgment on the pleadings admits, for the purpose of the motion, the allegations of the opposing party's pleadings but contends that they are insufficient as a matter of law.³ The motion presents a question of law and cannot be granted where the pleading raises any material issue of fact.⁴ It is the plaintiff's burden to establish the existence of a genuine issue of material fact.⁵ To show entitlement to relief under Superior Court Civil Rule 8(a), a complaint must aver either the necessary elements of a cause of action or facts which would entitle a plaintiff to relief under the theory alleged.⁶ A complaint must not serve as a fishing expedition to see whether a wrong has been committed.⁷

5. Plaintiff's negligent entrustment claim against Schenck fails as a matter of law. To make a *prima facie* case of negligent entrustment, a plaintiff must show all of the following: (1) entrustment of the automobile; (2) to a reckless or incompetent driver whom (3) the entrustor has reason to know is reckless or incompetent; and (4) resulting damages.⁸ Leary admits that she can only prove the first and fourth elements of the claim without engaging in discovery. She further offers to dismiss her negligent entrustment claim against Schenck if, after conducting discovery, it becomes apparent that the claim is not viable. This is

³ *Fagnani v. Integrity Fin. Co.*, 167 A.2d 67, 75 (Del. Super. 1960).

⁴ *Id.*

⁵ *Slovin v. Gauger*, 193 A.2d 452, 454 (Del. Super. 1963), *aff'd*, 200 A.2d 565 (Del. 1964).

⁶ *E.g., Am. Ins. Co. v. Material Transit, Inc.*, 446 A.2d 1101, 1104 (Del. Super. 1982).

⁷ *Malachi v. Sosa*, 2011 WL 2178626, at *2 (Del. Super. May 25, 2011).

⁸ *Perez-Melchor v. Balakhani*, 2005 WL 2338665, at *1 (Del. Super. Sept. 1, 2005).

precisely the kind of fishing expedition that Delaware's pleading rules seek to prevent. Leary has admitted that she can only prove [(1)] that Schenck entrusted the automobile to Eschelweck and [(4)] that damages resulted from the entrustment. Leary has alleged no facts suggesting either that Eschelweck was reckless or incompetent or that Schenck had reason to know of Eschelweck's recklessness or incompetence. In the Court's view, these missing facts – and not the fact of entrustment itself, nor the fact that an accident occurred subsequent to the entrustment – comprise the heart of a negligent entrustment claim. Even at this early stage of the litigation, Leary should be able to allege *some* facts pertaining to Eschelweck's recklessness or incompetence and Schenck's knowledge thereof if she expects to be able to prove her claim. That she has not done so leads the Court to conclude that she has no basis for her negligent entrustment claim.

6. For all of the reasons set forth above, Defendant Schenck's motion for judgment on the pleadings is GRANTED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman

Peggy L. Ableman, Judge

Original to Prothonotary
cc: