

IN THE COURT OF COMMON PLEAS OF LEBANON COUNTY
PENNSYLVANIA

CIVIL DIVISION

ROBERT L. WITMAN,
Plaintiff

: NO. 2024-CV-1047

v.

DOLLAR GENERAL (owners) and
DOLLAR GENERAL (store),
Defendants

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ORDER OF COURT

AND NOW, this 9th day of April, 2025, upon consideration of Defendants' Preliminary Objections, the Briefs submitted by the parties, and after Oral Argument, it is hereby Ordered that the Preliminary Objections are OVERRULED. The parties are directed to proceed in accordance with the Pennsylvania Rules of Civil Procedure.

BY THE COURT:


_____, P.J.
JOHN C. TYLWALK

JCT/jah

Cc: Robert L. Witman/230 Sanderson Street/Pottsville, PA 17901
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Defendants :

APPEARANCES:

ROBERT L. WITMAN : **SRL**
SEAN P. HANNON, ESQUIRE : **FOR DEFENDANTS**
DELL, MOSER, LANE & LOUGHNEY

OPINION, TYLWALK, P.J., APRIL 9, 2025.

In the Complaint in this matter, Plaintiff alleges that he entered the Dollar General Store located at 10th and Scull Streets in the City of Lebanon shortly before closing time on December 8, 2022. Upon entering the store, he asked the clerk for the key to the restroom.¹ After being given the key, Plaintiff entered the restroom and locked the door. He alleges that while he was inside the restroom,

¹ At Oral Argument, Defendants' counsel indicated that this restroom was for the use of the public, but that entry was only available after an individual obtained the key from the store employee.

he experienced a drug overdose and became unconscious. Meanwhile, the employees closed the store without ensuring that Plaintiff had left.

Plaintiff awoke on the restroom floor sometime around 7:00 a.m. the following morning and left the store via the emergency exit. He walked to a nearby church and called for an ambulance. After he was transported to the hospital, he was found to have a low body temperature, kidney failure, borderline stroke, and pneumonia in both lungs and was required to spend a week in the intensive care unit. He complains that the employee neglected to check the restroom before closing the store, thus leaving him stranded in an unconscious state. Plaintiff alleges that this omission, coupled with the employee's failure to seek help for him, caused such a delay in his receiving medical attention that his injuries from the overdose were exacerbated to the extent that he was left with heart and kidney problems and a higher susceptibility to drug overdose.

Defendants have filed Preliminary Objections seeking dismissal of the Complaint. They argue that Plaintiff has failed to allege any facts which would impose a duty upon them to warn or protect Plaintiff from himself or from a drug overdose. We disagree and will overrule this Preliminary Objection.

Preliminary objections in the nature of a demurrer test the legal sufficiency of the complaint. When considering preliminary objections, all material facts set forth in the challenged pleadings are admitted as true, as

well as all inferences reasonably deducible therefrom. Preliminary objections which seek the dismissal of a cause of action should be sustained only in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief. If any doubt exists as to whether a demurrer should be sustained, it should be resolved in favor of overruling the preliminary objections.

Khawaja v. RE/MAX Cent., 151 A.3d 626, 630 (Pa. Super. 2016)

Under Pennsylvania law, in order to hold a defendant liable for negligence, the plaintiff must prove the following four elements: (1) a legally recognized duty that the defendant conform to a standard of care; (2) the defendant breached that duty; (3) causation between the conduct and the resulting injury; and (4) actual damage to the plaintiff. ***Reason v. Kathryn's Korner Thrift Shop***, 169 A.3d 96, 101 (Pa. Super. 2017). Defendants claim that Plaintiff has failed to set forth sufficient facts to set forth the first element of a negligence cause of action.

The existence of a duty, as an element of negligence, is a question of law. ***Baumbach v. Lafayette College***, 272 A.3d 83 (Pa. Super. 2022). The determination of whether a duty exists in a particular case involves the weighing of several discrete factors which include: (1) the relationship between the parties; (2) the social utility of the actor's conduct; (3) the nature of the risk imposed and foreseeability of the harm incurred; (4) the consequences of imposing a duty

upon the actor; and (5) the overall public interest in the proposed solution.

Charlie v. Erie Insurance Exchange, 100 A.3d 244, 251 (Pa. Super. 2014).

Whether a duty is breached is a question of fact. **K. H. ex rel H. S. v. Kumar**, 122 A.3d 1080 (Pa. Super. 2015). When it is not inconceivable that a reasonable mind could reach the conclusion that the defendant breached its duty, a claimant may not be denied submission of that question to a jury in a negligence action.

Wright v. Eastman, 63 A.3d 281 (Pa. Super. 2013). An employer is held vicariously liable for the negligent acts of his employee which cause injuries to a third party, provided that such acts were committed during the course of and within the scope of the employment. **R.A. ex rel. N.A. v. First Church of Christ**, 748 A.2d 692, 699 (Pa. Super. 2000).

The existence of a duty, as an element of negligence, is a question of law for the court to decide. **Alderwoods (Pennsylvania), Inc. v. Duquesne Light Company**, 52 A.3d 347 (Pa. Super. 2012), *affirmed* 106 A.3d 27 (Pa. 2014). The existence of a legal duty of care on the part of Defendants depends on the relationship of the parties in this case.

Plaintiff alleges that he was on Defendants' business premises as a customer or a business "invitee." A "special relationship" exists between a business and its invitee. **Sherry v. Sheetz, Inc.**, 242 A.3d 427 (Pa. Super. 2020)

(unpublished non-precedential decision), citing **T. A. v. Allen**, 669 A.2d 360 (Pa. Super. 1995) (*en banc*), *appeal denied* 676 A.2d 1201 (Pa. 1996).

An invitee is described as follows:

- (1) An invitee is either a public invitee or a business visitor.
- (2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.
- (3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with the business dealings with the possessor of the land.

Restatement (Second) of Torts § 332; **Ott v. Unclaimed Freight Co.**, 577 A.2d 894, 896 (Pa. Super. 1990).

Generally, the determination of whether an individual is an invitee is a question for the fact-finder. **Charlie v. Erie Insurance Exchange**, 100 A.3d 244 (Pa. Super. 2014). Only where the evidence is insufficient to support such a finding, is it appropriate for the court to remove that issue from the jury. *Id.*

In **Campbell v. Eitak, Inc.**, 893 A.2d 749 (Pa. Super. 2006), a restaurant patron brought suit against the restaurant for failure to have policies in place for emergent care when the patron began to choke. The defendant's staff had called 911 and summoned an ambulance for the patron, but had not performed the Heimlich maneuver and had not administered any other first aid. The trial court

granted summary judgment for the restaurant. On appeal, the Superior Court recognized the general duty of the business to come to the assistance of a choking customer. However, the court affirmed the grant of summary judgment in favor of the defendant, holding that the defendant had fulfilled its obligation:

“the prompt summoning of medical assistance satisfies a restaurant’s duty to a patron who is choking. By calling 911 within minutes of Campbell’s reported distress, [restaurant] discharged its duty to Campbell as a matter of law.”

Campbell, 893 A.2d at 753.

In addressing the duty of a business to its patrons/invitees who experience medical emergencies on its premises, Pennsylvania courts have considered

Section 314A of the Restatement of Torts:

§314A. Special Relations Giving Rise to Duty to Aid or Protect

(1) A common carrier is under a duty to its passengers to take reasonable action

(a) To protect them against unreasonable risk of physical harm, and

(b) to give them first aid after it knows or has reason to know that they are ill or injured, and to care for them until they can be cared for by others.

...

(2) A possessor of land who holds it open to the public is under a similar duty to members of the public who enter in response to his invitation.

Restatement (Second) of Torts §314A(1), (3). Under Section 314A, the special duty to protect an invitee who is ill or injured extends to risks arising out of the actor's own conduct. Restatement (Second) of Torts, §314A, Comment d.

The language in the **Campbell** case has been interpreted to have been limited to a restaurant's duty to its patrons; however, its reasoning has been considered in cases addressing the general duty of a business to summon help for a patron suffering injury on business premises. In **Reason v. Kathryn's Korner Thrift Shop**, 169 A.3d 96 (Pa. Super. 2017), a customer sued a thrift store after an employee's daughter physically assaulted the customer. In examining the thrift store's duty to the customer, the court noted as follows:

Although Paragraph (1) of this section, the provision dealing with common carriers, was cited with approval in dicta by the Supreme Court of Pennsylvania in **Stupka v. Peoples Cab Co.**, 437 Pa. 509, 264 A.2d 373, 374 (1970), the Commonwealth's decisional law had not embraced the other paragraphs of this provision regarding other types of business entities, and the Court in **Campbell** declined to do so with respect to the restaurant. Instead, relying on **Lee v. GNLV Corp.**, 117 Nev. 291, 22 P.3d 209 (2001), and **Drew v. Lelaj's Sportsmen's Cafe, Inc.**, 806 P.2d 301 (Wyo. 1991), the Court held that restaurant employees' "duty to aid" extended only to calling for professional medical assistance within a reasonable time; the businesses did not owe a duty to provide first aid themselves. **Campbell**, 893 A.2d at 751–52.8 We have not revisited the issue since that time.

Although **Campbell**, **Lee**, and **Drew** all involved provision of medical assistance to restaurant patrons, we see no reason to distinguish restaurant cases from others where business invitees require assistance. Nor do we perceive a relevant distinction between the medical assistance required for

the choking victim in **Campbell** and the assistance required for a victim of a physical altercation, as in this case. Just as a business is under no legal duty to don the mantle of a medical professional to attend to an invitee's medical need, so too is a business not required to act as a policeman in the face of an ongoing assault. Indeed, imposing such a duty could place the business employees at risk of harm and impose liability on the business if its employees are injured. Although the alleged assault here consisted of fisticuffs between thrift shop patrons, it is not difficult to imagine more dangerous hostilities, perhaps involving firearms. Thus, based on **Campbell** and related case law and in the absence of any contrary authority provided by reason, we agree that a business satisfies its duty to aid a business invitee by calling 911 or another source of professional medical or police assistance.

Id. at. 105-106.

Our review of the Complaint reveals sufficient factual allegations by which the trier of fact could potentially determine that Plaintiff was Defendants' invitee. In the event that Plaintiff is found to have been an invitee, caselaw indicates that a business has an obligation to summon aid for an ill or injured patron on its premises even if the patron's situation is self-induced. We recognize the social utility of imposing such a duty on a business. Thus, we find that Plaintiff was owed a duty of care while he was on Defendants' business premises and that Defendants were obliged to summon medical aid for Plaintiff even if Plaintiff caused his own situation through an accidental overdose.

In determining the existence of the duty, we believe it was foreseeable to the employee who gave the key to the restroom to Plaintiff that Plaintiff may have

been in some sort of distress when the key was not returned and the restroom was not vacated by the time the employees closed the store for the night. The facts alleged present a question of whether the duty of care was breached by the employee's failure to check the restroom to ensure that Plaintiff had safely left the premises and by failing to summon help for Plaintiff as he would have been discovered to be unconscious on the restroom floor. The fact that Plaintiff was allowed to remain in the store for the entire period from 9:00 p.m. to 7:00 a.m. the following morning presents a factor to be considered in the question of whether this duty of care was breached.

Based on these legal principles, we cannot say that Plaintiff has failed to state a claim upon which he could be afforded relief. The facts alleged in the Complaint are sufficient to state the elements of a negligence cause of action, including a duty of care, against Defendants for the conduct of their employee. Thus, we will overrule this Preliminary Objection and direct the parties to proceed in accordance with the Pennsylvania Rules of Civil Procedure.