

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JAMI PHIFER, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 03-0327-SLR  
 )  
 E.I. DU PONT DE NEMOURS AND )  
 COMPANY; )  
 )  
 Defendants. )

---

Jeffrey S. Friedman, Esquire, Silverman & McDonald, Wilmington,  
Delaware and Steven F. Marino, Esquire, Marino & Associates, PC,  
Philadelphia, Pennsylvania. Counsel for Plaintiff.

James W. Semple, Morris, James, Hitchens & Williams, LLP,  
Wilmington, Delaware. Counsel for Defendant.

---

**MEMORANDUM OPINION**

Dated: January 5, 2004  
Wilmington, Delaware

**ROBINSON, Chief Judge**

**I. INTRODUCTION**

On March 26, 2003, Jami Phifer ("plaintiff") filed a complaint against DuPont Country Club<sup>1</sup> ("defendant") alleging personal injuries from a fall she sustained on club grounds. (D.I. 1) Plaintiff is a resident of the Commonwealth of Pennsylvania. Defendant is incorporated under the laws of the State of Delaware with its principal place of business in Wilmington, Delaware. The court has original jurisdiction over the instant suit pursuant to 28 U.S.C. § 1332. Presently before the court is the defendant's motion to dismiss the complaint for failure to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6). (D.I. 7) For the reasons that follow, the court grants defendant's motion.

**II. BACKGROUND**

On or about April 5, 2001, the New Castle County Chamber of Commerce organized and sponsored a business and technology convention at the DuPont Country Club (the "Club"). (D.I. 1 at ¶9) Plaintiff attended the convention and exited the main doors of the Club around noon. (Id. at ¶¶13, 14) She walked down a set of concrete steps leading from the main doors to a concrete sidewalk. (Id.) The stairs were crowded with many pedestrians entering and leaving the convention. (Id. at ¶16) As plaintiff

---

<sup>1</sup>On June 3, 2003, the parties filed a stipulation substituting E.I. Du Pont de Nemours and Company as the proper defendant in lieu of DuPont Country Club. (D.I. 6)

reached the sidewalk, she heard a loud noise originating from the direction of a white-colored truck parked in the Club's circular driveway adjacent to the main doors.<sup>2</sup> (Id. at ¶¶16, 17)

Plaintiff looked in the direction of the noise and, at the same time, an unknown male darted into her path and struck her.<sup>3</sup> (Id. at ¶19) Plaintiff infers that the reason that the unknown man abruptly juttred into her pathway was because he was startled by the loud noise and sought to move away from the truck. (Id. at ¶20) As a result of the impact, plaintiff was thrown into the air. (Id. at ¶21) Her body hit the concrete stairs upon landing, thereby causing her injury. (Id.)

### **III. STANDARD OF REVIEW**

In analyzing a motion to dismiss pursuant to Rule 12(b)(6), the court must accept as true all material allegations of the complaint and it must construe the complaint in favor of the plaintiff. See Trump Hotels & Casino Resorts, Inc. v. Mirage Resorts, Inc., 140 F.3d 478, 483 (3d Cir. 1998). "A complaint should be dismissed only if, after accepting as true all of the facts alleged in the complaint, and drawing all reasonable inferences in the plaintiff's favor, no relief could be granted under any set of facts consistent with the allegations of the

---

<sup>2</sup>Plaintiff does not state in her complaint whether the truck or its contents belong to defendant.

<sup>3</sup>Plaintiff does not identify the man who contacted her or assert that he was employed by defendant in her complaint.

complaint.” Id. Claims may be dismissed pursuant to a Rule 12(b)(6) motion only if the plaintiff cannot demonstrate any set of facts that would entitle him to relief. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The moving party has the burden of persuasion. See Kehr Packages, Inc. v. Fidelcor, Inc., 926 F.2d 1406, 1409 (3d Cir. 1991).

#### **IV. DISCUSSION**

Plaintiff’s claims rests solely upon Delaware common law. Plaintiff alleges that defendant violated its duty to exercise reasonable care to anticipate, inspect, and discover dangerous conditions on its property and to protect its business invitees from such conditions. (Id. at ¶24) More specifically, plaintiff contends (1) that defendant knew or should have known that unloading a truck presented an unreasonable risk of harm to her as a business invitee,<sup>4</sup> (2) that defendant knew or should have known that she would not discover or realize the danger posed by the truck, and (3) that defendant should have warned her of this danger. (Id. at ¶¶25, 27, 28) Plaintiff further alleges that she suffered emotional distress directly and proximately as a result of plaintiff’s negligence.

##### **1. Negligence**

The Delaware Supreme Court has set forth the legal standard

---

<sup>4</sup>The parties do not dispute that plaintiff was a business invitee when she entered defendant’s property.

applicable for business invitees as follows:

A possessor of property who invites others onto his property to conduct business must exercise due care to keep his property in a reasonably safe condition and warn of any unreasonable risks which he knows about, or with the exercise of reasonable care would have known about, and which the other would not be expected to discover for himself.

Robelen Piano Co. v. DiFonzo, 169 A.2d 240, 244 (Del.

1961) (citing the Restatement (Second) of Torts § 343 (1965)).

The Delaware courts have also recognized that a landowner is not an insurer of his business invitees' safety. Id.; Hess v. United States, 666 F. Supp. 666, 670 (D. Del. 1987). In light of these standards, a business invitee must establish the following three elements to hold a landowner liable for negligence under Delaware law: (1) an unreasonably dangerous condition; (2) known to the possessor of property or which he would have known if he had exercised reasonable care; and (3) not discoverable by the invitee. Id. at 671. Additionally, a business invitee must establish that her injuries were proximately caused by the unreasonably dangerous condition. Duphily v. Delaware Elec. Coop., Inc., 662 A.2d 821, 828 (Del. 1995). Delaware law recognizes the traditional "but for" test for proximate cause. Id. at 828-829. To satisfy this test, "a proximate cause must be one 'which in natural and continuous sequence, unbroken by any intervening cause, produces the injury and without which the result would not have occurred.'" Emerson v. United States, 1998

U.S. Dist. LEXIS 6461, \*16 (D. Del. 1998) (citing Laws v. Webb, 658 A.2d 1000, 1007 (Del. 1995)). "Proof of nothing more than the occurrence of a fall is insufficient to show negligence." Hess, 666 F. Supp. at 671.

Construing the facts alleged in the complaint and all reasonable inferences drawn therefrom in favor of plaintiff, the court finds that plaintiff has failed to state a claim for negligence upon which relief can be granted. Plaintiff has not explained how unloading a truck parked in the circular drive outside defendant's facilities constituted an unreasonably dangerous condition. In fact, plaintiff cannot say with certainty that the unloading truck emitted the loud noise. Plaintiff merely stated that she "believed" this to be the case.

Assuming, arguendo, that the truck was an unreasonably dangerous condition, plaintiff also fails to show that it proximately caused her injuries. Plaintiff instead alleges that her injuries were caused when an unknown man bumped into her. Even if this contact were triggered because the unknown man moved from his path to avoid the unloading truck as alleged by plaintiff, the court finds this connection too tenuous to satisfy the "but for" test for proximate cause. The action of the unknown man constitutes an intervening cause, thereby breaking the natural and continuous sequence of events from loud noise to plaintiff's fall. Accordingly, the court grants defendant's

motion to dismiss plaintiff's negligence claim.

## **2. Negligent Infliction of Emotional Distress**

To recover for the tort of negligent infliction of emotional distress, the Delaware Supreme Court has mandated that two requirements be satisfied. Robb v. Pennsylvania R.R. Co., 210 A.2d 709, 714-15 (Del. 1965). First, a plaintiff must have been in "the immediate area of physical danger" of the negligent conduct. Id. Second, the plaintiff's emotional distress stemming from the negligent conduct must result in "physical consequences." Id. The court finds that plaintiff is not entitled to relief under a negligent infliction of emotional distress cause of action because the court has concluded that defendant did not engage in any negligent conduct. Even if the court were to have found such negligence, plaintiff has not avered that her emotional injuries culminated in any physical consequences. Rather, plaintiff merely alleges that she suffered "emotional distress, grief, humiliation, anger and chagrin to a degree that no reasonable person should be expected to endure." (See D.I. 1 at ¶35) The court, consequently, grants defendant's motion to dismiss plaintiff's negligent infliction of emotional distress claim.

## **V. CONCLUSION**

For the reasons stated, defendant's motion to dismiss the complaint (D.I. 7) is granted. An order shall issue.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JAMI PHIFER, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civ. No. 03-0327-SLR  
 )  
 E.I. DU PONT DE NEMOURS AND )  
 COMPANY; )  
 )  
 Defendants. )

**O R D E R**

At Wilmington this 5th day of January, 2004,

IT IS ORDERED that defendant's motion to dismiss the  
complaint (D.I. 7) is granted.

Sue L. Robinson  
United States District Judge