

2016 WL 630180 (Pa.Com.Pl.) (Trial Order)
Court of Common Pleas of Pennsylvania.
First Judicial District
Civil Trial Division
Philadelphia County

Jennifer ANDERSON, Plaintiff,

v.

SISTERS SERVING SISTERS, INC. d/b/a Sisters Night Club and Jim Ross, Defendants.

No. 14080394.

January 14, 2016.

Findings of Fact and Conclusions of Law in Favor of Plaintiff

Frederica A. Massiah-Jackson, Judge.

***1 MASSIAH-JACKSON, J.**

On December 9 and 10, 2015, this Court presided over a non-jury trial in the above-captioned matter. Pursuant to Rule 1038 of the Pennsylvania Rules of Civil Procedure Findings of Fact and Conclusions of Law are submitted in support of the verdict.

FINDINGS OF FACT

1. On June 29, 2013, Plaintiff-Jennifer Anderson was descending the stairs at the Sisters Night Club in Philadelphia, Pa. Jim Ross was the owner of the Club.
2. Two or three steps above the first floor landing, Ms. Anderson slipped and fell.
3. Various explanations were offered by all of the witnesses and parties for the cause of her fall: “she missed the last two steps”; “she couldn't walk due to a virus”; “her foot caught up in the loose carpet”; “she was bitten by an insect in Florida and was paralyzed”; “she drank 4-6 drinks prior to the fall”; “the steps were wet and slippery”; the lighting was “dim and poor”; “there was liquid on the steps”.
4. The surveillance video of that stairwell area is not available due to a “faulty” memory card.
5. After Ms. Anderson fell several of the employees at the Club came over to assist.
6. Ms. Anderson's friend, Dr. Marinilda Rodriquez, was also called over to provide assistance.
7. The testimony is undisputed that Plaintiff-Anderson was in significant pain. Her left ankle was badly bruised and swollen.
8. When the Club employees tried to lift Ms. Anderson, she briefly passed out due to the pain. Thus, 9-1-1 was called.

9. An ambulance arrived and Plaintiff-Anderson was transported to Jefferson Hospital.

10. The Jefferson medical records indicate: swelling, pain, numbness of left foot; inability to wiggle toes; x-ray results revealed no fracture or dislocation. Ms. Anderson was released by the hospital with an ankle splint, crutches and pain medication.

11. The Plaintiff testified that she missed time from work. In addition to doctor visits, Ms. Anderson went to physical therapy two to three times each week from August to October, 2013. She stated that she received three or four injections into her ankle in 2013. See generally, Medical Records and Reports submitted by Plaintiff: EIP/MRI; Jefferson Hospital ED Report; Steven J. Pettineo Physical Therapy Records; Marinilda Rodriguez, DPM Medical Records; Ali Albert Anaim, DPM, P.C. Medical Records.

12. Plaintiff claims economic loss for Past Medical bills is \$7,913.37.

13. Plaintiff is also claiming \$1,300.00 for Past Lost Wages for time missed from work.

14. Dr. Rodriguez, a podiatrist, testified as Plaintiff's treating physician and expert witness. She concluded after reviewing two MRI reports, all medical records, and clinical examinations and treatment that Ms. Anderson suffered a Grade 3 sprain which will require future surgery and rehabilitation.

15. Dr. Ali Anaim, DPM, concluded after clinical examination that Ms. Anderson suffered "multiple ligamentum tear and unstable ankle". He opines that future surgery is required. See also, Report dated October 30, 2015.

16. Dr. Paul Scoles, an orthopedic surgeon, testified as the defense expert witness. He concluded after reviewing the medical records, two MRI reports and answers to interrogatories, that Ms. Anderson suffered a "moderately severe sprain" which he determined to be Grade 1 or 2. In the absence of "chronic instability" he opined that surgery is not indicated. See also, Report dated June 5, 2015.

*2 17. The record is uncontradicted that Plaintiff-Anderson has already suffered significant pains, sufferings, discomforts and distress. She continues to experience tenderness, swelling and stiffness in her ankle.

18. Plaintiff-Anderson's return to mobility was gradual from June through December, 2013, causing embarrassment, humiliation, inconvenience and loss of activities of daily living.

CONCLUSIONS OF LAW

1. An invitee, defined as a person invited onto the property to conduct business, is owed the highest duty of care. Plaintiff-Anderson was a business invitee at Sisters Night Club on June 29, 2013.

2. The Club had an obligation to maintain the stairways and keep them safe for all patrons. The Club is required to use reasonable care in the maintenance and upkeep of the stairs and to protect invitees from foreseeable harm. Restatement (Second) of Torts, §§ 343, 343A.

3. A landowner must take an injured party as it finds her, however, the owner is liable only for injuries caused by the defective and dangerous conditions.

4. In this case, where the restrooms require patrons to use the stairs, the Defendant Club had a heightened responsibility.

5. The so-called “circle of clean” was either non-existent or not effective on June 29, 2013. As a result, the harmful spills created by Club employees and/or patrons were not discovered by the Club. See, **comment f**, Duty to police premises, Restatement (Second) of Torts, § 344; *Porro v. Century III Associates*, 846 A.2d 1282 (Pa. Superior Ct. 2004); *Miller v. Peter J. Schmitt & Co.*, 592 A.2d 1324 (Pa. Superior Ct. 1991).
6. Neither of the Incident Reports prepared by Denise Cohen were persuasive.
7. An invitee has a duty to avoid a recognized hazard. Ms. Anderson, a frequent patron, knew or should have known to hold onto the railing because of spills and for her own safety.
8. After considering all of the evidence presented by depositions, exhibits and the credible testimony of Jennifer Anderson, this Court concludes that the Economic and Non-Economic Damages suffered by Plaintiff-Anderson totals One Hundred Twenty Five Thousand Dollars (\$125,000.00).
9. Plaintiff-Anderson was ten percent (10%) causally responsible for her fall.
10. Defendant-Jim Ross was not present at the time of the incident and did not participate in the negligence involved by the Co-Defendant Club. Neither the theory of “piercing the corporate veil” nor the “participation theory” are applicable to the facts of this litigation. See, *Brindley v. Woodland Village Restaurant*, 652 A.2d 865, 870 (Pa. Superior Ct. 1995); *Skalos v. Higgins*, 449 A.2d 601, 604 (Pa. Superior Ct. 1982).
11. Corporate officers may not be found liable for nonfeasance. *Wicks v. Milzoco*, 470 A.2d 86, 90 (Pa. 1983).
12. For all of the reasons set forth above the verdict is rendered in favor of Jennifer Anderson in the amount of **One Hundred Twelve Thousand Five Hundred Dollars (\$112,500.00)**, and against the Defendant-Club only. A verdict is rendered in favor Jim Ross only.