

**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY
IN THE COURT OF COMMON PLEAS**

ERIC N. DERRICKSON	:	
	:	TRIAL DIVISION-CIVIL
	:	
v.	:	SEPTEMBER TERM, 2010
	:	No. 1067
	:	
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY and CITY OF PHILADELPHIA and DORIEN J. OBERLTON a/k/a DORIEN OBERTON and DORIEN OBERTON a/k/a DORIEN J. OBERLTON	:	Commonwealth Court # 423 CD 2011
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OPINION

PROCEDURAL HISTORY

Plaintiff, Eric N. Derrickson, appeals from the February 3, 2011 Order granting a Motion for Judgment on the Pleadings dismissing the Complaint against Defendant Southeastern Pennsylvania Transportation Authority, (SEPTA).

FACTUAL BACKGROUND

On or about September 16, 2008, Plaintiff, Eric N. Derrickson (“Derrickson”) was assaulted by Defendant, Darien J. Oberlton (a/k/a Dorien Oberton (“Oberton”)) on the subway platform concourse located at 13th and Market Streets in Philadelphia. (Complaint ¶¶9, 12). As a result of the assault, Derrickson suffered head injuries. (Complaint ¶12).

On September 13, 2010, Derrickson brought this action against SEPTA, the City of Philadelphia, and Oberton. In Count 1 of the Complaint, Derrickson alleged that SEPTA was negligent in failing to protect him from the assaultive conduct of third persons. (Complaint ¶9). In Count II of the complaint, Derrickson alleged the same cause of action against the City of Philadelphia. (Complaint ¶22). On October 26, 2010, this Court granted the City of Philadelphia's Preliminary Objections, dismissing the City from the case with prejudice based on its finding that no exception existed to the City's governmental immunity pursuant to the Political Subdivision Tort Claims Act.

On November 22, 2010, SEPTA filed its Answer with New Matter and raised the defense of sovereign immunity. On November 29, 2010, Derrickson filed his Reply to New Matter.

On January 5, 2011, SEPTA filed a Motion for Judgment on the Pleadings. In the Motion, SEPTA argued that as a Commonwealth party, it was also protected by sovereign immunity. (SEPTA's Motion for Judgment on the Pleadings, ¶8). Further, it was argued that the allegations in Derrickson's Complaint did not allege acts or omissions that fall within any exceptions to sovereign immunity. (SEPTA's Memorandum of Law in Support of Motion for Judgment on the Pleadings, pg. 7).

Specifically, SEPTA argued that the vehicle exception to sovereign immunity found in 42 Pa.C.S.A. §8522(b)(1) did not apply because Derrickson's injuries were caused by Oberton's assault, not by the movement of a SEPTA vehicle or its parts. (SEPTA's Memorandum of Law in Support of Motion for Judgment on the Pleadings, pg. 10). It was further argued that the real estate exception to sovereign immunity found

in 42 Pa.C.S.A. §8522(b)(4) did not apply because Derrickson's injuries were caused by the conduct of a third party, not by any direct defect of the land itself. *Id.*

On January 24, 2011, Derrickson filed his Response to SEPTA's Motion for Judgment on the Pleadings. In his Response, Derrickson argued that SEPTA was negligent under the Restatement of Torts Section 344 for failing to protect business invitees from the acts of third persons, failing to react reasonably to come to his aid, and failing to adequately light the subway platform concourse where the assault occurred.

Derrickson argued that the vehicle exception to sovereign immunity applied because SEPTA failed to provide safe "ingress and egress" from its vehicles. (Plaintiff's Memorandum in Opposition to SEPTA's Motion for Judgment on the Pleadings, pg. 3). In the alternative, it was argued that the real estate exception to sovereign immunity applied based on SEPTA's alleged negligence. (*Id.* at pgs. 2-4).

This Court granted SEPTA's Motion for Judgment on the Pleadings on February 3, 2011, dismissing SEPTA from the case with prejudice. Derrickson filed his Appeal to this Order on March 3, 2011 and filed his Statement of Matters pursuant to Pa.R.A.P. 1925(b) on May 23, 2011.

The issue on appeal is whether this Court erred in granting SEPTA's Motion for Judgment on the Pleadings where the Court found that the allegations in the pleadings were not sufficient to show that either the vehicle exception under 42 Pa.C.S.A. §8522(b)(1) or the real estate exception under 42 Pa.C.S.A. §8522(b)(4) applied to waive SEPTA's sovereign immunity protection under 42 Pa.C.S.A. §8521.

LEGAL ANALYSIS

According to the Pennsylvania Rules of Civil Procedure, “after the relevant pleadings are closed, but within such time as not to unreasonably delay the trial, any party may move for a judgment on the pleadings.” Pa.R.C.P. 1034(a). A Motion for Judgment on the Pleadings is in the nature of a demurrer as it gives the means to test the legal sufficiency of the pleadings. All of the plaintiff’s allegations must be taken as true for the purposes of a motion for judgment on the pleadings. In addition, the motion should be granted where the law is clear and trial would be a “fruitless exercise.” *Bata v. Central-Penn National Bank*, 423 Pa. Super. 373, 378, 224 A.2d 174, 178 (1966). It is well-settled that judgment on the pleadings is appropriate if there are no disputed issues of fact. *Williams by Williams v. Lewis*, 391 Pa. Super. 552, 555, 466 A.2d 682, 683 (1983).

It is this Court’s finding that the allegations in the pleadings do not fall within either the vehicle liability exception or the real estate exception to SEPTA’s sovereign immunity and thus there is no cause of action against SEPTA.

SEPTA was declared an agency of the Commonwealth in *Feingold v. Southeastern Pennsylvania Transportation Authority*, 517 A.2d 1270 (Pa. 1986). As a Commonwealth party, SEPTA is immune from suit under 42 Pa.C.S.A. §8521. Section 8521 adopts the protections of 1 Pa.C.S.A. §2310, which states:

Sovereign immunity reaffirmed; specific waiver.

Pursuant to section 11 of Article I of the Constitution of Pennsylvania, it is hereby declared to be the intent of the General Assembly that the Commonwealth, and its officials and employees acting within the scope of their duties, shall continue to enjoy sovereign and official immunity and remain immune from suit except as the General Assembly

shall specifically waive the immunity. When the General Assembly specifically waives sovereign immunity, a claim against the Commonwealth and its officials and employees shall be brought only in such manner and in such courts and in such cases as directed by provisions of Title 42 (relating to judiciary and judicial procedures) or 62 (relating to procurement) unless otherwise specifically authorized by statute.

1 Pa.C.S.A. §2310.

Accordingly, Plaintiff must show that the cause of action falls within one of the specific exceptions to sovereign immunity listed in 42 Pa.C.S.A. §8522(b).

Section 8522(b) provides, in pertinent part:

§ 8522. Exceptions to sovereign immunity

(b) Acts which may impose liability.--The following acts by a Commonwealth party may result in the imposition of liability on the Commonwealth and the defense of sovereign immunity shall not be raised to claims for damages caused by:

(1) Vehicle liability.--The operation of any motor vehicle in the possession or control of a Commonwealth party. As used in this paragraph, “motor vehicle” means any vehicle which is self-propelled and any attachment thereto, including vehicles operated by rail, through water or in the air....

(4) Commonwealth real estate, highways and sidewalks.--A dangerous condition of Commonwealth agency real estate and sidewalks, including Commonwealth-owned real property, leaseholds in the possession of a Commonwealth agency and Commonwealth-owned real property leased by a Commonwealth agency to private persons, and highways under the jurisdiction of a Commonwealth agency, except conditions described in paragraph (5).

“Because the General Assembly intended to exempt the Commonwealth from immunity only in specific, clearly defined situations, the exceptions to the Act must be

strictly construed as to uphold legislative intent and insulate the Commonwealth and its political subdivisions from tort liability.” *Warnecki v. Southeastern Pennsylvania Transportation Authority*, 689 A.2d 1023, 1025 (1997) (citing *Nestor v. Dept. of Transportation*, 658 A.2d 829 (Pa.Cmwlt.), *petition for allowance of appeal denied*, 543 Pa. 698, 670 A.2d 145 (1995)).

Derrickson first argues that his cause of action falls under the vehicle liability exception to sovereign immunity found in §8522(b)(1). In so doing, Derrickson relies on the Third Circuit case of *Toombs v. Manning*, 835 F.2d 453 (3d Cir. 1987), which in predicting how the Pennsylvania Court’s would interpret the vehicle liability exception to sovereign immunity held that the “operation” of a SEPTA train includes the “safe ingress and egress” from the vehicle. Thus, Derrickson argues that SEPTA can be held liable under the vehicle liability exception for failing to protect him from the assaultive conduct of Oberton while he was on the subway platform concourse.

Pennsylvania courts, however, in declining to adopt the holding in *Toombs*, have consistently held that a Commonwealth party cannot be held liable under the vehicle liability exception to sovereign immunity for criminal acts of third persons. *Southeastern Pennsylvania Transportation Authority v. Hussey*, 138 Pa.Cmwlt. 436 (1991); *Evans v. Southeastern Pennsylvania Transportation Authority*, 149 Pa.Cmwlt. 376, 380, 613 A.2d 137, 139 (1992); *Greenleaf v. Southeastern Pennsylvania Transportation Authority*, 698 A.2d 170, 173 (Pa.Cmwlt. 1997).

They have affirmed the principle that holds that in order for the vehicle liability exception to apply, Pennsylvania law requires the plaintiff to show that his injuries were caused by the movement of the vehicle or its parts. *Greenleaf*, 698 at 173 (citing

Williamson by Williamson v. Southeastern Pennsylvania Transportation Authority, 154 Pa.Cmwlt. 448, 624 A.2d 218 (1993); *Love v. City of Philadelphia*, 518 Pa. 370, 543 A.2d 531 (1988).

In *Williamson by Williamson*, the plaintiff suffered a serious injury to his eye when he was assaulted on a SEPTA train. *Id.* at 450. Like Derrickson in the present case, the plaintiff in *Williamson by Williamson* argued that SEPTA was negligent for failing to protect him from the assaultive conduct of a third party. *Id.* at 452. The Commonwealth Court, however, held that the vehicle liability exception to sovereign immunity did not apply because the plaintiff's injuries were caused by the criminal acts of a third party as opposed to the movement of the SEPTA train or its parts.

As in *Williamson by Williamson*, nothing in the pleadings suggests that Derrickson's injuries were caused by the movement of a SEPTA train or any of its parts. Instead, Derrickson's injuries were the direct result of Oberton's ostensibly criminal conduct while Derrickson was standing on the subway platform concourse. Accordingly, the vehicle liability exception to sovereign immunity does not apply.

Derrickson next argues that his cause of action falls under the real estate exception to sovereign immunity found in §8522(b)(4). In order for the real estate exception to apply, it must be alleged "that an artificial condition or defect of the land *itself* causes an injury to occur." *Snyder*, 522 Pa. at 313 (emphasis added). Further, the "dangerous condition must derive, originate from or have as its source the Commonwealth realty." *Id.* at 311. Further, the real estate exception only applies "where it is alleged that the artificial condition or defect of the land itself causes injury, not merely when it facilitates injury by acts of others." *Id.* at 312.

In *Warnecki*, the plaintiff was assaulted by a third party while standing at a subway station. She alleged that SEPTA was negligent in the maintenance of the subway station, including the escalator, gates, locks, and its poor configuration and lighting. *Id.* at 1024. The Commonwealth Court held that the real estate exception to sovereign immunity was inapplicable because the plaintiff's injuries were caused by the criminal acts of an unknown assailant, not from any defective condition of the real estate itself. *Id.* at 1026.

Likewise, in *Chambers v. Southeastern Pennsylvania Transportation Authority*, 128 Pa.Cmwlth. 368, 563 A.2d 603 (1989), the plaintiff was seriously injured when he was assaulted outside of a subway station. *Id.* at 370. The plaintiff alleged that SEPTA was negligent in failing to provide adequate lighting and security patrols. *Id.* Again, the Commonwealth Court concluded that the real estate exception did not apply because the plaintiff's injury was caused by a third party who was not an agent of the Commonwealth. *Id.* at 372-73.

Like the plaintiffs in *Warnecki* and *Chambers*, Derrickson's injuries are the direct result of the assaultive conduct of a third party as opposed to a defect of the land itself. Accordingly, since there is no allegation that Derrickson's injuries were caused by a defective condition of the land itself, but were instead the result of Oberton's assault, his cause of action does not fall within the real estate exception to sovereign immunity.

CONCLUSION

In light of the foregoing analysis, this Court believes that the Motion for Judgment on the Pleadings of Defendant SEPTA was properly granted, and respectfully requests that it be affirmed by the Court above.

BY THE COURT:

Date

ALLAN L. TERESHKO, J.

cc:
Vincent John Giusini, Esq. for Appellant
Carlton L. Johnson, Esq/John Patrick Kahn, Esq. for Appellee, Septa