

UNITED STATES OF AMERICA
DISTRICT OF MAINE

CHARLOTTE BLONDER,)
)
 Plaintiff)
)
 v.) Civil No. 99-274-P-C
)
 THE CASCO INN RESIDENTIAL)
 CARE, INC., et al.,)
)
 Defendants)

**RECOMMENDED DECISION ON DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT (DOCKET NO. 33)
AND DEFENDANTS' AMENDED
MOTION FOR PARTIAL SUMMARY JUDGMENT (DOCKET NO. 60)**

The Plaintiff, a former resident of the Defendants' residential care facility, has brought a multi-count complaint arising from injuries she sustained during a fire while a resident of the facility. This matter is now referred to me for recommended decision on the Defendants' Motion and Amended Motion for Partial Summary Judgment (Docket Nos. 33 and 60) on Plaintiff's claims for false imprisonment (Counts VI of the Complaint), to pierce the corporate veil (Count VII of the Complaint), and for punitive damages. The Amended Motion merely clarifies that the original motion was intended to apply to both Defendants, The Casco Residential Care Facility ("Casco Inn") and Linda Symonds, Casco Inn's administrator. The Amended Motion is the operative pleading in this case. I now recommend that the Court GRANT the amended motion as to Count VI, the claim for false imprisonment, and the claim for punitive damages, and DENY the amended motion as it pertains to the request to pierce the corporate veil.

Summary Judgment Standard

Summary judgment is appropriate only if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56(c). “[A] 'material' fact is one that might affect the outcome of the suit under governing law.” *Fajardo Shopping Center, S.E. v. Sun Alliance Ins. Co., Inc.*, 167 F.3d 1, 6 (1st Cir. 1999). The Court views the record on summary judgment in the light most favorable to the nonmovant. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 50 (1st Cir. 2000).

However, summary judgment is appropriate “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Once the moving party has presented evidence of the absence of a genuine issue, the nonmoving party must respond by “placing at least one material fact in dispute.” *FDIC v. Anchor Properties*, 13 F.3d 27, 30 (1st Cir. 1994) (citing *Darr v. Muratore*, 8 F.3d 854, 859 (1st Cir. 1993)).

Facts

In late August 1995, Linda Symonds, the Casco Inn’s administrator, received a call from Plaintiff’s husband, Samuel Blonder, a Florida resident. Mr. Blonder sought to have the Plaintiff admitted as a resident of the Casco Inn. (Defendant’s Statement of Material Facts, “DSMF,” ¶¶ 1-2, Docket No. 34.) During the telephone conversation, Ms. Symonds asked Mr. Blonder about the Plaintiff’s medical condition and she learned that she suffered from Parkinson’s Disease and depression, occasionally used a

wheelchair, and had post-stroke weakness on one side. The only bed available at the Casco Inn was on the second floor, but the Inn had a stair chair. Arrangements were made for Mrs. Blonder to arrive at the Casco Inn approximately one week later, on the Saturday before Labor Day. (DSMF ¶¶ 15- 17, 19). The Casco Inn never obtained Mrs. Blonder's medical records prior to admission. (DSMF ¶ 20).

Undisputed facts establish that the initial admission process went smoothly and that Mrs. Blonder became a resident of Casco Inn during Labor Day weekend, 1995. (DSMF ¶¶ 27-31). On the evening of Labor Day, Monday, September 4, 1995, while the Plaintiff was in her bed, a fire erupted when Plaintiff's bed and some of the materials in the bed ignited. (DSMF ¶¶ 40, 50). A chair had been placed next to Plaintiff's bed to help keep her from falling out of bed because Plaintiff had twice fallen out of her bed during her admission to Casco Inn. (DSMF ¶ 41 & Plaintiff's Statement of Additional Facts, "PSAF," ¶ 55, Docket No. 48 at 19.) About one-half-hour prior to the fire, an Inn staff member made her regular half-hour bed check and found a lit reading lamp in the Plaintiff's bed. The lamp was removed from the bed, turned off and returned to the nightstand. (DSMF ¶¶ 42-46). Sometime later the lit lamp again found its way into the bed and caused Plaintiff's bed and some of the materials on and near it to ignite. (DSMF ¶¶ 49-50). John Bielat, a neighbor of the Casco Inn, helped to remove Plaintiff from the bedroom. (DSMF ¶ 53).

The Casco Inn is incorporated and Linda Symonds is the sole shareholder. (DSMF ¶¶ 3-4). During 1995, the Casco Inn missed at least one rent payment and fell behind on insurance payments. Not all of the beds at Casco Inn were filled in 1995. (PSAF ¶ 1-3). During 1994, Casco Inn failed to remit to the IRS withholding taxes.

Linda Symonds alleges that prior to 1995 she made a \$45,000.00 loan to Casco Inn which was never memorialized in any documents. She also posited that, in 1995, she may have received some loan repayment from the Casco Inn. (PSAF ¶¶ 15-16). Paul B. Watson, the Casco Inn's legal counsel and corporate clerk, established that the Casco Inn maintained some corporate records, but the parties dispute the extent of those records. (DSMF ¶¶ 8-11).

Discussion

I. False Imprisonment

Plaintiff's claim of false imprisonment arises from the Casco Inn's decision to place a chair by her bed in order to keep her from falling out of bed. Plaintiff's argument is that she was "trapped in the bed by the heavy chair, with the bed pushed against a wall and away from the sprinkler head." (Plaintiff's Opposition to Motion for Partial Summary Judgment, "POMSJ," Docket No. 47 at 3). However, Plaintiff also argues that she was non-ambulatory and unable to transfer herself from her bed – even without a chair to block her way. (*Id.* at 4.) There is no evidence from Plaintiff or her rescuer that the chair impeded her escape. Defendant, on the other hand, argues that in order to make out a claim of false imprisonment Plaintiff must show that Defendant did something more than simply place a chair by a bed to prevent the Plaintiff from accidentally falling out of bed. (Defendants' Motion for Summary Judgment, Docket No. 33 at 7.)

Maine follows the Restatement (Second) of Torts § 35 (1965) in requiring the Plaintiff to establish that Defendant intended to, and did in fact, confine the Plaintiff within boundaries fixed by the Defendant where the Plaintiff was either "conscious of the confinement or . . . harmed by it." *McCann v. Wal-Mart Stores, Inc.* 210 F.3d 51, 53 (1st

Cir. 2000). There is no evidence that suggests that the placement of the chair caused the Plaintiff's harm in this case. There is a dispute of fact as to whether or not Bielat rescued her from the floor or the smoldering bed, but even if Plaintiff was still in bed at the time of the rescue, there is no evidence in the record that it was the chair that prevented her from getting out of bed. On this record it is at least as likely to have been her own physical impairment that prevented Plaintiff from leaving the bed. Nor is there any evidence to suggest that Plaintiff was "conscious of confinement" at the point the chair was placed against the bed or at any other point in time. Had Plaintiff wanted to get up from bed at any time prior to the fire, the door to her room was left open and she had a bell to ring if she needed assistance.¹ Plaintiff has failed to generate sufficient facts to support her claim of false imprisonment.

II. Punitive Damages

Under Maine law the burden on a party seeking punitive damages is great. He or she must prove by clear and convincing evidence that the defendant acted with actual or implied malice. *See Tuttle v. Raymond*, 494 A.2d 1353, 1361 (Me. 1985). Neither "mere reckless disregard of the circumstances" nor gross negligence is enough to support an award of punitive damages. *See id.* at 1361. Malice can be proven in one of two ways, either the defendant's tortious conduct is motivated by ill will toward the plaintiff or the defendant's conduct is so outrageous that malice toward a person injured as a result of that conduct can be implied. *See Kelleher v. Boise Cascade Corp.*, 683 F.Supp. 858, 860 (D.Me. 1988).

¹ There is a factual dispute about the size and efficacy of the bell provided to Plaintiff, but again, assuming that Plaintiff is correct and the bell was too small to be heard, there is no evidence in the record that fact has any particular relevance to the incidents occurring during the fire.

In *Kelleher*, the plaintiff, a commercial diver, was injured while diving at defendant's paper mill. *See id.* at 859. Defendant knew the diving helmets used by plaintiff leaked due to sediment buildup on the exhaust valve diaphragm, that the total suspended solids in the effluent treatment system exceeded EPA standards, that coliform bacteria were present in the effluent, and that the defendant did not warn the plaintiff of the dangers. *See id.* at 860. The Court acknowledged that these facts may establish that the defendant acted recklessly, but that malice could not be implied from this conduct alone. *See id.* In the present case, Plaintiff alleges that Defendant did not adequately explore her medical condition prior to admission, conduct proper fire drills prior to the fire, follow proper evacuation procedures at the time of the fire, and properly accommodate Plaintiff's physical impairments during her stay. Plaintiff additionally suggests that Defendant was motivated to admit her because of its dire financial straits and that one of its employees, Suzanne Castelli, bore actual malice against the Plaintiff. (POMSJ at 5-10.)

Plaintiff's attempt to characterize the Castelli deposition testimony as evidence of actual malice or ill will against Mrs. Blonder is a grossly unfair characterization. Plaintiff seeks to make much of Ms. Castelli's comment "I would have been happier if I hadn't worked that [night.]" (Castelli Dep., Bound Attachment to Docket No. 48, Ex. 4 at 110). When considered in context, nothing Ms. Castelli said rises to the level of evidence of actual malice toward Mrs. Blonder as asserted by Plaintiff. Furthermore, while there are disputed facts regarding the extent of the Casco Inn's financial difficulties, assuming that financial need was in part a motivating factor leading to an inappropriate admission of Plaintiff, it does not follow that malice would be implied under Maine law. The financial

circumstances may have been a motivation for the conduct, but the actual conduct was, at worst, reckless disregard of the circumstances and, under *Kelleher*, that fact does not give rise to punitive damages.

III. Piercing the Corporate Veil

In Maine, in order to pierce the corporate veil the plaintiff must establish "(1) some manner of dominating, abusing, or misusing the corporate form; and (2) an unjust or inequitable result that would arise if the court recognized the separate corporate existence." *Johnson v. Exclusive Properties Unlimited*, 1998 ME 244, ¶ 6, 720 A.2d 568, 571; *see also GMAC Commercial Mortgage Corporation v. Gleichman*, 84 F. Supp.2d 127, 139 (D.Me. 1999). In determining whether a shareholder has abused the corporate form under the first prong, the Maine Supreme Judicial Court has quoted with approval a twelve part test developed by the Massachusetts courts, which weigh the following factors:

(1) common ownership; (2) pervasive control; (3) confused intermingling of business activity, assets, or management; (4) thin capitalization; (5) nonobservance of corporate formalities; (6) absence of corporate records; (7) no payment of dividends; (8) insolvency at the time of the litigated transaction; (9) siphoning away of corporate assets by the dominant shareholders; (10) nonfunctioning of officers and directors; (11) use of the corporation for transactions of the dominant shareholders; and (12) use of the corporation for promoting fraud.

Johnson, 1998 ME 244, ¶ 7, 720 A.2d at 571 (quoting *The George Hyman Construction Co. v. Gateman*, 16 F.Supp.2d 129, 149-150 (D.Mass. 1998)). The record evidence in this case suggests that there are disputed facts regarding both prongs of the test for piercing the corporate veil.

On the issue of abuse of the corporate form, there are disputed facts surrounding siphoning away of assets by Linda Symonds (PSAF ¶¶ 7, 11-12, 15-17), nonobservance

of corporate formalities (PSAF ¶¶ 15, DSMF ¶¶ 9-12), absence of corporate records (DSMF ¶ 11), and others of the twelve factors. Furthermore, on the question whether it would be an inequitable result if the court recognized the separate corporate existence, there is a question of fact regarding the continued existence of the corporation in any functioning form. (DSMF ¶ 13). The corporation itself never owned any real estate (DSMF ¶ 5) and appears to have experienced significant financial difficulties with the IRS. (PSAF ¶¶ 8-10). Based upon the foregoing disputed facts, the Defendant is not entitled to summary judgment on the issue of piercing the corporate veil.

Conclusion

Based upon the foregoing, I recommend that the Court **GRANT** the Motion for Partial Summary Judgment as to Count VI, False Imprisonment, **GRANT** the motion as it pertains to those portions of the Complaint seeking punitive damages, and **DENY** the motion as to Count VII, piercing the corporate veil.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Margaret J. Kravchuk
U.S. Magistrate Judge

Dated: September 1, 2000

U.S. District Court
District of Maine (Portland)

CIVIL DOCKET FOR CASE #: 99-CV-274

BLONDER v. CASCO INN RESIDENTIA, et al
09/07/99
Assigned to: JUDGE GENE CARTER
Demand: \$75,000
Lead Docket: None
Dkt# in other court: None

Filed:

Jury demand: Both
Nature of Suit: 362
Jurisdiction: Diversity

Cause: 28:1332 Diversity-Medical Malpractice

CHARLOTTE BLONDER
plaintiff

DAVID BERTONI, ESQ.
[COR LD NTC]
BRANN & ISAACSON
P. O. BOX 3070
LEWISTON, ME 04243
786-3566

NICHOLAS H. WALSH
111 COMMERCIAL STREET
PORTLAND, ME 04101
(207) 772-2191

v.

CASCO INN RESIDENTIAL CARE
FACILITY
defendant

ERNEST J. BABCOCK
[term 06/28/00]
761-0900
MARTHA C. GAYTHWAITE
761-0900
SUSAN J. GUERETTE, ESQ.
MICHELLE ALLOTT, ESQ.
FRIEDMAN, BABCOCK & GAYTHWAITE
SIX CITY CENTER
P. O. BOX 4726
PORTLAND, ME 04112-4726
761-0900

ST PAUL FIRE AND INSURANCE CO
movant
[term 08/04/00]

TIMOTHY J. BRYANT, ESQ.
[term 08/04/00]
[COR LD NTC]
PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLC
ONE CITY CENTER
PO BOX 9546
PORTLAND, ME 04112-9546
791-3000

CASCO INN ASSOCIATES
defendant
[term 05/04/00]

MARK G. LAVOIE
[term 05/04/00]
774-7000
AARON KENNETH BALTES, ESQ.

[term 05/04/00]
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
774-7000

TIMOTHY H SYMONDS
defendant
[term 05/04/00]

MARK G. LAVOIE
[term 05/04/00]
(See above)
AARON KENNETH BALTES, ESQ.
[term 05/04/00]
(See above)
[COR]

GARY W SYMONDS
defendant
[term 05/04/00]

MARK G. LAVOIE
[term 05/04/00]
(See above)
AARON KENNETH BALTES, ESQ.
[term 05/04/00]
(See above)

LINDA SYMONDS
defendant

ERNEST J. BABCOCK
[term 06/28/00]
761-0900
MICHELLE ALLOTT, ESQ.
FRIEDMAN, BABCOCK & GAYTHWAITE
SIX CITY CENTER
P. O. BOX 4726
PORTLAND, ME 04112-4726
761-0900