RICHARD HAINES,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 99-00,348
	:	
PRESBYTERIAN HOMES, INC.,	:	
t/d/b/a SYCAMORE MANOR	:	
HEALTH CENTER,	:	
	:	
Defendant	:	PRELIMINARY OBJECTIONS

OPINION AND ORDER

We are asked to determine the Preliminary Objections of Defendant Presbyterian Homes, Incorporated, t/d/b/a Sycamore Manor Health Center (hereinafter "Sycamore Manor") filed May 14, 1999, in response to a Complaint filed May 3, 1999, by Plaintiff Richard Haines (hereinafter "Mr. Haines"). The Preliminary Objections are asserted against the Complaint's claim of corporate liability through a motion to strike for lack of specificity to subparagraphs (a), (b) and (h) of Paragraph 33 of the Complaint and paragraph 44, as well as a demurrer to the corporate liability theory.[1]

According to the Complaint, Mr. Haines was the victim of a shooting incident in 1996, which has left him an "incomplete paraplegic" since June of 1996 (Paragraph 5 of the Complaint). Subsequently, Mr. Haines became a resident of Sycamore Manor from September of 1996 until April of 1997, at which time he was discharged for independent living (Paragraph 7 of the Complaint).

[1] The Complaint also asserts Sycamore Manor is liable to Mr. Haines because its employees acted negligently under a traditional *respondeat superior* liability theory.

The Complaint asserts that on March 7, 1997, a heat massage unit was turned on and placed on Mr. Haines' left shoulder and back area by a Sycamore Manor employee, where it remained for two hours before being discovered and removed (Paragraphs 11-13 of the Complaint). As a result, Mr. Haines is said to have suffered two severe burns to his left shoulder and back area (Paragraph 14 of the Complaint), which did not heal and required wound care, including debridement and topical antibiotic dressings, for approximately eleven weeks after his discharge from Sycamore Manor (Paragraphs 17-24 of the Complaint).

Preliminary Objections in the nature of a demurrer test the legal sufficiency of a complaint. ***Turner v. The Medical Center, Beaver, Pa. Inc.***, 686 A.2d 830 (Pa.Super. 1996) (*allocatur* denied). To sustain preliminary objections in the nature of a demurrer, it must appear certain that upon the factual averments and all inferences that may be fairly deduced from them, the law will not permit recovery by a plaintiff. ***Halliday v. Beltz***, 514 A.2d 906 (Pa.Super. 1986).

Our Supreme Court adopted the theory of corporate liability as it relates to hospitals in the case of ***Thompson v. Nason Hospital***, 591 A.2d 703 (Pa. 1991). The Court stated that under this doctrine, a hospital is liable if it fails to uphold the proper standard of care owed its patient. ***Id***. at 708. The ***Thompson*** Court further accepted four general areas under which a hospital's duties are defined: a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; a duty to select and retain only competent physicians; a duty to oversee all persons who practice medicine within its walls as to patient care; a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

Here, Sycamore Manor argues it is not a hospital; therefore, it cannot be subject to liability under a corporate negligence theory. In addition to ***Thompson***, *supra*, Sycamore Manor relies upon the case of ***Remshifski v. Kraus***, No. 1845 Civ. 1992, Slip op. (CCP, Monroe, September 8, 1995) to support its contention. In ***Remshifski***, the plaintiff sought to hold an allegedly negligent physician's non-hospital employers liable. In awarding a defense motion for summary judgment on this issue, the Honorable Linda Wallach Miller, Judge, notes the theory of corporate negligence places a non-delegable duty on the hospital to properly care for its patients' well-being, but held under Pennsylvania law (specifically ***Thompson,*** *supra)* the doctrine had not been extended to entities other than hospitals. ***Remshifski***, at 16.

However, in 1998 the Superior Court decided the case of ***Shannon v. McNulty***, 718 A.2d 828 (Pa.Super. 1998), wherein it found that all four ***Thompson*** duties are applicable to a health maintenance organization.[2] The ***Shannon*** Court stated: "We see no reason why the duties applicable to hospitals should not be equally applied to an HMO when that HMO is performing the same or *similar* function as a hospital" (emphasis supplied). Under this standard, then, this Court must consider whether Sycamore Manor is performing the same or similar function as a hospital. We conclude, given the allegations of the Complaint that it is.

Paragraph 4 of the Complaint alleges Defendant "is a nursing home facility, which, among other services, provides health care services to individuals who require long-term health care." Paragraph 6 of the Complaint asserts Mr. Haines, after three months of hospitalization, was transferred to the Defendant for ". . .care and treatment as a result of his

[2] Plaintiff's counsel contends the Superior Court extended corporate liability with regard to two of the four duties in ***McClellan v. Health Maintenance***, 604 A.2d 1053 (Pa.Super. 1992). However, the Court actually indicated that defendant was liable under Section 323 of the Restatement (Second) of Torts, therefore "we need not now consider or decide whether the theory of corporate negligence is applicable to IPA model HMOs."

quadriplegic status." Paragraphs 9 and 10 allege Mr. Haines received heat massage treatment for shoulder and scapula discomfort. Granted, at this procedural stage, no answer admitting or denying the allegations has been filed. Nevertheless, the allegations (together with other factual pleadings of the Complaint) make it clear the claim arises out of Sycamore Manor's provision of long-term health care to Mr. Haines, its patient, under a situation similar to the short-term health care, which would have been rendered, by a hospital. This Court is convinced that the reasons for the law establishing a duty upon a hospital to assure its patients are properly cared for, a duty which has been extended to include health maintenance organizations, should also require a nursing home facility to be under the same duty of providing a standard of care that assures its patient's safety and well-being.

At argument Mr. Haines' counsel pointed out that Mr. Haines was transferred to Sycamore Manor following a period of hospitalization, for continued care and treatment of his injuries. Counsel also argues that while at Sycamore Manor, Mr. Haines received therapy, treatment and "was under the complete care of Sycamore's physicians, nurses and staff." Therefore, counsel asserts Sycamore Manor was providing complete health care services to Mr. Haines during his stay there." Plaintiff's Brief p. 7. These contentions were not disputed by defense counsel, nor was any argument advanced by defense counsel that the services provided Mr. Haines were significantly different from the care he received during his hospital stay. We thus find Mr. Haines may properly assert a corporate negligence claim against Sycamore Manor.

However, Sycamore Manor makes further argument that under the case of ***Edwards v. Brandywine Hospital***, 652 A.2d 1382 (Pa.Super. 1995), even if it is subject to

corporate liability, the negligence of the employee as alleged by Mr. Haines is insufficient to sustain such a claim. The ***Edwards*** Court stated:

> Acts of malpractice occur at the finest hospitals, and these hospitals are subject to liability under theories of respondeat superior or ostensible agency. To establish corporate negligence, a plaintiff must show more than an act of negligence by an individual for whom the hospital is responsible. Rather, ***Thompson*** requires a plaintiff to show that the hospital itself is breaching a duty and is somehow substandard. This requires evidence that the hospital knew or should have known about the breach of duty that is harming its patients.
>
> Thus, a hospital is not directly liable under ***Thompson*** just because one of its employees or agents makes a mistake, which constitutes malpractice. Just as regular negligence is measured by a reasonable person standard, a hospital's corporate negligence will be measured against what a reasonable hospital under similar circumstances should have done. ***Thompson*** contemplates a kind of systemic negligence, such as where a hospital knows that one of its staff physicians is incompetent but lets that physician practice medicine anyway; or where a hospital should realize that its patients are routinely getting infected because the nursing staff is leaving catheters in the same spot for too long, yet the hospital fails to formulate, adopt or enforce any rule about moving catheters. ***Thompson*** does not propound a theory of strict liability…[t]hough broadly defined, ***Thompson*** liability is still fault based.

Thompson at 1386-1387 (citations omitted) (emphasis supplied). We are mindful that the procedural posture of the ***Edwards*** decision was an appeal on the issue of whether the trial court should have granted the hospital's motion for directed verdict. We are currently considering Preliminary Objections to the Complaint. However, not only must the corporate liability claim be fault based, it must be fact based. We do find the Complaint does not sufficiently aver specific facts, which would support a corporate negligence claim under ***Edwards***. Instead the Complaint asserts a single incident, comprising a period of two hours and involving one employee caused Mr. Haines' injuries. There are no allegations of a type of

the systemic negligence made actionable under a corporate liability theory by ***Edwards*** and ***Thompson***. Therefore, we will sustain the Preliminary Objection in the nature of a motion to strike the corporate negligence claim, for lack of specificity, specifically with respect to Paragraph 44 of the Complaint.

Similarly, we agree that subparagraphs (a), (b) and (h) of Paragraph 33 of the Complaint must be stricken. The subparagraphs do not sufficiently specify the nature of the inadequate patient care provided or the failure of Sycamore Manor to exercise the judgment of a reasonable health care provider.

ORDER

AND NOW, this 24th day of September, 1999, Defendant Sycamore Manor's Preliminary Objections in the nature of a demurrer are HEREBY DENIED. The Preliminary Objections in the nature of a motion to strike for lack of specificity are HEREBY SUSTAINED. Plaintiff shall have twenty (20) days from the filing of this Opinion and Order to file an Amended Complaint.

BY THE COURT,

William S. Kieser, Judge

cc: Court Administrator
Thomas Waffenschmidt, Esquire
William J. Mundy, Esquire
McKissock & Hoffman, P.C.; 1700 Market Street, Suite 3000; Phila., PA 19103
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)
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