

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

EARL H. SIMMONS, : C.A. No. S07C-08-022 ESB
Plaintiff, :
v. :
WSFS BANK, :
Defendant. :

O R D E R

1) By order dated July 22, 2008, this Court granted the motion of plaintiff Earl H. Simmons (“plaintiff”) to proceed *in forma pauperis* and ordered him to submit an amended complaint which sets forth defendant’s duty to him and what act or failure to act breached that duty.

2) Incredibly, plaintiff, upon being given his file to review at the Prothonotary’s Office, wrote on the Court’s order, struck through portions of the order, crossed out the original clock-in dates on all the pleadings, re-clocked in the pleadings on August 6, 2008, and wrote in “for p + s” and “(Alledging [sic] WSFS neglegince [sic])” on the original complaint. Plaintiff committed the same unbelievable acts in the files of two other pending cases, Simmons v. Wachovia Bank, C.A. No. S07C-08-039 and Simmons v. Schafer, et al., C.A. No. S07C-08-023. He had the gall on one file folder where he crossed out the name of a defendant and wrote in the name of another to write on the face of the file: “Need New Folder”. For this gross misconduct in light of the

courtesy extended him, this Court **ORDERS AS FOLLOWS:**

i) Earl H. Simmons never shall be allowed to handle a Superior Court file without direct supervision by an employee of the Superior Court during the entire period he is reviewing the file; and

ii) Should Earl H. Simmons again mark upon an file or any document in any file of this Court, this Court will deem him in contempt of Court and shall impose sanctions on him.

3) Plaintiff did not amend his complaint according to the Civil Rules of this Court.

Instead, he inserted the two phrases noted above in the complaint. The complaint now reads as follows:

On 5/25/07 Plaintiff slipped and fell into closed glass door at new bank glass building at 500 DE Ave. Wilm at 4:25 PM.

Door was normally open in all other times Plaintiff entered Bank on Bank Business. On date indicated, glass door was closed although Bank was open for business.

Plaintiff suffered a concussion, an ambulance called by Mgr. Jeff Graf.

Assistant, Lauren Kubler provided an ice pack for Plaintiff, after which, Plaintiff was taken by ambulance to Wilm. Hospital for treatment in E.R. Civil Suit is for \$10 Million U.S. Dollars **for p+s. (Alledging [sic] WSFS neglegiance [sic]).** [Bolded portions are those which plaintiff wrote on the original complaint on August 6, 2008].

In the July 22, 2008, decision in this matter, the Court clearly explained the problems with the complaint. Plaintiff did not come remotely close to remedying the defects.

Plaintiff must allege negligence with particularity. Super. Ct. Civ. R. 9(b). This means that the defendant must be apprised

of the acts or omissions by which it is alleged a duty has been violated. Therefore, to plead negligence sufficiently, a defendant must be apprised of: (1) what duty, if any, was breached; (2) who breached it; (3) what act or failure to act breached the

duty; and (4) the party affected by the act or failure. [Footnotes and citations omitted.]

Roberts v. Delmarva Power & Light Company, 2007 Del. Super. LEXIS 232, *2 (Del. Super.

Aug. 6, 2007). As the Court further explained in Roberts at **5-6:

The question here is whether the above recited portions of the Complaint are specific enough to put the Defendant on notice so he can mount a defense. Our courts have long stated that “Rule 9(b) relates to the specificity with which a cause of action for negligence should be stated [in the complaint]. It does not set a standard for what constitutes a cause of action.” FN 13 Furthermore, our courts have not required plaintiffs to set forth in detail the evidence upon which they base their claims. FN 14 “It is usually necessary to allege only sufficient facts out of which a duty is implied and a general averment of negligent failure to discharge that duty.” FN 15

FN 13 Myer v. Dyer, 542 A.2d 802, 805 (Del. Super. 1987).

FN 14 Robinson v. Meding, 163 A.2d 272, 275 (Del. 1960).

FN 15 Id.

Again, after being provided the opportunity to do so, plaintiff has not alleged what duty, if any, the bank owed him to keep the door open at all times. All he alleges is that the door was closed when he fell and normally, the door was open. Thus, the complaint is insufficient to state a claim of negligence.

Plaintiff’s complaint is dismissed as legally frivolous.

IT IS SO ORDERED THIS 20th DAY OF AUGUST, 2008.

JUDGE

cc: Prothonotary’s Office
Earl H. Simmons
Ronald W. Hartnett, Jr., Esquire