

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DAVID P. CUMMINGS, and)
CATHERINE CUMMINGS,)
husband and wife)

Plaintiffs,)

v.)

C.A. No. 07C-06-293 CLS

SLICER'S CAMPING)
TRAILERS, INC., a Delaware)
Corporation,)

Defendant.)

Date Submitted: January 14, 2009

Date Decided: March 31, 2009

On Defendant's Motion for Summary Judgment – **DENIED.**

ORDER

Michael Silverman, Esq., 1010 N. Bancroft Parkway, Suite 22, Wilmington,
DE 19805, attorney for Defendant.

Bruce L. Hudson, Esq., 2 Mill Road, Suite 202, Wilmington, DE 19806,
attorney for Plaintiffs.

Scott, J.

Introduction

Before the Court is Defendant's, Slicer's Camping Trailers Inc. ("Slicer's"), motion for summary judgment. Plaintiffs, David Cummings and Catherine Cummings, filed an action against Slicer's after the roof of their camping trailer collapsed on top of David Cummings causing him injury. Plaintiffs claim that Slicer's negligent repair of the roof caused it to collapse. In support of their claim, Plaintiffs have proffered statements made by Slicer's employees admitting negligence. The issue is whether Plaintiffs must produce expert testimony to establish Slicer's liability in light of the admissions made by Slicer's employees. For the reasons discussed below, the Court finds that an expert is not necessary to establish negligence. Because genuine issues of fact remain, the defendants' motion for summary judgment is **DENIED**.

Background

This is an action for personal injuries arising from an accident involving a camping trailer owned by Plaintiffs. According to the Complaint, Plaintiffs took their camping trailer to Slicer's to have a new roof installed in July 2005. Plaintiffs picked up their trailer in January 2006 and were told by a Slicer's employee that the repairman thought a torsion spring was installed incorrectly by the manufacturer and they therefore reversed it

during the roof repair. On or about June 28, 2006, Mrs. Cummings put up the trailer roof but noticed that it was difficult to crank up. On or about June 30, 2006, while Mr. Cummings was pushing the safety latch release to close the trailer's roof, the roof collapsed hitting him in the head and knocking him to the floor. On or about July 5, 2006, Plaintiffs sent the trailer back to Slicer's for service on the collapsed roof. On October 7, 2006, a Slicer's employee left a telephone message informing Mr. Cummings that no part of the trailer was broken but that one of the torsion springs was not set properly. Mr. Cummings retained a recorded a copy of this telephone message. On October 19, 2006, Plaintiffs returned to Slicer's to pick up the trailer and were told by another Slicer's employee that the torsion spring was installed incorrectly during the initial roof repair. Mr. Cummings recorded this conversation. George Sinclair ("Sinclair), a Slicer's employee with 25 years of experience who serviced the roof the second time, testified at his deposition that the torsion spring was not set correctly. He further testified about how a misplaced torsion spring would cause a roof to collapse.

On June 29, 2007, Plaintiffs filed this personal injury suit against Slicer's alleging negligence. Specifically, they claim that Slicer's incorrectly installed the torsion spring causing the roof to collapse and injure Mr. Cummings. Slicer's denies that it was negligent in any way in servicing

the trailer and claims that Plaintiffs negligent conduct was the sole cause of Mr. Cummings' injuries.

On January 1, 2008, the Court issued a Trial Scheduling Order requiring Plaintiffs to produce all of their Expert Reports by September 30, 2008. Plaintiffs failed to produce any expert reports pertaining to the standard of care or Slicer's alleged breach of that standard.

Parties' Contentions

Slicer's denies that it was negligent in any way pertaining to the servicing of the trailer. It argues that without a liability expert, Plaintiffs are unable to establish: (1) that there was a defective condition; (2) the standard of care and/or; (3) that Slicer's conduct fell below the applicable standard of care. Plaintiffs disagree and argue that expert testimony is not necessary to establish a prima facie case of negligence because Slicer's employees admitted that Slicer's repairman incorrectly installed the torsion spring during the initial repair of the roof. Plaintiffs also cite to Sinclair's deposition testimony that the incorrectly installed torsion spring would cause the roof to collapse. Plaintiffs argue that based on the statements made by Slicer's employees, a jury could form an intelligent judgment without the aid of an expert as to whether Slicer's service on the trailer fell below the applicable standard of care and caused the roof to collapse.

Standard of Review

The Court may grant summary judgment if it concludes that “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 summary judgment as a matter of law.”¹ The moving party bears the initial burden of showing that no material issues of fact are present.² Once such a showing is made, the burden shifts to the nonmoving party to demonstrate that there are material issues of fact in dispute.³ In considering a motion for summary judgment, the Court must view the record in a light most favorable to the nonmoving party.⁴ Summary judgment will not be granted when a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.⁵ Additionally, “issues of negligence are [generally] not susceptible of summary adjudication. It is only when the moving party establishes the absence of a genuine issue of any material fact respecting negligence that summary judgment may be entered.”⁶

¹ Super. Ct. Civ. R. 56(c); *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991).

² *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

³ *Id.* at 681.

⁴ *Burkhart*, 602 A.2d at 59.

⁵ *Phillips-Postle v. BJ Productions, Inc.*, 2006 WL 1720073 (Del. Super.); citing *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

⁶ *Id.*

Discussion

Viewing the facts in the light most favorable to the Plaintiffs, the Court finds that Slicer's has failed to meet its burden of establishing the absence of a material issue of fact. Essentially, Slicer's claims that it did not negligently service Plaintiffs' trailer. Plaintiffs proffered statements made by Slicer's employees including Sinclair's deposition testimony to the contrary. This presents a genuine issue of material fact regarding whether Slicer's was in fact negligent. For this reason, summary judgment is not appropriate in this case.

Slicer's reliance on *Abegglan v. Berry Refrigeration et. al.*,⁷ and *Roberts v. Daystar, et. al.*,⁸ is misplaced. In *Abegglan*, the plaintiff claimed that a refrigeration repairman negligently repaired a leaking ice machine. In *Roberts*, the plaintiff claimed that the defendant negligently maintained a closed construction site by leaving holes in the ground uncovered and unmarked. This Court found that without the aid of a liability expert, the juries in *Abegglan* and *Roberts* would have been faced with the duty of determining the proper procedure for repairing an ice machine and the acceptable conditions at a closed construction site. This Court found that the knowledge necessary to make those determinations are typically outside the

⁷ Del. Super., C.A. No. 03C-08-061, Scott, J. (Dec. 2, 2005) (Mem. Op.)

⁸ Del. Super. C.A. No. 05C-04-189, Scott, J. (Dec. 8, 2008) (ORDER).

scope of the layperson's general knowledge and that without expert testimony to explain such procedures and expectations, the jury would be left to speculate as to the standard of care.

The facts of this case are distinguishable from the facts in *Abeggan* and *Roberts*. Here, the professionals themselves have admitted that they installed the torsion spring incorrectly and that an improperly installed torsion spring would cause the roof to collapse. The jury need not make the technical determinations; the professionals themselves have already done so. At this stage in the proceedings, upon reviewing the record in the light most favorable to the Plaintiffs, the Court finds that expert testimony is not necessary to establish the standard of care or that Slicer's services fell below that standard because Slicer's has vicariously admitted liability through the statements made by their employees. The Court does not make any ruling on the admissibility of those statements at this time.

IT IS SO ORDERED.

/s/ CALVIN L. SCOTT
Judge Calvin L. Scott, Jr.