IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

LAKISHA P. ROYAL, Plaintiff, v. GALMAN STONEBRIDGE, LLC d/b/a SOPHIA'S PLACE EAST, GALMAN STONEBRIDGE 2015, L.P., THE GALMAN GROUP, GALMAN GROUP, LTD., and GALMAN GROUP MANAGEMENT-PHILADELPHIA, LLC, Defendants.	)	C.A. No. N17C-07-094 JRJ

OPINION

Date Submitted: June 5, 2018
Date Decided: July 16, 2018

Upon Defendants' Motion for Judgment on the Pleadings: **DENIED.**

Benjamin A. Schwartz, Esquire, Schwartz & Schwartz, 1140 South State Street, Dover, Delaware 19901; and Richard K. Washington, Jr., Esquire (*pro hac vice*) (argued), Washington & Washington, P.C., 1650 Market Street, Suite 3600, Philadelphia, Pennsylvania, Attorneys for Plaintiff.

Joseph J. Bellew, Esquire (argued), Cozen O'Connor, 1201 North Market Street, 10th Floor, Wilmington, Delaware, Attorney for Defendants.

Jurden, P.J.

I. INTRODUCTION

Before the Court in this premises liability case is Defendants Galman Stonebridge, LLC d/b/a Sophia's Place East, Galman Stonebridge 2015, L.P., The Galman Group, Galman Group, Ltd., and Galman Group Management-Philadelphia, LLC's Motion for Judgment on the Pleadings.[1] For the reasons that follow, the Defendants' Motion is **DENIED.**

II. BACKGROUND

A. Facts

The Defendants own Sophia's Place East Apartment Complex in New Castle, Delaware.[2] On November 6, 2015, Plaintiff Lakisha Royal, a United States Postal Service Worker, was delivering mail on the Defendants' property when she sustained injuries to her left ankle and left knee due to an uneven, broken, and cracked sidewalk.[3] On September 29, 2016, Royal slipped and fell in a bathroom at her home and suffered a non-displaced fracture of the left tibia shaft.[4] Royal alleges that she fell because she was trying to remain non-weight bearing on her previously injured left leg.[5]

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[1] Defs.' Opening Br. (Trans. 61819521) (D.I. 24).
[2] Compl. ¶ 4 (Trans. 60845593) (D.I. 1) ("Galman Stonebridge Compl."); Defs.' Opening Br. Ex. C ("Galman Group Compl.") ¶ 5.
[3] *Id.*
[4] *Id.*
[5] *Id.* Royal allegedly slipped and fell in her bathroom nearly one year after she sustained the injuries on the Defendants' property.

B. Procedural History

According to Royal, the Defendants' negligence was the proximate cause of the injuries she sustained on November 6, 2015 and September 29, 2016.[6] Royal is seeking general and special damages for her injuries, medical expenses, and emotional harm.[7] On July 12, 2017, Royal commenced this premises liability action against Defendants Galman Stonebridge, LLC d/b/a Sophia's Place East, and Galman Stonebridge 2015, L.P.[8] On October 24, 2017, Royal filed a substantially similar complaint against Defendants The Galman Group, Galman Group Ltd., and Galman Group Management-Philadelphia, LLC.[9] The two matters were consolidated on February 20, 2018.[10] On March 19, 2018, the Defendants filed a motion for judgment on the pleadings pursuant to Superior Court Civil Rule 12(c).

III. STANDARD OF REVIEW

Pursuant to Superior Court Civil Rule 12(c), a party may move for a judgment on the pleadings, "[a]fter the pleadings are closed but within such time as not to delay the trial." The Court must accept all well-pled allegations in the complaint as true and construe all reasonable inferences in favor of the non-moving party.[11] A motion for judgment on the pleadings will be granted only where there is no genuine

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[6] Galman Stonebridge Compl. ¶ 4; Galman Group Compl. ¶ 5.
[7] *Id.*
[8] *See* Galman Stonebridge Compl.
[9] *See* Galman Group Compl.
[10] Order of Consolidation (Trans. 61707101) (D.I. 21).
[11] *Doe v. Bradley*, 2011 WL 290829, at *3 (Del. Super. Jan. 21, 2011).

issue of material fact and the movant is entitled to judgment as a matter of law.[12] "Unresolved issues of fact as to the defendant's negligence, proximate cause, and the parties' respective degrees of negligence usually present questions of fact for the jury."[13]

IV. DISCUSSION

The Defendants argue they are entitled to judgment for the following reasons: (1) Defendants did not owe a duty to Royal at her personal residence; (2) Royal's September 29, 2016 injury was not foreseeable and thus a superseding cause of the Defendants' alleged negligence; and (3) Defendants' alleged November 6, 2015 negligence did not proximately cause Royal's September 29, 2016 injuries.[14] The Court finds the Defendants' first two arguments are misplaced but will address the third argument because the key issue here is whether a genuine issue of material fact exists as to whether the Defendants' alleged November 6, 2015 negligence was the proximate cause of Royal's second injury.

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[12] *Gonzalez v. Apartment Cmtys. Corp.*, 2006 WL 2905724, at *1 (Del. Super. Oct. 4, 2006); *Bradley*, 2011 WL 290829, at *3 ("Indeed, when considering a motion under Rule 12(c), the Court must decline to construe facts not clearly alleged in the complaint or to decide disputed issues of fact, but rather must confine its review to deciding issues of law as framed by the well-pled allegations in the complaint.").

[13] *Jones v. Clyde Spinelli*, 2016 WL 3752409, at *2 (Del. Super. July 8, 2016); *see* DAN B. DOBBS ET AL., THE LAW OF TORTS 369 (2d ed. 2016) ("If a later injury results in part because the plaintiff is still operating under a residual disability from the first injury, it is a question for the jury whether the second injury was foreseeable.").

[14] Defs.' Opening Br. ¶¶ 47–49; Reply Br. ¶¶ 23–24 (Trans. 61986966) (D.I. 29).

To prevail on a negligence claim in Delaware, a plaintiff must establish that a defendant's negligent act or omission breached a duty of care owed to the plaintiff, and that the breach proximately caused the plaintiff's injury.[15] Delaware law recognizes the traditional "but for" definition of proximate cause, which is defined as the direct cause without which the injury would not have occurred.[16]

The Court finds *Brinkley v. Cat Enterprises, Inc.* and *Drummond v. Delaware Transit Corp.* instructive.[17] In *Brinkley*, the Court held that the plaintiff presented substantial evidence to allow a reasonable jury to conclude that two separate injuries were the direct result of the defendant's negligence.[18] The plaintiff in *Brinkley* alleged the defendant's negligence caused her to fracture her knee when she slipped and fell on the defendant's premises.[19] During her recovery, she fell while using crutches, reinjuring the same knee and requiring additional surgery.[20] The *Brinkley* plaintiff alleged this second injury was directly related to the defendant's negligent conduct that caused the first injury.[21] At trial, the plaintiff's treating physician testified that after the plaintiff's first injury, her knee was weak and could have

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[15] *Sims v. Stanley*, 2008 WL 853538, at *2 (Del. 2008) (TABLE); *see also Drummond v. Del. Transit Corp.*, 365 F.Supp.2d 581, 585 (D. Del. 2005).
[16] *Drummond*, 365 F.Supp.2d at 585 (quotations omitted).
[17] *Brinkley v. Cat Enters., Inc.*, 1994 WL 146018 (Del. Super. Apr. 4, 1994); *Drummond*, 365 F.Supp.2d 581.
[18] *Brinkley*, 1994 WL 146018, at *4.
[19] *Id.*, at *1.
[20] *Id.*
[21] *Id.*, at *2.

reasonably contributed to the second fall.[22] The jury returned a verdict in favor of the plaintiff.[23] Thereafter, the defendant moved for Judgment Notwithstanding the Verdict, arguing the plaintiff did not meet her burden of proof with respect to the second injury.[24] The Court denied the motion, finding a reasonable juror could conclude both falls were attributed to the defendant's negligence in the first fall.[25]

In *Drummond*, the District Court of Delaware, applying Delaware law, found injuries that were sustained as a result of a second fall were the direct result of the defendant's negligent conduct which occurred a year prior.[26] The plaintiff in *Drummond*, a passenger on a transit bus, sustained injuries when he fell because the bus made a sudden stop to avoid a collision.[27] A year after that injury, the plaintiff fell and sustained additional injuries.[28] The plaintiff provided expert medical testimony to establish that his second fall was a result of his knees buckling, which would not have occurred "but for" the injuries he sustained on the bus a year earlier.[29] The plaintiff's expert witness testified that the injuries from the second fall were

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[22] *Id.*, at *4.
[23] *Id.*, at *1.
[24] *Brinkley*, 1994 WL 146018, at *2.
[25] *Id.*, at *4. ("[U]nder a reasonable view of the evidence, a jury could have found in favor of Plaintiff and attributed both the first and second fall to the Defendant's negligence.").
[26] *Drummond*, 365 F.Supp.2d at 588–90.
[27] *Id.* at 584.
[28] *Id.* at 587.
[29] *Id.* at 588 (Plaintiff's expert witness testified that after the bus incident, plaintiff required left knee surgery and knee buckling is a complication associated with such surgery).

"causally related" to the defendant's negligence during the first fall.[30] The defendant also presented expert witness testimony.[31] The defendant's expert witness conceded that "but for" the bus incident, i.e., defendant's negligent act, the plaintiff would not have needed the medical treatment he received for the second fall.[32] In *Drummond*, just as in *Brinkley*, factual testimony was considered by a jury to determine whether the defendant's prior negligence, which caused the plaintiff's initial injury, was the proximate cause of the plaintiff's later injury.

In the instant case, the Court cannot grant the Motion because there remains genuine issues of material fact as to whether the Defendants' alleged November 6, 2015 negligence proximately caused Royal's September 29, 2016 injuries. As *Brinkley* and *Drummond* make clear, it is for the finder of fact to determine whether Royal's September 29, 2016 injuries are proximately related to the alleged negligent act of the Defendants. Accepting the allegations in the Complaints as true, and construing all reasonable inferences in the light most favorable to the non-moving party, the Court finds that it is inappropriate to conclude, as a matter of law, that the Defendants' negligence was not the proximate cause of Royal's September 29, 2016 injuries.

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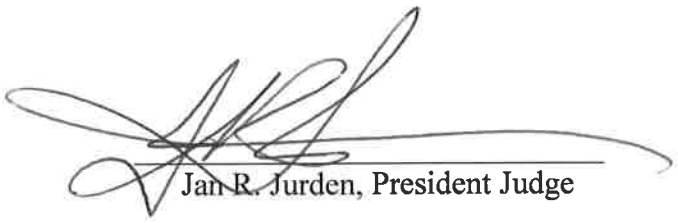
[30] *Id.* at 587.
[31] *Id.*
[32] *Drummond*, 365 F.Supp.2d at 587.

V. CONCLUSION

NOW, THEREFORE, based upon the foregoing reasons, the Defendants' Motion for Judgment on the Pleadings is **DENIED.**

IT IS SO ORDERED.



Jan R. Jurden, President Judge

Original to Prothonotary
cc: Benjamin A. Schwartz, Esq.
Richard K. Washington, Jr., Esq.
Joseph J. Bellew, Esq.