STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: May 1, 2020]

KRYSTLE SCLAFANI,	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. PC-2019-5454**
	:	
JOHN MANNION, Alias John Doe,	:	
MICHAEL F. DURGIN, Alias John Doe,	:	
DANTE PROCOPIO, Alias John Doe,	:	
CHARLES ROGERS, Alias John Doe,	:	
MARTHA ROGERS, Alias Jane Doe,	:	
and JOHN DOES 1 through 10,	:	
Defendants.	:	

DECISION

M. DARIGAN, J. Charles Rogers, Martha Rogers (the Rogers), and Michael F. Durgin (Durgin) (collectively Defendants) move this Court for dismissal pursuant to Super. R. Civ. P. 12(b)(6). They each assert that Krystle Sclafani (Plaintiff) has failed to state a claim for relief because Defendants did not owe her a legal duty to protect her from harm caused by the acts of a third party. Plaintiff objected, arguing that Defendants did owe her a legal duty as possessors of land and as social hosts. For the reasons that follow, this Court denies Durgin's Motion to Dismiss and grants the Rogers' Motion to Dismiss.

I

Facts and Travel

The Rogers are co-owners of property located at 4 Castle Road in Narragansett, Rhode Island (the Premises). (Compl. ¶¶ 5-6.) At all times pertinent to this case, co-defendants Durgin, John Mannion (Mannion), and Dante Procopio (Procopio) (collectively Tenant Defendants) were

students at the University of Rhode Island (URI) and members of the URI Rowing Club (Rowing Club) who rented the Premises from the Rogers. *Id.* ¶¶ 2-4. The Rogers have rented the Premises to members of the Rowing Club for a number of years. *Id.* ¶ 28.

During the late night of October 27, 2018 and into the early morning of October 28, 2018, Durgin and Mannion planned, supervised, and hosted a party on the Premises where they expected a large number of guests, many of whom would be under the age of twenty-one. *Id.* ¶ 10. Procopio knew that Durgin and Mannion were planning a party on this date but he did not attend the party, and he was not present on the Premises at the time of the party. *Id.* ¶ 11. The Rogers had no knowledge of this particular party, but prior tenants had used the Premises to host large parties involving underage drinking in the past. *Id.* ¶¶ 29-30.

On the night of the party, Durgin and Mannion initially restricted access to the Premises to only those guests who were closely related to the Rowing Club by placing someone at the Premises' front door to monitor guests' admission to the party. *Id.* ¶ 13. Later in the night, however, other URI students, including Plaintiff and her friends, learned that the party had been opened up to all students and there was no longer anyone monitoring guests at the Premises' front door. *Id.* ¶ 14.

Upon Plaintiff's arrival, Rowing Club member Noah Key (Key) offered Plaintiff a can of Red Bull containing an unknown mix of alcohol, which Plaintiff accepted and drank. *Id.* ¶ 15. Plaintiff and her friends then began serving themselves alcohol from a supply of liquor placed on a table in the open that Durgin and Mannion purchased and provided for guests' consumption during the party. *Id.* ¶ 16. She subsequently began playing various drinking games in the house. *Id.* As a result, Plaintiff became severely intoxicated. *Id.* ¶ 18. On this date, Plaintiff was eighteen years old. *Id.* ¶ 1.

At one point, Plaintiff and her friends needed to use the bathroom on the second floor of the home, which was deemed off limits by Durgin and Mannion such that Plaintiff and her friends were escorted to and from the second-floor bathroom by a guest stationed at the top of the stairs. *Id.* ¶ 21. Later in the night, after Plaintiff had become intoxicated, Rowing Club member Colin Moulton (Moulton), another party guest, led Plaintiff to the second floor of the Premises and into Procopio's private bedroom where he and Plaintiff engaged in unconsensual sexual intercourse. *Id.* ¶¶ 19-20. At this time, there was no one stationed at the top of the stairs restricting access to the second floor of the home. *Id.* ¶ 21.

Plaintiff timely filed a Complaint sounding in negligence against Mannion, Durgin, Procopio, and the Rogers. Specifically, Plaintiff alleges that the Tenant Defendants, as persons in possession of property and social hosts, breached their duty of care to protect Plaintiff from foreseeable acts of intoxicated party attendees. *Id.* ¶ 12. Plaintiff further alleges that the Rogers, as property owners and landlords, breached their duty to control tenant activities that presented a foreseeable risk of harm to Plaintiff. *Id.* ¶ 27. Excluding Mannion, all Defendants filed motions to dismiss pursuant to Super. R. Civ. P. 12(b)(6). This Court granted Procopio's motion to dismiss at a hearing on August 28, 2019 after finding that Procopio did not owe Plaintiff any legal duty because he was not present on the Premises at the time of the party. Thus, only Durgin's and the Rogers' motions are addressed here.[1]

[1] This Court heard Durgin's Motion to Dismiss on October 2, 2019 and the Rogers' Motion to Dismiss on November 6, 2019.

II

Standard of Review

"'The sole function of a motion to dismiss is to test the sufficiency of the complaint.'" *Palazzo v. Alves*, 944 A.2d 144, 149 (R.I. 2008) (quoting *Rhode Island Affiliate, ACLU, Inc. v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989)). Under Rhode Island law, "a Rule 12(b)(6) motion to dismiss is appropriate when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim." *Barrette v. Yakavonis*, 966 A.2d 1231, 1234 (R.I. 2009) (internal quotations omitted). In making its Rule 12(b)(6) determination, the Court "'assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiffs.'" *Giuliano v. Pastina*, 793 A.2d 1035, 1036 (R.I. 2002) (quoting *Martin v. Howard*, 784 A.2d 291, 297-98 (R.I. 2001)).

III

Analysis

A

Premises Liability

"[L]iability for alleged negligent conduct cannot attach to a defendant absent a recognized duty of care." *Gushlaw v. Milner*, 42 A.3d 1245, 1252 (R.I. 2012). The issue of whether a defendant owes a plaintiff a legal duty is a question of law decidable by the court. *Martin v. Marciano*, 871 A.2d 911, 915 (R.I. 2005). If no duty exists, the plaintiff's claims must fail as a matter of law. *Selwyn v. Ward*, 879 A.2d 882, 886 (R.I. 2005).

The duties owed by landowners are well-defined under Rhode Island law. Generally, "a landowner has no duty to protect another from harm caused by the dangerous or illegal acts of a

third party." *Martin*, 871 A.2d at 915. However, the Rhode Island Supreme Court has articulated a heightened standard of care for landowners and possessors[2] of land when a landowner is both present and there exists a potential of intentional harm to third parties. In *Volpe*, the Court adopted the Restatement (Second) of *Torts* § 318 (1965) and held that:

> "when possessors of property allow one or more persons to use their land or personal property, they are, if present, under a conditional duty to exercise reasonable care to control the conduct of such users to prevent them from intentionally harming others or from conducting themselves on the possessors' property in a manner that would create an unreasonable risk of bodily harm to others." 821 A.2d at 706.

Two conditions must be met for such a duty to arise: "the possessors of the property must (1) know or have reason to know that they have the ability to control the person(s) using their land, and (2) know or should know of the necessity and opportunity for exercising such control."[3] *Id.*

Importantly, this duty is imposed only on property owners who are present at the time. *Correia*, 162 A.3d at 638. In *Correia*, the Rhode Island Supreme Court specifically addressed the issue of whether a possessor of land must be physically present on the land for a duty to arise or if it is sufficient for the possessor of land to know and have the ability to control the persons using his land. *Id.* at 636. In that case, the plaintiff and some friends were target shooting on the

[2] Rhode Island courts use "possessors of property" and "landowners" interchangeably in this context. *See Volpe v. Gallagher*, 821 A.2d 699, 715 (R.I. 2003) ("We also recognize that the duty of *landowners and possessors of property* to prevent third persons whom they permit to use their property from intentionally harming or creating an unreasonable risk of bodily harm to others is an exception to the general rule . . . .") (emphasis added).

[3] This duty does not hinge on the existence of a special relationship but rather arises from the landowner's "obligation to prevent those whom they allow to use their property from doing so in a manner that creates an unreasonable risk of harm to others in situations in which the possessors are able to exercise such control." *Volpe*, 821 A.2d at 711. Notwithstanding, when a plaintiff voluntarily participates in the dangerous activity and brings the instrumentalities necessary to engage in this activity on the property so as to create the dangerous condition herself, the landowner-defendant does not owe a duty. *Correia v. Bettencourt*, 162 A.3d 630, 638 (R.I. 2017).

defendant's property when one of the plaintiff's friends accidentally shot the plaintiff in the stomach. *Id.* at 633. The plaintiff and his friends were all invited to the defendant-landowner's property as guests but the defendant-landowner was not present when the incident occurred. *Id.* at 634. After the accident, the plaintiff filed an action against the defendant-landowner alleging, in pertinent part, that the defendant breached his duty to control the guest who injured the plaintiff. *Id.* at 633-34. Affirming its holding in *Volpe*, the Court explicitly stated that "[t]he language of § 318 of the Restatement . . . clearly expresses that a duty arises *only if* the landowner is present." *Id.* at 636 (emphasis added). The Court refused "to broaden a property owner's duty of care any wider than that delineated in *Volpe*" such that, even if the defendant knew he had the ability to control the third party, his physical presence was required to "impos[e] liability on the property owner for the conduct of persons using the owner's property." *Id.* at 637. Thus, the Court ultimately held that summary judgment for the defendant was proper when "[n]o evidence was proffered that [the defendant-landowner] was present when the accident occurred." *Id.*

The Rhode Island Supreme Court has also addressed the duties owed by landlords when a claim arises from the use of leased property. A landlord who "has *demised* the entire premises to a tenant in whom he has vested exclusive possession and divested himself of any control thereof" owes no duty to third parties. *See Moretti v. C. S. Realty Co.*, 78 R.I. 341, 349, 82 A.2d 608, 612 (1951) (emphasis in original). In such circumstances, a landlord may only enter the premises without a tenant's consent in an emergency or when the tenant is absent for more than seven days so long as the entry is reasonably necessary for the protection of the property. G.L. 1956 § 34-18-26. A landlord may only evict tenants who commit a "crime of violence," which includes, among other crimes, rape, murder, arson, sexual assault, and kidnapping. Sections 34-18-24(10) and 34-18-39.

1

Durgin

Durgin squarely falls within the holding in *Volpe* subjecting him to a duty to control the acts of third parties on his property. First, Plaintiff has sufficiently alleged that Durgin was in possession of the Premises as a tenant, provided alcohol at the party and made it available to underage guests, and was present while Plaintiff drank the alcohol and was subject to the alleged sexual assault. *See Volpe*, 821 A.2d at 706. While Durgin was not physically present in the private second-floor bedroom during the sexual assault, our Supreme Court has made clear that a defendant only needs to be present *on the property* while the dangerous activity is occurring in order to impose a duty. *See id.* at 706-07 (The "defendant was 'present' . . . because she was there when her son engaged in the conduct that created an unreasonable risk of harm to others . . .").

Second, Plaintiff has alleged a conceivable set of facts demonstrating that Durgin had the ability to control all of his party guests, including Plaintiff and Moulton. *Id.* at 706. She states that Durgin planned and organized the party, as well as supplied a large quantity of alcohol that he intended guests to consume. Further, at the beginning of the night, Durgin exercised control over his party guests by stationing someone at the front door of the Premises so that only guests who were closely affiliated with the Rowing Club were allowed onto the Premises. Durgin further exercised control when he stationed someone at the second-floor entrance to prohibit guests from entering or using the second-floor bathroom unaccompanied. The record is devoid of any facts indicating that Durgin somehow lost his ability to continue exercising control over his party guests throughout the remainder of the night, when Plaintiff was present on the Premises, or that he did not have this same ability to exercise control before the party began when he helped amass the supply of alcohol. *See id.* Accordingly, while both Plaintiff and her alleged attacker, Moulton,

were undisputedly legal adults, this is not a case where Durgin was completely helpless to control their actions while they were both located on the Premises. *See Phelps v. Hebert*, 93 A.3d 942, 948 (R.I. 2014) (finding that landowners had no legal ability to control either adult's actions on or off the premises where decedent asked for a ride on an ATV and declined to wear a helmet).

Third, Plaintiff has sufficiently established that Durgin knew or should have known of the necessity and opportunity for exercising such control. From the facts alleged in Plaintiff's Complaint, Durgin conceivably knew or should have known that amassing a large quantity of alcohol, which was made available to known underage guests, could result in injury to one of his guests, yet he failed to take any action to ensure his guests' safety once the alcohol he supplied was consumed. Further, Durgin should have known that his intervention was needed during the party since Plaintiff and Moulton were both "obviously intoxicated," and, in full view of Durgin, proceeded to go to the off-limits second floor and enter a private bedroom. (Compl. ¶¶ 18-21.) Plaintiff does not allege, and she is not required to allege, that Durgin should have accurately gauged their intoxication levels or predicted that a criminal assault was likely in this situation; instead, Plaintiff satisfactorily alleges that, given the circumstances, Durgin should have known that two intoxicated individuals entering an off-limits bedroom required his attention and control. *See Volpe*, 821 A.2d at 706.

Durgin's contention that he owed no duty because Plaintiff voluntarily participated in and initiated the underage drinking is misplaced. *See Correia*, 162 A.3d at 638 (finding the defendant did not owe a duty when the plaintiff voluntarily participated in the dangerous activity and brought the necessary instrumentalities to engage in the activity). While true that Plaintiff voluntarily engaged in the underage drinking, Plaintiff did not initiate the accumulation of alcohol provided to underage guests and she did not contribute to this dangerous activity. To the contrary, according

to the Complaint, Plaintiff did not bring her own alcohol to the Premises and instead only drank from the alcohol Durgin supplied, which was present on the Premises upon her arrival.

Therefore, accepting the facts as pled in the Complaint as true, Durgin owed Plaintiff a duty to control the conduct of his guests because he was a possessor of land, he amassed a large quantity of alcohol for the purpose of providing such alcohol to guests, including underage guests, he was present on the Premises at the time of this dangerous activity, and he both had the ability to control his guests and should have known of the necessity for exercising such control.

2

Rogers

Conversely, Plaintiff has failed to allege a set of facts supporting her claim that the Rogers owed her a legal duty as possessors of land to control the actions of third parties. First, Plaintiff concedes that the Rogers were not physically present on the Premises at the time the Tenant Defendants accumulated the large supply of alcohol and were similarly not present during the assault or when Durgin and Mannion served alcohol to underage guests. *See id.* at 636. Even if the Rogers had the same knowledge a physically present person would have had, such knowledge, standing alone, is insufficient under Rhode Island law to impose a duty on the Rogers to prevent a third party criminal assault. *See id.* at 637 (holding that a defendant-landowner must be physically present when the dangerous activity occurs so as to give rise to a duty of care under either Restatement (Second) of *Torts* § 318 or common law negligence).

Second, Plaintiff has not presented any facts to support her claim that the Rogers had the ability to control the Tenant Defendants. *See Volpe*, 821 A.2d at 706. The Tenant Defendants rented the entire Premises from the Rogers such that the Rogers vested exclusive possession of the Premises in the Tenant Defendants and divested themselves of all control of the Premises. *See*

Moretti, 82 A.2d at 612. Under such circumstances, Rhode Island law makes clear that the Rogers maintained no control over the Premises and were therefore unable to enter upon the Premises so as to take control over the Tenant Defendants' alleged dangerous activities.

Contrary to Plaintiff's position, the Residential Landlord and Tenant Act, §§ 34-18-1, *et seq.* (the Act) does not change this outcome. Section 34-18-24 only allows landlords to enter a rental property in case of an emergency, which Plaintiff has not alleged, or with notice after the tenants have vacated the property for at least seven days, which Plaintiff has also not alleged. Though Plaintiff notes that § 34-18-15(a) prohibits a rental agreement from having a provision allowing the property to be used in violation of the law, this is not relevant here given that there is no indication the rental agreement between the Rogers and the Tenant Defendants sanctioned underage drinking. At issue here is whether the Rogers were entitled to enter the Premises to prevent or control the Tenant Defendants' actions. Under the Act, the Rogers could only control the Tenant Defendants' activities, and possibly evict them, if the Tenant Defendants committed a crime of violence, which does not include stockpiling alcohol or serving such alcohol to underage guests. *See* § 34-18-24(10); § 34-18-39.

Third, Plaintiff has not alleged any facts suggesting that the Rogers knew or should have known of the necessity and opportunity for exercising control. Instead, the Rogers could not know of the necessity and opportunity for exercising control because, according to the Complaint, they were unaware of Durgin and Mannion's party and were not physically present on the Premises during the alleged dangerous activities. *See Volpe*, 821 A.2d at 706.

Accordingly, Plaintiff has failed to allege facts necessary to find that the Rogers owed her a legal duty as possessors of land to control the intentional actions of third parties. The Rogers were not physically present when the alleged dangerous activities occurred, had no right to control

the Tenant Defendants or their guests on the Premises, and did not know or have reason to know of the necessity and opportunity for exercising such control.

B

Special Relationship

The Rhode Island Supreme Court has also enunciated an exception to the general premises liability no duty rule when there is a special relationship between the plaintiff and defendant. *Martin*, 871 A.2d at 915. A special relationship "is predicated on a plaintiff's reasonable expectations and reliance that a defendant will anticipate harmful acts of third persons and take appropriate measures to protect the plaintiff from harm." *Id.* Pertinent to this case, the Court expressly held in *Martin* that a special relationship exists "between those who provide intoxicants and those whom they serve." *Id.* As such, "a party host who is alleged to have made alcohol illegally available to underage guests . . . owe[s] plaintiff 'the duty of exercising reasonable care to protect [her] from harm and criminal attack at the hands of fellow [guests] or other third persons.'" *Id.* (citing 2 Stuart M. Speiser et al., *The American Law of Torts* § 9:20 at 1125 (1985)).

In *Martin*, the defendant-host had a graduation party for her daughter at her home, which she expected to attract a large number of people. *Id.* at 914. Despite the fact that there were underage guests, the defendant-host supplied two kegs of beer that underage guests served themselves; these kegs were supplemented by alcohol brought by guests. *Id.* During the party, there was an altercation between the underage and intoxicated plaintiff and a guest that resulted in severe injuries to the plaintiff. *Id.* The Court held that a social host has a special relationship with underage guests to whom she serves alcohol such that she owes a special duty to take reasonable steps to protect these guests from injury and attacks by third parties. *Id.* at 915-16. In imposing this duty on the defendant-host, the Court found that there were no serious implications warranting

judicial restraint in these circumstances because the defendant-host "at most . . . willingly provided alcohol to a group of underage partygoers and, at least, supervised a party at which the underage guests were drinking openly and freely from two kegs of beer." *Id.* at 916; *Cf. Ferreira v. Strack*, 652 A.2d 965, 968 (R.I. 1995) (stating that "[t]he imposition of liability upon social hosts for the torts of guests has such serious implications that any action taken should be taken by the Legislature after careful investigation, scrutiny, and debate."). Thus, the Court rejected "the notion that imposing a duty on defendant and other similarly irresponsible parents and hosts to protect their guests from harm causally related to the consumption of alcohol by underage drinkers creates an unreasonable burden." *Martin*, 871 A.2d at 916.

1

Durgin

The facts alleged here are almost directly analogous to those in *Martin* such that Durgin owed Plaintiff a special duty to take reasonable measures to ensure her safety from third-party attacks. As a preliminary matter, Plaintiff has sufficiently alleged that she was an implied invitee on the Premises.[4] Even though the party was initially only open to those closely related to Rowing Club members, this limitation was impliedly lifted later in the night when there was no longer someone stationed at the door of the Premises restricting access to the party. After that time, any URI student was allowed to attend the party as a permitted guest, including Plaintiff, and neither Durgin nor Mannion challenged either Plaintiff's or any other non-Rowing Club member's

[4] Rhode Island Courts will only impose a special duty on social hosts when the tortfeasor or victim is a social guest, not when the tortfeasor or victim is a trespasser. *See Ferreira*, 652 A.2d at 969 (holding that the hosts did not owe the victims a special duty when the tortfeasor was a trespasser at the hosts' home, not an invited guest).

presence at the party. These facts suggest that Durgin consented to Plaintiff's presence at the party so as to render Plaintiff one of his social guests.

Although Plaintiff did not previously know Durgin or any of the other Tenant Defendants and Plaintiff had never been to the Premises before the night of the party, Durgin was at least constructively aware that Plaintiff was in attendance at the party. Unlike the guest in *Ferreira*, Plaintiff alleges that she openly drank the alcohol that Durgin made available, even though she served herself, and openly engaged in drinking games while on the Premises such that Durgin could have easily observed her at the party. *But see Ferreira*, 652 A.2d at 969-70 (finding that the guest was a trespasser when defendants were not constructively aware of his presence because they had no opportunity to view him, as he engaged in no social activities and he drank his own alcohol). Further, Plaintiff does not need to demonstrate that Durgin was specifically aware of her presence but rather her factual allegations that Durgin should have been aware of her presence is sufficient to establish that he owed her a duty as a social guest. *See Martin*, 871 A.2d at 916.

As a social guest, Durgin had a duty to protect Plaintiff against third-party attacks. Like the defendant-host in *Martin*, Durgin planned a party that drew in a large number of attendees and he provided alcohol for these attendees' consumption even though he knew underage guests would be present. *See id.* at 914. Further, much like the guests in *Martin*, Plaintiff served herself alcohol that Durgin made available for the purpose of drinking and proceeded to openly drink this alcohol throughout the night on the Premises in full view of Durgin. *See id.* Thus, at the most, Durgin "willingly provided alcohol" to Plaintiff or, at the least, "supervised a party at which the underage guests were drinking openly and freely" so as to justify the imposition of this legal duty. *See id.* at 916.

Despite Durgin's urging, this Court finds that the *Martin* Court was not uniquely concerned with *parent-hosts*. While the Court did specifically conclude that parent-hosts are under a duty to take reasonable steps when serving alcohol to underage guests, it is apparent when reading the case as a whole, as well as *Martin*'s prodigy, that the Court intended its holding to apply broadly to social hosts who serve alcohol to underage guests. *See Selwyn*, 879 A.2d at 888 (finding that *Martin* held that a *social host* owes a special duty to her underage guests when she provides those guests with intoxicants) (emphasis added); *see also Willis v. Omar*, 954 A.2d 126, 130 (R.I. 2008) (finding that *Martin* held that a *party host* who makes alcohol available to an underage guest owes a duty of reasonable care to protect the guest from harm, including a criminal assault) (emphasis added). In light of its broad holding, *Martin* supports the finding that Durgin did, in fact, have a special relationship with Plaintiff because he was a social host who made alcohol available to Plaintiff as an underage party guest. *See Martin*, 871 A.2d at 915 (holding that a special relationship exists between a host who serves alcohol to underage guests so as to justify the imposition of a legal duty).[5]

For these reasons, Plaintiff has met her burden in demonstrating that Durgin owed her a legal duty to take reasonable steps to protect her from third-party attacks by virtue of their special relationship—a social host serving alcohol to an underage guest.

[5] This Court finds Durgin's policy argument unavailing. The Court in *Martin* explicitly imposed a legal duty on social hosts who serve alcohol to underage guests and rejected the principle that imposing this duty in such circumstances "creates an unreasonable burden." 871 A.2d at 916. Thus, it is not the province of this Court to determine whether this legal duty is unduly burdensome but only to determine whether Plaintiff has alleged a set of facts demonstrating that Durgin owed her a legal duty under Rhode Island law.

2

Rogers

On the other hand, Plaintiff acknowledges that the Rogers did not serve her alcohol and makes no allegations that they provided or contributed to the supply of alcohol made available to Plaintiff and other underage guests on the Premises during the Tenant Defendants' party. Rather, as discussed above, the Rogers were not present on the Premises and had no ability to control the Tenant Defendants' actions in hosting a party where underage guests would be served alcohol.

Even if the Rogers had knowledge of the party, or had knowledge that the Tenant Defendants or previous Rowing Club members had hosted such parties in the past as Plaintiff alleges, this knowledge alone is insufficient to impose a duty under *Martin*. *See id.* (holding the defendant-host liable for injuries resulting from a third party's attack because *she* made the alcohol available to guests she knew to be underage). The *Martin* defendant's conduct simply is not analogous to the Rogers' conduct here. The absent and uninvolved Rogers cannot be liable for the Tenant Defendants' actions. *See id.*

Under the circumstances in this case, Plaintiff had no reasonable expectation that the Rogers would anticipate the harmful acts of a third party so as to take reasonable measures and protect Plaintiff from harm. *See id.* Plaintiff has failed to allege a conceivable set of facts supporting her claim that the Rogers owed her a legal duty to protect her against a third-party attack because of a special relationship.[6]

[6] This Court declines to address the Rogers' proximate cause argument because this Court has found that the Rogers do not owe Plaintiff a legal duty.

C

Foreseeability[7]

The focus of all legal duty analyses is foreseeability. *Selwyn*, 879 A.2d at 887. "[T]he foreseeability inquiry considers generally whether 'the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed on the negligent party.'" *Martin*, 871 A.2d at 917 (quoting *Banks v. Bowen's Landing Corp.*, 522 A.2d 1222, 1226-27 (R.I. 1987)). The exact kind of harm does not need to be foreseeable so long as it was foreseeable that some harm could result from the defendant's negligence. *Id.* Specifically, in considering whether a criminal assault was a foreseeable risk of harm, "[i]t is for the jury to determine whether the assault was such a remote possibility that it was an intervening cause of harm." *Id.*

Generally, one under a duty to protect others from unreasonable harm "'is not required to take precautions against a sudden attack from a third person'" unless he has "'reason to anticipate.'" *Id.* (quoting Restatement (Second) of *Torts* § 314A cmt. e (1999)). "[C]ause to anticipate the assault may arise from: 1) actual or constructive knowledge of the assailant's violent nature, or 2) actual or constructive knowledge than an atmosphere of violence exists in the [location of the assault]." *Id.* (internal quotations omitted).

In *Martin*, the Rhode Island Supreme Court discussed whether a criminal attack by a third party was a foreseeable risk of harm when a party host served alcohol to underage party guests. *See id.* Ultimately, the Court held that it "was generally foreseeable that one of [the defendant-host's] underage guests could have been the victim of an attack while attending the party." *Id.* The

[7] Having determined that Plaintiff has presented no set of facts supporting her claim that the Rogers owed her a legal duty, this section only addresses the foreseeability of Plaintiff's injuries in relation to Durgin.

Court reasoned that the defendant-host had cause to anticipate a violent altercation between the plaintiff and the party guest because the defendant-host expected a large gathering of underage guests, provided these underage guests with alcohol, and witnessed all of her guests openly drink this alcohol in violation of the law. *Id.* Additionally, the Court articulated that "it is common knowledge that the use of intoxicants frequently unduly excites the tempers, emotions and actions of those who indulge in them. This is especially true when underage individuals consume alcohol." *Id.* (internal citations omitted). Even though there was no evidence that the defendant-host in *Martin* knew of the attacking guest's presence at the party, the defendant-host still owed a duty to the plaintiff because the "defendant had actual or constructive knowledge that the party she hosted created an atmosphere that could lead to violence, and hence, the need for greater vigilance." *Id.* at 916. Thus, *Martin* provides that when alcohol is served to minors, a third-party attack resulting in injury to a social guest is foreseeable such that the defendant-host owes these social guests a legal duty and may be held liable for the social guest's resulting injuries. *See id.* at 917.

As in *Martin,* Durgin hosted a party where he anticipated a large number of guests, many of whom he knew would be underage, and he provided alcohol to these guests knowing that they would consume this alcohol in violation of the law. *See id.* Even though Durgin may not have had actual or constructive knowledge of Moulton's alleged violent nature, Plaintiff has sufficiently alleged facts supporting her claim that Durgin had cause to anticipate an atmosphere of violence on the Premises, where the assault took place, because Durgin provided alcohol to underage party guests. *See id.* (holding that an atmosphere of violence is created when a large number of underage partygoers consume alcohol).

Contrary to Durgin's assertions, he did not need cause to anticipate the particular sequence of events leading up to Plaintiff's assault and did not need reason to specifically foresee Plaintiff's

assault. *See id.* (holding that creating an atmosphere of violence gives the defendant-host cause to anticipate and that the specific harm does not need to be foreseeable). Further, even though Durgin may not have actually known of either Plaintiff's or Moulton's presence at the party, Durgin still owed Plaintiff a duty solely because of the violent atmosphere he created on the Premises. *See id.* at 916 (finding the defendant-host owed a duty to plaintiff regardless of the defendant-host's knowledge of the attacker's presence because the "defendant had actual or constructive knowledge that the party she hosted created an atmosphere that could lead to violence, and hence, the need for greater vigilance").

Consequently, on the face of Plaintiff's Complaint, she has alleged facts sufficient to demonstrate that Moulton's assault and her resulting injuries were foreseeable such that Durgin owed Plaintiff a legal duty to take reasonable steps to protect her from a third-party attack.

IV

Conclusion

For the reasons stated herein, this Court denies Durgin's Motion to Dismiss pursuant to Super. R. Civ. P. 12(b)(6) because Plaintiff has set forth sufficient facts demonstrating that Durgin owed her a legal duty as a possessor of land and as a social host to take reasonable steps to protect her from injuries caused by the acts of a third party. This Court grants the Rogers' Motion to Dismiss pursuant to Super. R. Civ. P. 12(b)(6) because it is clear beyond a reasonable doubt that they did not owe Plaintiff a legal duty to take reasonable steps to protect her from injuries caused by the acts of a third party. Counsel may present appropriate orders.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Krystle Sclafani v. John Mannion, et al.
CASE NO:	PC-2019-5454
COURT:	Providence County Superior Court
DATE DECISION FILED:	May 1, 2020
JUSTICE/MAGISTRATE:	M. Darigan, J.
ATTORNEYS:	
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