

00-740-CD
LINDA M. ZELENKY -vs- JEFFREY W. RICE indiv and t/a/b/a

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)
NO. 00-
-CD

LINDA M. ZELENKY,
Plaintiff

VS.
JEFFREY W. RICE, et al,
Defendant

COMPLAINT

FILED

JUN 21 2000
O 230 Atty ~~W. Gearhart~~ pd
William A. Shaw
Prothonotary

\$80.00
2cc Atty ~~W. Gearhart~~

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

19 LINDA M. ZELENKY, :
Plaintiff :
VS. : NO. 00- 740 -CD
19 JEFFREY W. RICE, Individually, and :
t/d/b/a JEFFREY W. RICE, D.M.D, P.C. : Jury Trial Demanded
Defendant :
19

CASE NUMBER: 00- -CD

TYPE OF CASE: Civil

TYPE OF PLEADING: COMPLAINT

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

JUN 21 2000

William A. Shaw
Prothonotary

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)**

**LINDA M. ZELENKY, :
Plaintiff :
VS. : NO. 00- -CD
: :
JEFFREY W. RICE, Individually, and :
t/d/b/a JEFFREY W. RICE, D.M.D., P.C. : Jury Trial Demanded
Defendant : :**

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
Clearfield, PA 16830
814-765-2641 Ext. 50-51

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)**

LINDA M. ZELENKY, :
Plaintiff :
VS. : NO. 00- -CD
:
JEFFREY W. RICE, Individually, and :
t/d/b/a JEFFREY W. RICE, D.M.D., P.C. : **Jury Trial Demanded**
Defendant :

COMPLAINT

AND NOW, comes LINDA M. ZELENKY, by and through her attorney, R. Denning Gearhart, who avers as follows:

1. That Plaintiff is LINDA M. ZELENKY, an adult individual, with an address of P.O. Box 123, Hawk Run, Clearfield County, Pennsylvania 16840.
2. That Defendant is JEFFREY W. RICE, D.M.D., land developer, with his principal place of business located in the Rice Complex at 90 Beaver Drive, DuBois, Clearfield County, Pennsylvania 15801.
3. That on or about January 21, 1999, Plaintiff was employed under a contract to provide cleaning services to the office owned by Jeffrey W. Rice, D.M.D., P.C. , but leased to Jeffrey W. Rice, D.M.D. The contract was between the Plaintiff and the Defendant.
4. That on or about that date, she was performing the required services, and in the course of those services was removing some garbage from the offices of Dr. Rice to a dumpster maintained by the Defendant and located in a parking lot owned and maintained by the Defendant.

5. That in the course of doing this, she did slip on some ice and slush which had negligently been allowed to accumulate and remain on the premises owned and maintained by the Defendant.

6. That the ice and snow was a result of weather conditions which had occurred at least a day before the accident which resulted in this cause of action.

7. That as a result of slipping and falling she suffered the following injuries:

- a. Trimalleolar fracture of the right ankle with displacement;
- b. Small minimal posterior malleolar fragment with displacement of the medial malleolar fragment; and
- c. Fracture of the distal fibula laterally of the right ankle.
- d. Severe pain, suffering and anguish, humiliation and inconvenience.

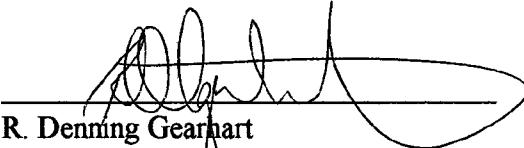
8. Further, as a result of those injuries, she incurred medical bills listed in Plaintiff's Exhibit '1'.

9. That the Plaintiff was unable to conduct her normal activities, including her cleaning business for a period of 21 weeks, and as a result suffered an earning loss of approximately \$5000.00.

10. That said injuries and loss would not have occurred, but for the Defendant's negligence in failing to remove ice and other hazards from his business premises despite having ample opportunity to do so.

WHEREFORE, Plaintiff prays your Honorable Court to enter judgment in her favor and against the Defendant in an amount in excess of \$20,000.00.

Respectfully submitted,


R. Denning Gearhart
Attorney for Plaintiff

COMMONWEALTH OF PENNSYLVANIA
: SS:
COUNTY OF CLEARFIELD

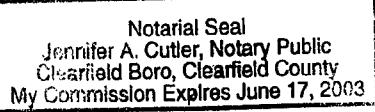
AFFIDAVIT

Before me, the undersigned officer, personally appeared, LINDA M. ZELENKY who being duly sworn according to law deposes and says that the facts set forth in the foregoing Complaint are true and correct to the best of her knowledge, information, and belief.

Linda M. Zelenky
LINDA M. ZELENKY

Sworn to and subscribed
before me this 16th day
of June, 2000.

Jennifer A. Cutler
Notary Public



(2)

R. DENNING GEARHART

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

ZELENKY, LINDA M.

00-740-CD

VS

RICE, JEFFREY W. IND & T/D/B/A

COMPLAINT

SHERIFF RETURNS

NOW JUNE 29, 2000 AT 12:47 PM DST SERVED THE WITHIN
COMPLAINT ON JEFFREY W. RICE IND & T/D/B/A JEFFREY W. RICE,
D.M.D., P.C., DEFENDANT AT EMPLOYMENT RICE COMPLEX, 90
BEAVER DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY
HANDING TO BONNIE FIEDOR, OFFICE MANAGER A TRUE AND ATTESTED
COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HER THE
CONTENTS THEREOF.

SERVED BY: NEVLING/MCCLEARY

28.21 SHFF. HAWKINS PAID BY: ATTY.
10.00 SURCHARGE PAID BY: ATTY.

SWORN TO BEFORE ME THIS

11th DAY OF July 2000
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co., Clearfield, PA.

SO ANSWERS,

Chester A. Hawkins
by Marilyn Harr
CHESTER A. HAWKINS
SHERIFF

FILED

JUL 11 2000
13:43 pm
William A. Shaw
Prothonotary

EK8

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)
NO. 00-740-CD

LINDA M. ZELENKY,
Plaintiff

VS.
JEFFREY W. RICE, et al,
Defendant

NOTICE

FILED

AUG 24 2000

WILLIAM A. SHAW
PROTHONOTARY

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

LINDA M. ZELENKY, :
Plaintiff :
VS. : NO. 00-740-CD
: :
JEFFREY W. RICE, Individually and :
t/d/b/a JEFFREY W. RICE, D.M.D., P.C., :
Defendant : :

TO: JEFFREY W. RICE, Individually and
t/d/b/a JEFFREY W. RICE, D.M.D., P.C., Defendant

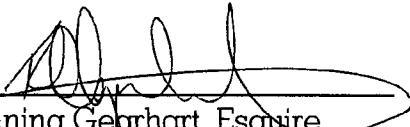
IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO TAKE ACTION REQUIRED OF YOU IN THIS CASE. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR'S OFFICE
Clearfield County Courthouse
Second & Market Streets
Clearfield, PA 16830
(814) 765-2641 Ext. 50-51

Dated: August 24, 2000

By: _____


R. Denning Gearhart, Esquire
Attorney for Plaintiff

FILED

AUG 24 2000

William A. Shaw
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL DIVISION - LAW

LINDA M. ZELENKY,

Plaintiff

vs.

JEFFREY W. RICE, individually and t/d/b/a
JEFFREY W. RICE, D.M.D., P.C.

Defendant

No. 740 - 2000 C.D.

Type of Pleading:
**Praeclipe for Entry
of Appearance**

Filed on Behalf of:
Defendant

Counsel of Record for this Party:
Jeffrey M. Gordon, Esquire
Supreme Court No. 55835
152 Jefferson Street
Brookville, PA 15825
(814) 849-6800

FILED

AUG 25 2000

William A. Shaw
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL DIVISION - LAW

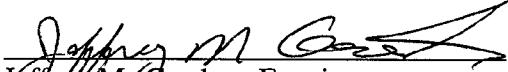
LINDA M. ZELENKY, :
Plaintiff :
:
v. : No. 740 - 2000 C.D.
:
JEFFREY W. RICE, individually and t/d/b/a :
JEFFREY W. RICE, D.M.D., P.C., :
Defendant :
:

PRAECIPE FOR ENTRY OF APPEARANCE

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of the Defendant, Jeffrey W. Rice, individually and t/d/b/a Jeffrey W. Rice, D.M.D., P.C., in the above-captioned matter.

August 24, 2000


Jeffrey M. Gordon, Esquire
Attorney for Defendant

FILED

AUG 25 2000

M. J. McPhee, Clerk
William A. Shaw
Prothonotary

cc

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL DIVISION - LAW

LINDA M. ZELENKY,

Plaintiff

No. 740 - 2000 C.D.

vs.

JEFFREY W. RICE, individually and t/d/b/a
JEFFREY W. RICE, D.M.D., P.C.

Defendant

Type of Pleading:
Answer and New Matter

Filed on Behalf of:
Defendant

Counsel of Record for this Party:
Jeffrey M. Gordon, Esquire
Supreme Court No. 55835
152 Jefferson Street
Brookville, PA 15825
(814) 849-6800

TO PLAINTIFF:

You are hereby notified to file a written response to the enclosed New Matter within twenty (20) days from service hereof or a judgment may be entered against you.



Jeffrey M. Gordon, Esquire
Attorney for Defendant

FILED

SEP 01 2000

William A. Shaw
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL DIVISION - LAW

LINDA M. ZELENKY, :
Plaintiff :
: :
v. : No. 740 - 2000 C.D.
: :
JEFFREY W. RICE, individually and t/d/b/a :
JEFFREY W. RICE, D.M.D., P.C., :
Defendant :
:

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Jeffrey W. Rice, individually and t/d/b/a/ Jeffrey W. Rice, D.M.D., P.C , by and through his counsel, Jeffrey M. Gordon, Esquire who files the following Answer and New Matter as follows:

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Denied. It is denied that ice and slush had accumulated in the area where the Plaintiff allegedly fell. To the contrary and at all times relevant hereto, the Defendant acted reasonably and prudently in the maintenance and care of his premises.

6. Denied. It is denied that ice and snow had accumulated in the area where the Plaintiff allegedly fell. To the contrary and at all times relevant hereto, the Defendant acted reasonably and prudently in the maintenance and care of his premises.

7(a)-(d). Denied. After reasonable investigation the Defendant is without sufficient

knowledge, information or belief as to the truth of the averments contained in paragraph seven (7 a.- d.), therefore such averments are denied and strict proof thereof is demanded at the time of trial.

8. Denied. After reasonable investigation, Defendant is without sufficient knowledge, information or belief as to the truth of the averments contained in paragraph eight (8) of Plaintiff's Complaint, therefore such averments are denied and strict proof thereof is demanded at the time of trial.

9. Denied. After reasonable investigation, Defendant is without sufficient knowledge, information or belief as to the truth of the averments contained in paragraph nine (9) of Plaintiff's Complaint, therefore such averments are denied and strict proof thereof is demanded at the time of trial.

10. Denied. The averments of negligence contained in paragraph ten (10) of Plaintiff's Complaint are specifically denied. At all times relevant hereto, the Defendant acted reasonably and prudently with regard to the maintenance of the business premises in question. By way of further response, after reasonable investigation the Defendant is without sufficient knowledge, information or belief as to any injuries or losses that may have been sustained by the Plaintiff, therefore such averments are denied and strict proof thereof is demanded at the time of trial.

NEW MATTER

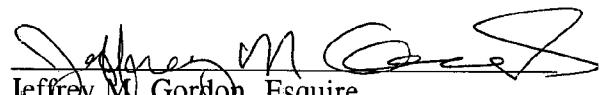
11. Defendant incorporates paragraphs one (1) through ten (10) of this Answer as if set forth herein at length.

12. Plaintiff allegedly fell in an area that had been properly maintained by the Defendant through the shoveling of snow and ice and the application of anti-skid materials.

13. The Plaintiff had traversed over the area which she allegedly fell just prior to the alleged fall and therefore, knew or should have known of the condition of the area and in the event that the Plaintiff slipped and fell on ice, the existence of which is denied, then such condition was known, obvious and the Plaintiff therefore assumed the risk of traversing over the same area a second time.

WHEREFORE Defendant demands judgment in his favor.

Respectfully submitted

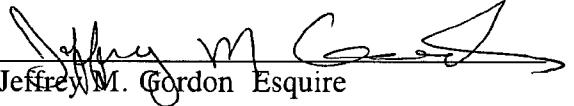


Jeffrey M. Gordon, Esquire
Attorney for Defendant

VERIFICATION

I, Jeffrey M. Gordon, do hereby state that I am the attorney for the Defendant, Jeffrey W. Rice, individually and t/d/b/a Jeffrey W. Rice, D.M.D., P.C., that I am authorized to make this Verification on behalf of the Defendant, and the facts set forth in the foregoing Answer and New Matter are true and correct, not at his own knowledge, but from information supplied to him from the Defendant, and that the purpose of this Verification is to expedite the litigation, and that the Verification of the Defendant, will be supplied, if demanded, also subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

August 31, 2000

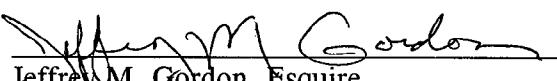


Jeffrey M. Gordon Esquire
Attorney for Defendant

CERTIFICATE OF SERVICE

I, Jeffrey M. Gordon, Esquire, hereby certify that a true and correct copy of the within Answer and New Matter was served upon the following by regular first class mail, this 31st day of August, 2000.

R. Denning Gearhart, Esquire
215 East Locust Street
Clearfield, PA 16830


Jeffrey M. Gordon, Esquire
Attorney for Defendant

FILED

SEP 01 2000
M 12371 NOCC
William A. Shaw
Prothonotary
EAF

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION No. 2000-740-GD

LINDA M. ZELENKY,
Plaintiff

vs.

JEFFREY W. RICE, individually and
t/d/b/a JEFFREY W. RICE, D.M.D.,
P.C.,
Defendant

ANSWER TO DEFENDANT'S NEW MATTER

FILED

DEC 19 2000
O 1482ccat
William A. Shaw
Prothonotary
R. Denning Gearhart

EGG

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LINDA M ZELENKY, :

Plaintiff :

vs. : No. 2000-740-CD

JEFFREY W. RICE, individually and
d/b/a JEFFREY W. RICE, D.M.D., P.C. :

Defendant :

CASE NUMBER: 2000-740-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: ANSWER TO DEFENDANT'S NEW MATTER

FILED ON BEHALF OF: PLAINTIFF

COUNSEL OF RECORD
FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court ID No. 26540
215 East Locust Street
Clearfield, Pa., 16830
(814) 765-1581

FILED

DEC 19 2000

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

LINDA M ZELENKY,

Plaintiff

vs.

No. 2000-740-CD

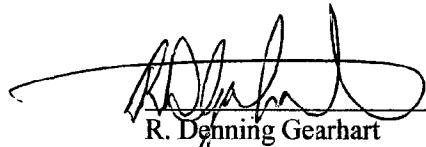
JEFFREY W. RICE, individually and
t/d/b/a JEFFREY W. RICE, D.M.D., P.C.,
Defendant

ANSWER TO NEW MATTER

COMES NOW, Plaintiff, by and through her Attorney, R. Denning Gearhart, and Answer the New Matter filed by Defendant as follows:

12. Denied for the reasons set forth in the Complaint filed in this matter.
13. Denied that the Plaintiff knew or had reason to suspect that the condition of the area was dangerous.

WHEREFORE, Plaintiff demands judgment in her favor and against the Defendant in an amount in excess of \$20,000.00.



R. Denning Gearhart
Attorney for Plaintiffs

FILED

APR 25 2001

O
William A. Shaw
Prothonotary
6/23

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

LINDA M. ZELENKY, :
Plaintiff :
VS. : NO. 00-740-CD
: :
JEFFREY W. RICE, Individually and :
t/d/b/a JEFFREY W. RICE, D.M.D., P.C., :
Defendant :
:

CASE NUMBER: 00-740-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **PLAINTIFF'S ANSWER TO DEFENDANT'S
REQUEST FOR PRODUCTION OF DOCUMENTS**

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

APR 25 2001

William A. Shaw
Prothonotary

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 1

Any and all documents reflecting, referring or relating in any way to the incident forming the basis for the allegations contained in Plaintiff's Complaint.

ANSWER: NONE

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 2

Any and all documents reflecting, referring or relating in any way to any investigation of the incident forming the basis for the allegations contained in the pleadings filed in this case, whether conducted or undertaken by the Plaintiff, or others.

ANSWER: NONE

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 3

Any and all documents reflecting, referring or relating in any way to statements rendered by individuals in connection with this incident, whether written, oral, signed, transcribed, recorded, or otherwise contained in any documentary forms.

ANSWER: NONE

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 4

Any and all documents reflecting, referring or relating in any way to individuals who witnessed the incident alleged in the Plaintiff's Complaint, or any activities or occurrences prior or subsequent thereto which you contend support any of the allegations contained in your Complaint.

ANSWER: NONE

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 5

Any and all photographs, drawings, and/or diagrams reflecting, referring, depicting or relating in any way to the incident alleged in Plaintiff's Complaint and/or any other pleadings filed in the captioned matter.

ANSWER: NONE

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 6

To the extent that the same has not been supplied to your response to the prior requests, kindly supply any and all documents that you contend establish, either in whole or in part, the averments contained in your Complaint, including any medical reports, billings, or any other medical documentation of any kind, establishing the alleged damages in your Complaint.

ANSWER: NONE

March 6, 2001


Jeffrey M. Gordon, Esquire
Attorney for Defendant

FILED

DEC 05 2001

11:55 AM
William A. Shaw
Prothonotary

~~to~~ GJ
1 copy mailed to ~~ATTY~~

acted negligently and in New Matter, the Defendant alleges that the Plaintiff knew or should have known of any alleged condition present in the area, and therefore assumed the risk in traversing over the area.

6. The pleadings have been closed and discovery is complete.

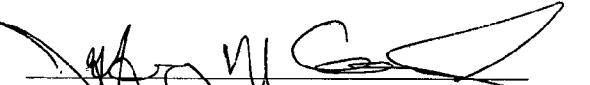
7. The testimony of the Plaintiff clearly shows that before she allegedly slipped and fell, the Plaintiff recognized the alleged dangerous condition on the Defendant's premises and was aware of the inherent risks involved in encountering said dangerous condition.

8. Further, the Plaintiff's testimony indicates that despite her awareness of the dangerous condition and the inherent risks in encountering said condition, the Plaintiff chose to encounter the condition.

9. Viewing the above-captioned case from the perspective of a duty analysis, the record shows that even when examined in a light most favorable to the Plaintiff, there is no genuine issue of material fact that the Plaintiff voluntarily encountered a risk known to her thereby obviating any duty which might otherwise be owed to her by the Defendant. See Howell v. Clyde, 533 Pa. 151, 620 A.2d 1107 (1993).

WHEREFORE, Defendant Jeffrey W. Rice, individually and t/d/b/a/ Jeffrey W. Rice, D.M.D., P.C. demands judgment in his favor and requests this Honorable Court to grant this Motion for Summary Judgment.

Respectfully submitted,



Jeffrey M. Gordon, Esquire
Attorney for Defendant



COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL DIVISION - LAW

LINDA M. ZELENKY, :
Plaintiff :
: :
v. : No. 740 - 2000 C.D.
: :
JEFFREY W. RICE, individually and t/d/b/a :
JEFFREY W. RICE, D.M.D., P.C., :
Defendant :
:

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Defendant, Jeffrey W. Rice, individually and t/d/b/a Jeffrey W. Rice, D.M.D., P.C., by and through his attorney, Jeffrey M. Gordon, Esquire, who moves this Honorable Court for Summary Judgment pursuant to Pa. R.C.P. 1035.2, as follows:

1. Plaintiff's cause of action arises out of a slip and fall accident that occurred on January 21, 1999, while Plaintiff was performing janitorial duties at the office of the Defendant, located at 90 Beaver Drive, DuBois, Clearfield County, Pennsylvania.
2. On the above-referenced date, Plaintiff, Linda M. Zelenky, alleges that during the performance of said janitorial duties, she slipped and fell on ice and slush which had accumulated in the parking lot of the Rice Complex.
3. As a result of this accident, Plaintiff, Linda M. Zelenky, suffered personal injuries and seeks to recover monetary damages from the Defendant for his alleged negligence.
4. The Plaintiff's Complaint, filed on June 21, 2000, alleges that the personal injuries would have not occurred but for the Defendant's negligence in failing to remove "ice and other hazards" from his business premises.
5. Defendant, Jeffrey W. Rice, D.M.D., filed a responsive pleading denying that he

AP

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL DIVISION - LAW

LINDA M. ZELENKY,

Plaintiff

No. 740 - 2000 C.D.

vs.

JEFFREY W. RICE, individually and t/d/b/a
JEFFREY W. RICE, D.M.D., P.C.

Defendant

Type of Pleading:
**Motion for
Summary Judgment**

Filed on Behalf of:
Defendant

Counsel of Record for this Party:
Jeffrey M. Gordon, Esquire
Supreme Court No. 55835
152 Jefferson Street
Brookville, PA 15825
(814) 849-6800

FILED

DEC 05 2001

**William A. Shaw
Prothonotary**

FILED

APR 25 2001

Office of
William A. Shaw
Prothonotary

R. DENNING GEARHART
ATTORNEY AT LAW
CLEARFIELD, PA. 16830

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

LINDA M. ZELENKY, :
Plaintiff :
VS. : NO. 00-740-CD
: :
JEFFREY W. RICE, Individually and :
t/d/b/a JEFFREY W. RICE, D.M.D., P.C., :
Defendant :
:

CASE NUMBER: 00-740-CD

TYPE OF CASE: Civil

TYPE OF PLEADING: **PLAINTIFF'S ANSWERS TO DEFENDANT'S
INTERROGATORIES TO PLAINTIFF**

FILED ON BEHALF OF: Plaintiff

COUNSEL OF RECORD FOR THIS PARTY: R. DENNING GEARHART, ESQUIRE
Supreme Court I.D. #26540
215 East Locust Street
Clearfield, PA 16830
(814) 765-1581

FILED

APR 25 2001

William A. Shaw
Prothonotary

COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
PENNSYLVANIA
CIVIL DIVISION - LAW

LINDA M. ZELENKY, :
Plaintiff :
: :
v. : No. 740 - 2000 C.D.
: :
JEFFREY W. RICE, individually and t/d/b/a :
JEFFREY W. RICE, D.M.D., P.C., :
Defendant :
:

DEFENDANT'S INTERROGATORIES TO PLAINTIFF

Defendant, Jeffrey W. Rice, individually and t/d/b/a Jeffrey W. Rice, D.M.D., P.C. by and through, Jeffrey M. Gordon, Esquire, the undersigned attorney, requests the Plaintiff to answer under oath the following Interrogatories within thirty (30) days from service thereof in accordance with Pa. R.C.P. Nos. 4005 and 4006. These Interrogatories are deemed to be continuing to the extent provided in Pa. R.C.P. No. 4007.4.

1. State your:
 - a. full name;
 - b. any other name (including maiden name) by which you have been known;
 - c. date and place of birth;
 - d. residence addresses from five years before the incident to present;
 - e. Social Security number and whether you are receiving benefits and, if so, whether on the basis of age or disability;
 - f. each accident or health insurance company or beneficial group (covering the injuries which allegedly resulted from the incident).

ANSWER:

- a. Linda Marie Zelenky
- b. Stark and Sloan
- c. 8/16/63 Philipsburg, PA
- d. P.O. Box 123, Hawk Run, PA 16840
- e. 208-56-6759
- f. PA Welfare Department

4. Have you ever been convicted of a crime other than for violations of the motor vehicle law?
If so, set forth the nature of the conviction including the date and location where convicted.

ANSWER:

NO

5. State the date and time of the incident upon which your complaint is based.

ANSWER:

1/21/99 about 4:15 p.m.

6. State whether the incident was a result of:
 - a. slippery condition on the surface;
 - b. defect within the surface;
 - c. debris or litter on the surface;
 - d. variations in the level of the surface;
 - e. inadequate lighting;
 - f. obstructions or defects other than those on the walking surface;
 - g. defective ladders, platforms, scaffolds;
 - h. any other condition (specify).

ANSWER:

SEE COMPLAINT

7. As to each condition which you contend caused the incident, state:
 - a. its nature;
 - b. how it made the premises dangerous;
 - c. the exact location and dimensions of each condition which caused you to fall;
 - d. each fact which indicates the length of time each aforesaid condition had existed prior to the incident;
 - e. each fact which indicates the defendant knew or should have known of each condition prior to the incident.

ANSWER:

SEE COMPLAINT

8. Were you aware of the conditions which caused the fall at any time before the incident and, if so, state:

- a. the manner in which you acquired such knowledge;
- b. the time you acquired such knowledge.

ANSWER:

NO

9. State the number of occasions that you had used the subject sidewalk/walkway/stairs, prior to the incident.

ANSWER:

Everytime I went to clean.

10. State whether there was artificial illumination in use at the time and place of the incident. If so, describe the type of illumination and its location.

ANSWER:

It was still light outside

11. If you fell on ice or snow, state:

- a. whether there was a path cleared in or about the area where the incident occurred;
- b. did it appear that the area where you fell had been salted or cindered? If so, describe to what extent the area was salted or cindered.

ANSWER:

- a. No
- b. Not that I noticed

12. What were the temperature and weather conditions at the time of the incident?

ANSWER:

Partly cloudy - seasonal

13. Describe in detail the shoes and overshoes you were wearing at the time of the incident.

ANSWER:

Sneakers

14. Of what materials were the heels and soles of the outer shoes made?

ANSWER:

Rubber

15. Have you ever worn or needed glasses? If so, state whether you were wearing glasses at the time of the incident and, if not, the reason.

ANSWER:

NO

16. Was your vision in any way obstructed or impaired at the time of the incident?

ANSWER:

NO

17. If you were carrying anything at the time of the incident, state:

- a. its size, including the shape, length, width and weight;
- b. whether your vision was in any way obstructed by the item; and
- c. which hand or hands were being used to carry the item.

ANSWER:

Was not carrying anything

18. Have you ever filed a lawsuit or made a claim in connection with injuries resulting from a fall? If so, identify all parties against whom you made the claim(s) and provide the complete caption of any lawsuit(s) that resulted.

ANSWER:

Workers' Compensation - fell at Pizza Hut after manager mopped floor behind me without me knowing it was wet. There was never any settlement. I was just able to go to chiropractic and was off maybe a week or two that workers' compensation paid.

19. Please describe the subject incident in complete chronological detail, including, but not limited to:

- a. where you were coming from and where you were going to as of the time of the incident;
- b. everything that you did and everything that happened to you from one hour preceding the incident to and including the time of the incident;
- c. everything that you did and everything that happened to you from the time of the incident until you reached your home or received medical treatment;
- d. the direction in which you were traveling at the time of the incident.

ANSWER:

All described in Deposition of 2/28/01

20. State whether you consumed any alcoholic beverages within eight hours prior to the incident, the places where the alcoholic beverages were obtained, and the nature and amount consumed.

ANSWER:

NO

21. Had you taken any drugs, medication and/or stimulants within twenty-four hours of the incident? If so, identify the type, quantity, time taken and purpose.

ANSWER:

NO

22. State the name, age, home and business addresses and present whereabouts, if known, of all persons whom you or anyone acting on your behalf knows or believes witnessed the incident.

ANSWER:

None Known

23. With respect to each of the aforementioned witnesses, state the following information:

- a. his or her exact location at the time of the incident;
- b. his or her activity at the time of the incident;
- c. by whom he or she was employed and for whom he or she was working at the time of the incident; and
- d. the name and address of his present employer.

ANSWER:

N/A

24. State the name, age, home and business address and present whereabouts, if known, of all persons whom you or anyone acting on your behalf know or believe to have relevant knowledge of the conditions at or near the scene of this incident, existing immediately prior thereto or immediately after this incident.

ANSWER:

Tina - works for Dr. Rice

Cindy - works for Dr. Rice

Amy Bezza - nurse practitioner for Dr. Piasio

25. Have you or has anyone acting on your behalf obtained from any person or persons any report, memorandum, testimony or other statement concerning the incident involved in this cause of action?

ANSWER:

Other than doctor's reports, no.

26. If the answer to the preceding interrogatory is in the affirmative, state:

- a. the name, home and business address and present whereabouts, if known, of each such person;
- b. the substance of the person's statement.

ANSWER:

N/A

March 6, 2001



Jeffrey M. Gordon, Esquire
Attorney for Defendant

COMMONWEALTH OF PENNSYLVANIA :
: SS:
COUNTY OF CLEARFIELD :
:

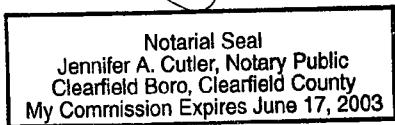
AFFIDAVIT

Before me, the undersigned officer, personally appeared, LINDA M. ZELENKY who being duly sworn according to law deposes and says that the facts set forth in the foregoing Answers to Interrogatories are true and correct to the best of her knowledge, information, and belief.

Linda M. Zelenky
LINDA M. ZELENKY

Sworn to and subscribed
before me this 9 day
of April, 2001.

Jennifer A. Cutler
Notary Public



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

LINDA M. ZELENKY

-vs-

JEFFREY W. RICE, individually and
t/d/b/a JEFFREY W. RICE, D.M.D., P.C.

No. 00-740-C

FILED

FEB 20 2002

OPINION AND ORDER

William A. Shaw
Prothonotary

On January 21, 1999, plaintiff Linda M. Zelenky, a cleaning lady for the offices of defendant Jeffrey W. Rice, D.M.D., P.C. was carrying out refuse from his offices to a dumpster in the parking lot when she slipped on ice and snow and fell resulting in various injuries for which she now seeks damages. The office complex is owned by Jeffrey W. Rice individually while the defendant corporation leases office space from him.

At her deposition of February 28, 2001, the plaintiff testified that she had been cleaning the corporate defendant's offices pursuant to an oral agreement with him for about a year and was familiar with the offices and their surroundings (n.t. p. 9-10, 16). That she recognized the snow had accumulated in the general area from precipitation in the recent past (n.t. p. 14). As her deposition testimony reveals, the plaintiff was aware the path to the dumpster was covered with ice and snow and posed a risk (n.t. p. 14). Her deposition then continued as follows:

Q: On your return trip when you fell, were you coming back on the same path that you had just traveled over?

A: Yes.

Q: So you would have walked over the same area that you fell on your way to the dumpster?

A: Pretty much, yeah.

Q: Do you recall, Linda, seeing any ice or snow on that sidewalk when you were walking to the dumpster?

A: Parts of the sidewalk was shoveled off, parts wasn't.

Q: How about the driveway itself where you fell, do you recall snow or ice accumulated on the driveway on your way to the dumpster?

A: It was kind of bumpy. You had to just – I was being careful as I could be. It was just bumpy.

Q: When you say "bumpy", bumpy with snow or was it just the contours of the concrete?

A: No it was the ice and snow on the concrete. There you couldn't see it.

Q: Couldn't see what?

A: The parking lot from the ice.
(N.T. p. 14)

....

Q: When you say you're trying to be careful, you were trying to be careful because you didn't want to slip and fall on the ice, correct?

A: Yeah.

Q: So Linda, is it fair to say on the day this occurred, you recognized there was ice and snow in areas of the parking lot and on the sidewalk and that those icy patches of snowy area represented a potential danger?

A: Yes, they were very bumpy. Like I said, it was just patchy areas. It was all over.

(N.T. pg. 19)

....

Both individual and corporate defendants have moved for summary judgment based on the Appellate Court rulings in Carrender v. Fitterer, 503 Pa. 178, 469 A.2d 120 (1983) and Howell v. Clyde, 533 Pa. 151, 620 A.2d 1107 (1993).

Summary judgment is proper when based on the pleadings, depositions, answers to interrogatories, admissions and expert reports, there is no genuine issue of any material fact, and the moving party is entitled to judgment as a matter of law. Pa.R.C.P. 1035.1 (1)(2)(3), Pa. R.C.P. 1035.2 (1). In addition, summary judgment is proper when, after discovery is closed, "an

adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.” Pa. R.C.P. (1035.2(2)). When considering a motion for summary judgment, the court must accept as true all well pleaded facts and examine the facts in a light most favorable to the non-moving party. Tengalia v. Proctor and Gamble, Inc., 737 A.2d 306, 307 (Pa. Super. 1999).

Both defendants argue that the deposition testimony of the plaintiff as set forth above clearly indicates that she was aware of the snow and ice in the area which she fell and because she was aware of the risk of injury involved with walking on the frozen snow and ice, as a matter of law, the defendants owed no duty to the plaintiff and therefore cannot be held liable.

In Carrender, the plaintiff was injured when she slipped and fell on ice in the parking lot of a doctor’s office. At trial the court refused to instruct the jury on the defendant’s proposed assumption of risk charge ruling that this defense merged with the defense of contributory negligence. The Superior Court of Pennsylvania, however, held that as a matter of law the defendant was under no duty to take precaution or give warning that the ice was present in the parking lot and were entitled to judgment n.o.v. In so ruling, the court noted that contained in the plaintiff’s deposition testimony were admissions that she was aware of the snow and ice and the inherent risk of walking on it. The court rejected plaintiff’s argument that once an invitee-possessor relationship is proven, the existence of a duty is established and it is incumbent upon the possessor to show that the invitee assumed risk of injury from a hazardous condition on the possessor’s property, and, in effect, held that those who encounter a known or obvious danger are deemed to have agreed to accept the risk.

In Howell, the Supreme Court affirmed its earlier ruling in Callender noting that it was significant to its holding that there was no question that the plaintiff knew of the risk and proceeded to take action voluntarily and deliberately.

In the instant case, plaintiff's testimony clearly establishes that she was fully aware of the risk of injury associated with walking on the frozen ice and snow and of the potential danger involved therein. Obviously she chose to encounter the known dangerous conditions thereby exposing herself to the known risk of bodily harm associated therewith.

This Court is satisfied that the above position taken on behalf of the defendant Jeffrey W. Rice, D.M.D., P.C. is correct and that under the provisions of the Restatement of Torts Paragraphs 342, 343 and 343(a) summary judgment must be entered in favor of said corporation. In so ruling, this Court is persuaded by the Appellate Court decision in Callender and Howell set forth above and the ruling contained therein.

With regards to the individual defendant Jeffrey W. Rice, the Court does herein deny his Motion for Summary Judgment. Although defendants argue that the defendants are, in fact, one and the same individual, this Court is not persuaded. They are, in fact, distinct entities in the eyes of the law; one Jeffrey W. Rice being an individual and the second, Jeffrey W. Rice, D.M.D., P.C. a corporation. The office complex is owned by Jeffrey W. Rice, individually and this Court therefore, is of the opinion that his duties and obligations are defined in paragraph 360 of the Restatement of Torts 2nd which states as follows:

S360. Parts of Land Retained in Lessor's Control Which Lessee is Entitled to Use

A possessor of land who leases a part thereof and retains in his own control any other part which the lessee is entitled to use as appurtenant to the part leased to him, is subject to liability to his lessee and others lawfully upon the land with the consent of the lessee or a sublessee for physical harm caused by a dangerous condition upon that part of the land retained in the lessor's control,

if the lessor by the exercise of reasonable care could have discovered the condition and the unreasonable risk involved therein and could have made the condition safe.

Plaintiff has cited the Superior Court decision in Bleam v. Gateway Professional Center Associates, 636 A.2d 172, Pa. Super., 1993, wherein the court held:

This court went on to explain that numerous exceptions to the general rule exist, in which liability does attach to a landlord out of possession. One such situation is where "the landlord has retained control over a portion of the property which is necessary to the safe use of the leased property; or, if the lessor shares with the lessee the right to possess any section of the property." Kobylinski, supra, (citing generally Restatement (Second) of Torts SS356-362).

In accordance with Kobylinski, we find that the trial court erroneously looked to the general Restatement sections concerning possessors of land, rather than the specific provisions that outline the potential liability of a landowner-lessor to its tenant. Applying §360 to the evidence presented by both parties in support of and opposition to Gateway's motion for summary judgment, we find that Gateway could be liable to Bleam despite her recognition of the risk involved in parking near ice and snow.

Comment b following §360 addresses this exact issue:

The rule stated in this Section may also apply even though the person injured, whether he be the lessee himself or a third person, has knowledge of the existence of the dangerous condition. His knowledge may put him in contributory fault[,] . . . [b]ut unless the danger is so apparent and so great that it is unreasonable for him to encounter it in view of the purpose of his use, or unless knowing the danger he fails to exercise that caution which a reasonable man would exercise under the same circumstances, the lessor remains liable to him notwithstanding his knowledge of the existence of the condition.

Restatement of Torts (Second) §360, comment b.

We do not suggest that Bleam was entitled to summary judgment, but rather that there remain genuine issues of material fact which need to be resolved before a judgment in favor of either

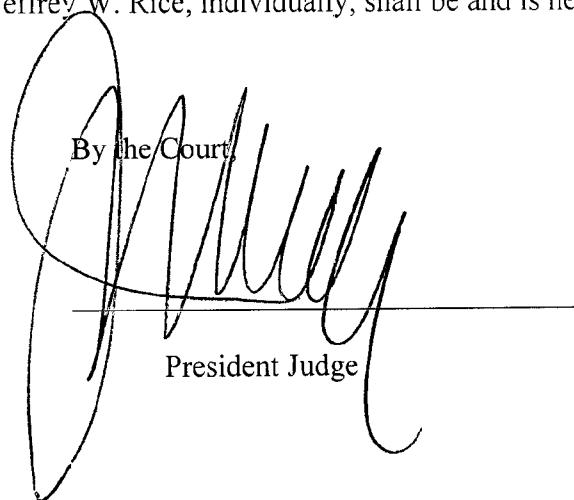
party properly can be rendered. Therefore, we find that the trial court erred as a matter of law.

As set forth in Bleam, this Court does not herein suggest that plaintiff is entitled to summary judgment but rather that there remain issues of material facts which need to be resolved before judgment in favor of either plaintiff or the individual defendant can be entered.

WHEREFORE, the Court enters the following:

ORDER

NOW, this 26th day of February, 2002, following argument and briefs into Motions for Summary Judgment filed on behalf of both defendants above named, in accordance with the foregoing Opinion, it is the ORDER of this Court that Summary Judgment shall be and is hereby entered in favor of Jeffrey W. Rice, D.M.D., P.C. and Motion for Summary Judgment filed on behalf of Jeffrey W. Rice, individually, shall be and is hereby dismissed.



By the Court
President Judge

FILED

FEB 20 2002

07/23/02 City Clerk
William A. Shaw
Prothonotary
City Clerk
GHD



(P)

~~Here~~
~~Perfected~~
Drg-2402-90

OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET, SUITE 228
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-~~0000~~ 7449

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

December 28, 2001

R. Denning Gearhart, Esquire
Attorney at Law
215 East Locust Street
Clearfield, PA 16830

Jeffrey M. Gordon, Esquire
Attorney at Law
152 Jefferson Street
Brookville, PA 15825

RE: LINDA M. ZELENKY

vs.

JEFFREY W. RICE, al
No. 00-740-CD

Dear Counsel:

With regard to the above matter, Attorney Gordon has filed a Motion for Summary Judgment and Brief in support thereof on behalf of Defendant. Attorney Gearhart's reply Brief will be due on or before Friday, January 18, 2002.

Oral argument in this case in this case is scheduled for Monday, February 4, 2002 at 9:00 A.M., in Chambers, Clearfield County Courthouse, Clearfield, PA.

You should file your original Brief with the undersigned and forward copies to opposing counsel.

Very truly yours,
Marcy Kelley
Marcy Kelley
Deputy Court Administrator

cc: Honorable John K. Reilly, Jr.

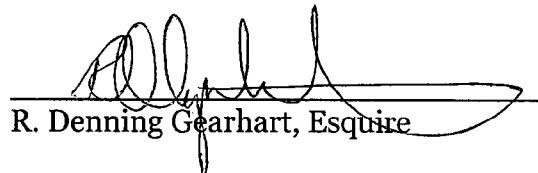
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
(CIVIL DIVISION)

LINDA M. ZELENKY, :
Plaintiff :
VS. : NO. 00-740-CD
: :
JEFFREY W. RICE, Individually and :
t/d/b/a JEFFREY W. RICE, D.M.D.,P.C. :
Defendant :
:

PRAECIPE TO MARK ACTION SETTLED and DISCONTINUED

TO THE PROTHONOTARY OF SAID COURT:

Please mark the above-captioned action settled and discontinued.



R. Denning Gearhart, Esquire

Dated: November 15, 2002

FILED

O : 11:49 AM

NOV 15 2002

William A. Shaw
Prothonotary

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3 certificate
to attorney
WAC
copy to CJA