

# Adams County Legal Journal

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CORPORATION OF PENNSYLVANIA T/D/B/A PIZZA HUT

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## ADAMS COUNTY LEGAL JOURNAL (USPS 542-600)

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## CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on August 23rd, 2017, a Petition for Name Change was filed in the Court of Common Pleas of Adams County, Pennsylvania, requesting a Decree to change the name of Petitioner, Joshua Zechariah McGrail-Brigaman to Josh Zechariah Brigaman.

The Court has affixed the 20th day of October, 2017 at 11:00 a.m. in Courtroom No. 4, Third Floor of the Adams County Courthouse, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the request of the Petitioner should not be granted.

9/15

## CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on May 15, 2017, a Petition of Change of Name of a Minor was filed in the Court of Common Pleas of Adams County, Pennsylvania, requesting a Decree to change the name of the minor, Alex Zoray Diaz Rico to Alex Zoray Velazquez Rico.

The Court has affixed the 22nd day of September, 2017 at 11:00 a.m. in Courtroom No. 4, Third Floor of the Adams County Courthouse, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the request of the Petitioner should not be granted.

9/15

## CHANGE OF NAME NOTICE

NOTICE IS HEREBY GIVEN that on August 16th, 2017 a petition for Name Change was filed in the Court of Common Pleas of Adams County, Pennsylvania, requesting a decree to change the name of the Petitioner Janna Ann Heather Ridenour to Janna Ann Heather Harrison.

The court has affixed the 20th day of October 2017 at 10 a.m. in Courtroom Number 4, Third floor of the Adams County Courthouse as the time and place for the hearing of said Petition when and where all persons interested may appear and show cause, if any they have, why the request of the Petitioner should not be granted.

9/15

NOTICE BY THE ADAMS COUNTY  
CLERK OF COURTS

NOTICE IS HEREBY GIVEN to all heirs, legatees, and other persons concerned that the following accounts with statements of proposed distribution filed therewith have been filed in the Office of the Adams County Clerk of Courts, and will be presented to the Court of Common Pleas of Adams County - Orphans' Court, Gettysburg, Pennsylvania, for confirmation of accounts entering decrees of distribution on Friday, September 22, 2017 at 8:30 a.m.

**WATSON**—Orphans' Court Action Number OC-94-2016. The First and Final Account of Thomas Richard Watson, Executor of the Estate of William Lee Watson, late of Menallen Township, Adams County, Pennsylvania.

**PIPER**—Orphans' Court Action Number OC-90-2017. The First and Final Account of James V. McLendon, Executor the Estate of Doris A. Piper, Deceased, late of the Borough of Littlestown, Adams County, Pennsylvania.

Kelly A. Lawver  
Clerk of Courts

9/8 & 9/15

NORMA WEINZETTLE V. ATLANTIC DEVELOPMENT CORPORATION OF PENNSYLVANIA T/D/B/A PIZZA HUT

1. Summary judgment is only appropriate in those cases which are free and clear from doubt.

2. In order to be liable for negligence, the plaintiff must prove that the defendant (1) had a legally-recognized duty that the defendant conform to a standard of care; (2) the defendant breached that duty; (3) causation between defendant's conduct and the resulting injury; and (4) actual damage to the plaintiff.

3. It is settled in the law that except in rare situations not here involved the mere occurrence of an injury does not prove negligence, and that an admittedly negligent act does not necessarily entail liability; rather even when it is established that the defendant breached some duty of care owed the plaintiff, it is incumbent on a plaintiff to establish a causal connection between defendant's conduct and the plaintiff's injury.

4. The defendant's negligent conduct may not, however, be found to be a substantial cause where the plaintiff's injury would have been sustained even in the absence of negligence.

5. Summary judgment is appropriate in negligence actions where the plaintiff is unable to establish that the defendant breached a duty.

6. It is well settled that businesses have a duty to keep its customers safe while on business premises.

7. A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,  
PENNSYLVANIA, CIVIL 16-SU-1328, NORMA WEINZETTLE V.  
ATLANTIC DEVELOPMENT CORPORATION OF  
PENNSYLVANIA T/D/B/A PIZZA HUT.

Brian P. Strong, Esq., Attorney for Plaintiff

Adam L. Seiferth, Esq., Attorney for Defendant

Campbell, J., September 5, 2017

OPINION

Before this Court is Defendant Atlantic Development Corporation of Pennsylvania's Motion for Summary Judgment filed June 27, 2017. For the reasons stated herein, the attached Order granting Defendant's Motion for Summary Judgment is entered.

This cause of action arose out of a slip and fall incident at the Pizza Hut restaurant located at 237 Bufford Avenue in Gettysburg,

Pennsylvania. On April 2, 2016, Plaintiff alleges that she entered Defendant's premises to purchase a pizza and caught her foot on a wrinkled or buckled mat immediately in front of the entrance door. Plaintiff also alleges that she fell and suffered injury as a result of the fall. On December 22, 2016, Plaintiff initiated this suit, filing a complaint. Defendant filed a Motion for Summary Judgment on June 27, 2017.

In its Motion for Summary Judgment, Defendant argues that Plaintiff has failed to establish that the negligence of Defendant was the proximate cause of her alleged injuries and therefore cannot establish a prima facie case of negligence against Defendant.

In relation to Motions for Summary Judgment, the Pennsylvania Rules of Civil Procedure provide:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law

1. whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
2. if, after the completion of discovery relevant to the motion, including the production of expert reports, 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.** Summary judgment is only appropriate in those cases which are free and clear from doubt. *McConnaughey v. Bldg. Components, Inc.*, 637 A.2d 1331, 1333 (Pa. 1994). "The purpose of the rule [1035.2] is to eliminate cases prior to trial where a party cannot make out a claim or a defense after relevant discovery has been completed; the intent is not to eliminate meritorious claims prematurely before relevant discovery has been completed." **PA. R. CIV. P. 1035.2, Explanatory Comment—1996.** Before the moving party files for summary judgment, "the adverse party must be given adequate time to develop the case and the motion will be premature

if filed before the adverse party has completed discovery relevant to the motion.” **PA. R. CIV. P. 1035.2, Explanatory Comment—1996.**

In order to be liable for negligence, the plaintiff must prove that the defendant (1) “had a legally-recognized duty that the defendant conform to a standard of care; (2) the defendant breached that duty; (3) causation between [defendant’s] conduct and the resulting injury; and (4) actual damage to the plaintiff.” *Truax v. Roulhac*, 126 A.3d 991, 997 (Pa. Super. 2015) (citing *Ramalingam v. Keller Williams Realty Group, Inc.*, 121 A.3d 1034, 1042 (Pa. Super. 2015)).

It is settled in the law that except in rare situations not here involved the mere occurrence of an injury does not prove negligence and that an admittedly negligent act does not necessarily entail liability; rather even when it is established that the defendant breached some duty of care owed the plaintiff, it is incumbent on a plaintiff to establish a causal connection between defendant's conduct and the plaintiff's injury. Stated another way, the defendant's conduct must be shown to have been the proximate cause of plaintiff's injury.... Proximate cause is a term of art denoting the point at which legal responsibility attaches for the harm to another arising out of some act of defendant, ... and it may be established by evidence that the defendant's negligent act or failure to act was a substantial factor in bringing about the plaintiff's harm.... The defendant's negligent conduct may not, however, be found to be a substantial cause where the plaintiff's injury would have been sustained even in the absence of negligence.

*Correll v. Werner*, 437 A.2d 1004, 1005-1006 (Pa. Super. 1981) (quoting *Hamil v. Bashline*, 392 A.2d 1280, 1284 (Pa. 1978)). Summary judgment is appropriate in negligence actions where the plaintiff is unable to establish that the defendant breached a duty. *Porro v. Century III Associates*, 846 A.2d 1282, 1285-86 (Pa. Super. 2004)(affirming lower court’s order granting summary judgment in favor of defendants in slip and fall case where plaintiff failed to establish facts imposing liability upon defendants)).

Here, Plaintiff alleges that she was injured as a result of Defendant’s negligence for failing to warn Plaintiff of a dangerous

latent condition. In order to survive a motion for summary judgment, Plaintiff must prove that Defendant had a duty to her, that Defendant breached that duty, causation between Defendant's conduct and Plaintiff's injuries, and actual damage to Plaintiff. Plaintiff must provide some evidence that the mat in Defendant's restaurant's entrance way created a dangerous condition, that Defendant failed to warn Plaintiff of the dangerous condition, and that Plaintiff sustained injuries as a result of Defendant's failure to warn her of the dangerous latent condition.

First, Plaintiff must prove that Defendant had a duty to her. It is well settled that businesses have a duty to keep its customers safe while on business premises. See *Rodriguez v. Kravco Simon Co.*, 111 A.3d 1191, 1193 (Pa. Super. 2015); *Myers v. Penn Traffic Co.*, 606 A.2d 926, 928 (Pa. Super. 1992); *Treadway v. Ebert Motor Co.*, 436 A.2d 994, 999 (Pa. Super. 1981); *Morris v. Atlantic & Pac. Tea Co.*, 121 A.2d 135, 137 (Pa. 1956). Therefore, Defendant had a duty to keep Plaintiff safe while she was on Defendant's premises.

Next, this Court must determine whether Plaintiff has proven that Defendant breached that duty by failing to warn Plaintiff that a dangerous condition existed. Defendant argues that Plaintiff has failed to prove that Defendant breached a duty of care because Plaintiff has failed to provide sufficient evidence that there was a latent dangerous condition about which Defendant neglected to warn Plaintiff.

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

- a. knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
- b. should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
- c. fails to exercise reasonable care to protect them against the danger.<sup>1</sup>

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<sup>1</sup> Restatement (Second) of Torts § 343.

To recover damages in a “slip and fall” case, the plaintiff/invitee must present evidence which proves that the store owner deviated in some way from his duty of reasonable care under the existing circumstances. This evidence must show that the proprietor knew, or in the exercise of reasonable care should have known, of the existence of the harmful condition. Section 343 also requires the invitee to prove either that the store owner helped to create the harmful condition, or that it had actual or constructive notice of the condition.

**Zito v. Merit Outlet Stores**, 647 A.2d 573, 575 (Pa. Super. 1994) (internal citations omitted)). Plaintiff’s deposition reads as follows:

Q. (Attorney Seiferth) Tell me what happened.

A. (Plaintiff) I got out of the car. I walked across. And I opened the door; and as I pushed the door, my right foot got caught and I could not move anymore and – on the mat. And the next thing I remember was hitting that floor and everything went black, and that was it. <sup>2</sup>

At the deposition, Attorney Seiferth asked Plaintiff why shortly after falling, she took a picture of the mat. Plaintiff responded as follows: “Well, at that moment I thought that that rug was responsible, and the way I was bleeding, I said, I gotta have some proof.”<sup>3</sup> Further, when Attorney Seiferth asked Plaintiff about where her right foot got caught, Plaintiff answered as follows:

In here (indicating). I can’t remember - - I opened the door - - you know, I’m trying to - - I can’t really remember, but I - - all that I can remember is that my foot got caught and the door was open pretty wide for me to go in, and I don’t remember where exactly that I actually tripped. <sup>4</sup>

Plaintiff further revealed her uncertainty of exactly how she fell when asked to identify on an exhibit what she caught her foot on.

Q: Okay. So is it safe for me to say that you can’t say for

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<sup>2</sup> Plaintiff’s Dep., May 17, 2017, pg. 18.

<sup>3</sup> Plaintiff’s Dep., May 17, 2017, pg. 36.

<sup>4</sup> Plaintiff’s Dep., May 17, 2017, pg. 37.

sure, looking at Exhibit Number 3, whether anything that's depicted in this photograph is what your right foot caught on?

A: I can't answer that. I don't remember. <sup>5</sup>

When Attorney Seiferth asked Plaintiff to identify where her right foot got caught in another exhibit depicting the mat in question, Plaintiff answered:

A. I cannot - - I cannot remember, but my foot did get caught - - it got - - when the door opened, okay, it got caught right somewhere in this vicinity (indicating). That's all I can remember.

Q. Now, you said this vicinity - -

A. Yeah, yeah. Okay, yeah.

Q. - - you're referring, first of all, to Photograph Number 3?

A. I can't really remember. All I can remember is that my foot, as I tried to continue walking, it just hit that. And I don't know if this thing got lifted up (indicating). I don't know. That I can't say. I don't remember. But I know that it got in my way. <sup>6</sup>

Based on Plaintiff's deposition, the exhibits, and other evidence this case is free and clear of doubt. Plaintiff has failed to show that Defendant breached a duty to Plaintiff. Plaintiff has provided no evidence that shows that Defendant's conduct was the proximate cause of her injuries or that there was a latent dangerous condition. Even assuming for argument's sake that the mat had ripples that created a dangerous condition, Plaintiff has failed to show that Defendant deviated in some way from its duty of reasonable care. There is no evidence that Defendant knew or should have known that the mat had ripples, that Defendant created the harmful condition, or that Defendant had actual or constructive notice of the mat having ripples. The evidence that Plaintiff presented only shows that Plaintiff had an accident, that she may or may not have tripped over the mat in the entrance way, and that managers at Pizza Hut are

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<sup>5</sup> Plaintiff's Dep., May 17, 2017, pg. 37.

<sup>6</sup> Plaintiff's Dep., May 17, 2017, pgs. 40-41.



responsible for checking the restaurant for spills or problems.<sup>7</sup> Furthermore, Plaintiff provides no evidence that the managers working at the Pizza Hut on April 2, 2016 failed to check for unsafe conditions, knew or should have known of a dangerous condition, or had actual or constructive notice that the mat had ripples.

Because Plaintiff has failed to show that Defendant breached a duty to her, she has failed to establish a prima facie case, and therefore, this Court will not analyze whether Plaintiff established causation between Defendant's conduct and her resulting injury and actual damage to her.

Therefore, for the reasons stated herein, Defendant's Motion for Summary Judgment is granted, and the attached Order is entered.

#### ORDER

AND NOW, this 5th day of September, 2017, upon consideration of Defendant's Motion for Summary Judgment filed June 27, 2017, Plaintiff's Answer to Defendant's Motion for Summary Judgment, and all supporting briefs, Defendant's Motion for Summary Judgment is Granted. Plaintiff's Complaint is dismissed with prejudice.

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<sup>7</sup> Plaintiff provided evidence that managers are supposed to do what the restaurant calls a "figure 8" to check to make sure that everything in the restaurant is how it is supposed to be. Managers are supposed to do a "figure 8" every hour.



**ESTATE NOTICES**

**NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary or administration to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.**

**FIRST PUBLICATION**

**ESTATE OF GEORGE W. CROOK, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Personal Representative: Barbara A. Runyon, 781 Apple Way, Saint Thomas, PA 17252

**ESTATE OF BRENDA L. MUMMERT, DEC'D**

Late of Menallen Township, Adams County, Pennsylvania

Administratrices: Katrina J. Humphrey, 2588 Shippensburg Rd., Biglerville, PA 17307; Natasha N. Humphrey, 36 S. High St., PO Box 462, Arendtsville, PA 17303

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

**SECOND PUBLICATION**

**ESTATE OF GEORGE W. MARINOS, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executors: Georgia K. Hollabaugh, 380 Carlisle Road, Biglerville, PA 17307; Speros G. Marinou, P.O. Box 3192, Gettysburg, PA 17325

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF VIRGINIA M. SHANOLTZ, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executor: Eric G. Shanoltz, c/o Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

**ESTATE OF HELLEN MEALS STARNER, DEC'D**

Late of Tyrone Township, Adams County, Pennsylvania

Executrix: Nancy Miller, 872 Peach Glen-Idaville Road, Gardners, PA 17324

Attorney: John A. Wolfe, Esq., Wolfe, Rice & Quinn, LLC, 47 West High Street Gettysburg, PA 17325

**THIRD PUBLICATION**

**ESTATE OF PAULA E. CALDWELL, DEC'D**

Late of Latimore Township, Adams County, Pennsylvania

Thomas Caldwell, 210 Two Churches Rd., East Berlin, PA 17316

Attorney: Thomas R. Nell, Esq., 130 W. King Street, PO Box 1019, East Berlin, PA 17316

**ESTATE OF CHARLES JOSEPH DEVETT, a/k/a CHARLES J DEVETT, a/k/a CHUCK DEVETT, DEC'D**

Late of the Borough of Abbottstown, Adams County, Pennsylvania

Executrix: Mary Kause Simonovich, 6641 Deep Hollow Lane, Manassas, VA 20112.

**ESTATE OF KIRK ALAN ERICKSON, DEC'D**

Late of Hamiltonban Township, Adams County, Pennsylvania

Administratrix: Susan W. Erickson, 234 Carrolls Tract Road, Fairfield, PA 17320

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF ELLEN MARIE GREENHOLT a/k/a ELLEN M. GREENHOLT, DEC'D**

Late of Mount Pleasant Township, Adams County, Pennsylvania

Executor: Joseph D. Greenholt, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

**ESTATE OF MARY MARGARET KANE, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Barbara A. Kane, 2180 Old Route 30, Orttanna, PA 17353

Attorney: Gary E. Hartman, Esq., Hartman & Yannetti, 126 Baltimore Street, Gettysburg, PA 17325

**ESTATE OF CHARLES MESSINGER, JR. a/k/a CHARLES L. MESSINGER, JR., DEC'D**

Late of Conewago Township, Adams County, Pennsylvania

Administratrix: Deborah L. Messinger a/k/a Deborah Lynn Crowl, c/o Joseph E. Erb, Jr., Esq., Stonesifer and Kelley a division of Barley Snyder, 14 Center Square, Hanover, Pennsylvania 17331

Attorney: Joseph E. Erb, Jr., Esq., Stonesifer and Kelley a division of Barley Snyder, 14 Center Square, Hanover, Pennsylvania 17331

**ESTATE OF CHAMPLAIN S. PACKARD, III, a/k/a CHAMPLAIN SMITH PACKARD, III, DEC'D**

Late of Cumberland Township, Adams County, Pennsylvania

Executrix: Janet L. Packard, c/o Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

Attorney: Barbara Jo Entwistle, Esq., Entwistle & Roberts, 37 West Middle Street, Gettysburg, PA 17325

**ESTATE OF NANCY A. RICE, DEC'D**

Late of Franklin Township, Adams County, Pennsylvania

Executrix: Janet R. Larson, 6 Papermill Street, Easton, MD 21601

Attorney: Phillips & Phillips, 101 West Middle Street, Gettysburg, PA 17325

**ESTATE OF EDWARD G. SANDERS, DEC'D**

Late of Straban Township, Adams County, Pennsylvania

Executor: Scott E. Sanders, 18 N. 4th St., McSherrystown, PA 17344

**ESTATE OF DALE V. SPONSELLER, DEC'D**

Late of Mt. Pleasant Township, Adams County, Pennsylvania

Co-Executors: Wendy J. Sponseller, 409 Lincoln Way West, New Oxford, PA 17350; Steven D. Sponseller, 45 Daniel Lane, New Oxford, PA 17350

Attorney: Keith R. Nonemaker, Esq., Guthrie, Nonemaker, Yingst & Hart, LLP, 40 York Street, Hanover, PA 17331

**ESTATE OF JOAN L. WERDEBAUGH, DEC'D**

Late of Mt. Joy Township, Adams County, Pennsylvania

Administrator: Michael P. Werdebaugh, c/o Brian J. Hinkle, Esq., Mette, Evans & Woodside, 3401 North Front St., Harrisburg, PA 17110.

Attorney: Brian J. Hinkle, Esq., Mette, Evans & Woodside, 3401 North Front St., Harrisburg, PA 17110

