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CONNOR ROSE VS. MANNY VILMATELO,
LAMBDA CHI ALPHA FRATERNITY –
GETTYSBURG COLLEGE THETA-PI CHAPTER
AND GETTYSBURG COLLEGE

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CONNOR ROSE VS. MANNY VILMATELO, LAMBDA CHI
ALPHA FRATERNITY – GETTYSBURG COLLEGE THETA-
PI CHAPTER AND GETTYSBURG COLLEGE

1. A claim sounding in negligence is unsustainable unless there is a duty upon the defendant in favor of the plaintiff which has been breached.

2. The cornerstone of Rose’s cause of action is the belief that the College is responsible for the actions of its students. The Complaint suggests College failed to provide effective supervision and control over the actions of its students, failed to prevent excessive drinking by its students, and failed to take reasonable measures to intercede where a student was excessively consuming alcohol. The Complaint echoes similar deficiencies by the College in control of its fraternity members. These claims imply a custodial relationship by the College towards its students and imposes an *in loco parentis* duty upon the College. Unfortunately for Rose, this view has been soundly rejected by Pennsylvania courts and federal courts interpreting Pennsylvania law.

3. Currently, there is no claim in the pleadings that the College was a social host as there is no allegation that representatives of the College were present at the event or assisted in the procurement or distribution of the alcohol in any way. There is, in fact, a paucity of any claim that the event involved any active encouragement by the College. Since the thrust of the claim against College rests upon an *in loco parentis* duty upon a university towards its students, the Preliminary Objection will be sustained.

IN THE COURT OF COMMON PLEAS OF ADAMS COUNTY,
PENNSYLVANIA, 2018-SU-450, CONNOR ROSE VS. MANNY
VILMATELO, LAMBDA CHI ALPHA FRATERNITY –
GETTYSBURG COLLEGE THETA-PI CHAPTER, AND
GETTYSBURG COLLEGE

Gregory L. Schell, Esq., Attorney for Plaintiff

Manny VilmateLO, *pro se* Defendant

Lambda Chi Alpha Fraternity – Gettysburg College Theta-Pi

Chapter, *pro se* Defendant

Jonathan K. Holin, Esq., Attorney for Defendant Gettysburg College

Michael J. Zettlemoyer, Esq., Attorney for Defendant Gettysburg

College

George, P. J., April 12, 2019

OPINION

On April 12, 2016, Connor Rose (“Rose”) was a student at Gettysburg College (“College”) when he attended a spring formal sponsored by Lambda Chi Alpha Fraternity (“Fraternity”) which was held on the College campus. Alcohol was present at the event and, according to Rose, Manny VilmateLO (“VilmateLO”) became violent, belligerent, and aggressive due to his intoxication. Rose claims that

due to his intoxication, and without any provocation, Vilmatelo violently assaulted him causing serious and permanent injuries. Rose subsequently commenced this litigation against Vilmatelo, the Fraternity, and the College seeking damages for his injuries. Rose claims the College is responsible for the acts of their students including those of Vilmatelo. Rose further alleges the College breached its duty to supervise the actions of the Fraternity. College has responded with Preliminary Objections to the Complaint demurring to the cause of action and challenging the lack of specificity in the Complaint.¹

A preliminary objection in the nature of a demurrer is properly granted where the contested pleading is legally insufficient. *Cardenas v. Schober*, 783 A.2d 317, 321 (Pa. Super. 2001) (citing Pa. R.C.P. 1028(a) (4)). “Preliminary objections in the nature of a demurrer require the court to resolve the issues solely on the basis of the pleadings; no testimony or other evidence outside of the complaint may be considered to dispose of the legal issues presented by the demurrer.” *Id.* at 321–22. All material facts set forth in the pleading and all inferences reasonably deducible therefrom must be admitted as true. *Id.* at 321.

It is a fundamental principle of tort law that a claim sounding in negligence is unsustainable unless there is a duty upon the defendant in favor of the plaintiff which has been breached. *Marshall v. Port Authority of Allegheny County*, 568 A.2d 931 (Pa. 1990). Rose’s Complaint seeks to impose a duty on College as the party responsible for supervising the acts of the fraternities on campus and the students attending the school. The allegations do not claim the College was in any way responsible for supplying, serving, dispensing, or otherwise

¹ Rose’s initial Complaint was filed on August 3, 2018. On August 27, 2018, Gettysburg College filed Preliminary Objections to the Complaint similar to those which are the subject of this Opinion. Prior to the Court acting upon the Preliminary Objections, on December 31, 2018, Rose filed a First Amended Complaint in violation of Pa. R. Civ. P. 1028 (relating to right to file an amended complaint within twenty (20) days of preliminary objection or with consent of opposing party or permission from the court). On January 7, 2019, the Court struck Rose’s First Amended Complaint due to this violation. Subsequently, oral argument was held on College’s Preliminary Objections to the original Complaint. By Order dated January 8, 2019, the College’s Preliminary Objections were sustained; however, Rose was given an opportunity to file an Amended Complaint. On February 7, 2019, Rose filed the current Amended Complaint which was met by the current Preliminary Objections. The College has filed a Brief in Support of its Preliminary Objections. Rose has not filed a responsive brief in violation of Adams County Local Rule 1028(c). Pursuant to local rule, Rose has conceded the viability of the Preliminary Objections.

furnishing alcoholic beverages to Vilmatelo, Rose, or any other student or fraternity member.

The cornerstone of Rose's cause of action is the belief that the College is responsible for the actions of its students. The Complaint suggests College failed to provide effective supervision and control over the actions of its students; failed to prevent excessive drinking by its students; and failed to take reasonable measures to intercede where a student was excessively consuming alcohol. The Complaint echoes similar deficiencies by the College in control of its fraternity members. These claims imply a custodial relationship by the College towards its students and imposes an *in loco parentis* duty upon College. Unfortunately for Rose, this view has been soundly rejected by Pennsylvania courts and federal courts interpreting Pennsylvania law.

In *Alumni Ass'n. v. Sullivan*, 572 A.2d 1209 (Pa. 1990), the Court considered whether Bucknell University could be held responsible for the conduct of a fraternity in providing an underage student alcoholic beverages. The student subsequently became intoxicated and started a fire which caused damages to a neighboring fraternity. Finding it would be inappropriate to impose an *in loco parentis* duty upon the University, the Court endorsed the observations of Federal Judge Aldisert in *Bradshaw v. Rawlings*, 612 F.2d 135 (Pa. 1979):

Our beginning point is a recognition that the modern American college is not an insurer of the safety of its students. [T]he authoritarian role of today's college administrations has been notably diluted in recent decades. Trustees, administrators, and faculties have been required to yield to the expanding rights and privileges of their students. *** College students today are no longer minors; they are now regarded as adults in almost every phase of community life. *** As a result of [societal changes], eighteen year old students are now identified with an expansive bundle of individual and social interests and possess discrete rights not held by college students from decades past. There was a time when college administrators and faculties assumed a role *in loco parentis*. Students were committed to their charge because the students were considered minors. A special relationship was created between college and student that imposed a

duty on the college to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the college. The campus revolutions of the late sixties and early seventies were a direct attack by the students on rigid controls by the colleges and were an all-pervasive affirmative demand for more student rights. *** These movements, taking place almost simultaneously with legislation and case law lowering the age of majority, produced fundamental changes in our society. *** Regulation by the college of student life on and off campus has become limited. Adult students now demand and receive expanded rights of privacy in their college life.... College administrators no longer control the broad arena of general morals. *** But today students vigorously claim the right to define and regulate their own lives. ***

Thus, for purposes of examining fundamental relationships that underlie tort liability, the competing interests of the student and of the institution of higher learning are much different today than they were in the past. [T]he change has occurred because society considers the modern college student an adult, not a child of tender years. *** [T]he circumstances show that students have reached the age of majority and are capable of protecting their own self interests...

Bradshaw, 612 F.2d at 138-40 (footnotes omitted).

Rose seeks to escape the instruction provided by the *Alumni Ass'n*. Court by pleading that College was aware of the alcohol consumption on campus and adopted policies concerning the same. Rose further alleges the College was aware that alcohol would be served at the spring formal and, despite this knowledge, took the affirmative step to approve the event with safeguards including requiring the Fraternity to post a person or persons to oversee the conduct of the event, prevent violent behavior, and prevent alcoholic beverages from being served to intoxicated individuals. Rose argues that by these acts, College assumed a special duty to control activities at the event. Once again, this argument is expressly rejected by Pennsylvania law.

In *Millard v. Osborne v. Lambda Chi Alpha*, 611 A.2d 715 (Pa. Super. 1992), plaintiff's estate sought to impose liability on Thiel College for a fatal motorcycle accident in which the decedent, while intoxicated, crossed the center line causing a head-on collision with traffic in the oncoming lane. Plaintiff claimed decedent became intoxicated at a fraternity house on the Thiel College campus at which the College permitted alcohol consumption pursuant to an alcohol policy adopted by the College.² Despite acknowledging Thiel College assumed certain specific responsibilities through its policy, the *Millard* Court rejected the existence of an *in loco parentis* duty on the part of the College and dismissed the claim. The Court noted that, similar to the current matter, no representatives of the College were present while the decedent consumed alcohol nor did the College assist in the procurement or distribution of the alcohol.

In *Booker v. Lehigh University*, 80 F. Supp. 234, the United States District Court for the Eastern District of Pennsylvania, while interpreting Pennsylvania law, reached a similar conclusion. In *Booker*, a University student became inebriated at an on-campus fraternity party and subsequently seriously injured herself in a fall while walking back to her dorm room. In seeking damages against Lehigh University, the plaintiff argued that the University adopted a comprehensive social policy on the use of alcohol by which they assumed a duty to monitor alcohol use. Similar to the College's policy in the current litigation, Lehigh's policy required party hosts to prohibit underage possession or consumption of alcohol and to hire monitors to ensure compliance with the prohibition.³ Additionally, the policy required the hosts to register the event with the University. In granting summary judgment in favor of the University, the *Booker* Court rejected plaintiff's argument that Lehigh, through the promulgation of social policy, undertook a duty to protect its students and supervise on-campus fraternity functions. The Court concluded:

In short, Lehigh was not a social host for the parties in question. Even if we assume that Lehigh was aware that

² The policy in *Millard* specifically provided: "The use of alcohol at organized functions on weekends will be permitted only in recreation rooms and upon registration and approval of the Student Development Services Office." *Millard*, A.2d at 488, FN 2.

³ The Lehigh policy required party hosts to "hire a uniformed security guard." *Booker v. Lehigh University*, 800 F. Supp. 234 at 236.

plaintiff was drinking alcohol by virtue of its understanding that underage drinking was common on college campuses, including its own, Pennsylvania imposes no duty upon its colleges to supervise private social functions on their campuses to ensure that no underage drinking occurs.... The Social Policy was not an assumption of such a duty but rather a policy statement that supposedly responsible adult students should be aware of their own behavior.

Booker, F. Supp. at 241.

Currently, there is no claim in the pleadings that the College was a social host as there is no allegation that representatives of the College were present at the event or assisted in the procurement or distribution of the alcohol in any way. There is, in fact, a paucity of any claim that the event involved any active encouragement by the College. Since the thrust of the claim against College rests upon an *in loco parentis* duty upon a university towards its students, the Preliminary Objections will be sustained.⁴

For the foregoing reasons, the attached Order is entered.⁵

ORDER OF COURT

AND NOW, this 13th day of May, 2019, the Preliminary Objections of Gettysburg College are sustained. The Complaint against Gettysburg College is dismissed. The Adams County Prothonotary's Office is directed to enter judgment in favor of the Defendant, Gettysburg College.

⁴ The sole allegation in the Complaint, which is an exception to Rose's attempt to impose a special duty on the College to control the actions of its students, is a claim that the College failed to immediately seek medical attention for Rose following the attack by Vilmatelo. Rose's Second Amended Complaint, paragraph 48(i). This claim is similarly insufficient as Rose has not pled that the College was aware of Rose's injuries or that Rose sought medical attention which was denied by College staff. See *T.A. v. Allen*, 669 A.2d 360, 362 (Pa. Super. 1995); *Restatement (Second) of Torts*, § 314.

⁵ Rose was previously given an opportunity to cure deficiencies in the initial Complaint and failed to do so; it is therefore apparent that further amendment is fruitless.

ESTATE NOTICES

NOTICE IS HEREBY GIVEN that in the estates of the decedents set forth below, the Register of Wills has granted letters, testamentary of 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 IRENE D. BRENT, DEC'D
Late of Franklin Township, Adams County, Pennsylvania
Co-Executors: Patricia I. Arendt, 719 Belmont Road, Gettysburg, PA 17325; Timothy Brent, 201 Glenwood Road, Dillsburg, PA 17019
Attorney: Robert E. Campbell, Esq., Salzmans Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF ESTATE OF KAREN O. HUTCHISON, DEC'D

Late of Reading Township, Adams County, Pennsylvania
Erin Hutchison, 336 Lincoln Way West, New Oxford, PA 17350
Attorney: Thomas R. Nell, Esq., 130 W. King Street, P.O. Box 1019, East Berlin, PA 17316

ESTATE OF ESTATE OF ESTHER R. TAYLOR, DEC'D

Late of the Borough of Bendersville, Adams County, Pennsylvania
Administratrix: Martha S. Taylor, 253 S. Main Street, Aspers, PA 17304

SECOND PUBLICATION

ESTATE OF GERALDEAN J. BAIN, DEC'D

Late of Mt. Joy Township, Adams County, Pennsylvania
Executrix: Melanie B. Keltz, 12524 Meadowood Drive, Silver Spring, MD 20904

ESTATE OF KRISTOPHER KIRK KAISER a/k/a KRISTOPHER K. KAISER, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania
Administratrix: Brandi L. Kaiser, c/o Alex E. Snyder, Esq., Barley Snyder LLP, 100 E. Market Street, York, PA 17401
Attorney: Alex E. Snyder, Esq., Barley Snyder LLP, 100 E. Market Street, York, PA 17401

ESTATE OF MARCELLA M. KOSER, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executor: Edward Jones Trust Company, 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 RALPH E. KUYKENDALL, DEC'D

Late of the Borough of Gettysburg, Adams County, Pennsylvania
Thomas Kuykendall, 603 Highland Avenue, Carlisle, PA 17013
Attorney: David K. James, III, Esq., 234 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JANET M. LOHR, DEC'D

Late of Oxford Township, Adams County, Pennsylvania
Executor: Edward Jones Trust Company, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

ESTATE OF ROSALIE A. PATTERSON, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Executrix: Sharon R. Patterson, 250 Hunterstown Hampton Road, Gettysburg, PA 17325
Attorney: John J. Murphy III, Esq., Patrono & Murphy, LLC, 28 West Middle Street, Gettysburg, PA 17325

ESTATE OF CHARLES K. SENTZ, JR., DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Andrew C. Sentz, c/o Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331
Attorney: Scott J. Strausbaugh, Esq., Strausbaugh Law, PLLC, 1201 West Elm Avenue, Suite #2, Hanover, PA 17331

ESTATE OF JOAN L. STULL a/k/a JOAN L. WOLF, DEC'D

Late of Conewago Township, Adams County, Pennsylvania
Personal Representative: Bonnie M. Creager, c/o Alexandra M. Sipe, Esq., Maxwell Sipe Law Offices, LLC, 20 East Sixth Street, Suite 301, Waynesboro, PA 17268
Attorney: Alexandra M. Sipe, Esq., Maxwell Sipe Law Offices, LLC, 20 East Sixth Street, Suite 301, Waynesboro, PA 17268

THIRD PUBLICATION

ESTATE OF CAROL A. BURKE-GOODMAN a/k/a CAROL A. BURKE, DEC'D

Late of Butler Township, Adams County, Pennsylvania
Administratrix: Christine E. Goodman, 90 Harney Road, Littlestown, PA 17340
Attorney: Clayton A. Lingg, Esq., Mooney Law, 230 York Street, Hanover, PA 17331

ESTATE OF DORIS E. CAREY, DEC'D

Late of Straban Township, Adams County, Pennsylvania
Co-Executrices: Carey P. Brown and Susan K. Carey, c/o Todd A. King, Esq., Salzmans Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325
Attorney: Todd A. King, Esq., Salzmans Hughes, P.C., 112 Baltimore Street, Gettysburg, PA 17325

ESTATE OF JOHN C. GROFT, DEC'D

Late of the Borough of New Oxford, Adams County, Pennsylvania
Executor: John M. Groft, c/o Stephen D. Tiley, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013
Attorney: Stephen D. Tiley, Esq., Frey and Tiley, 5 South Hanover Street, Carlisle, PA 17013

ESTATE OF PAULINE C. PIFER, DEC'D

Late of Huntingdon Township, Adams County, Pennsylvania
Executors: Shirley A. Miller, 5004 Oxford Road, York Springs, PA 17372; Jonathan R. Pifer, 4996 Oxford Road, York Springs, PA 17372
Attorney: Keith R. Nonemaker, Esq., Barley Snyder LLP, 40 York Street, Hanover, PA 17331

THIRD PUBLICATION CONTINUED

ESTATE OF WILLIE CATHERINE
STARNER, DEC'D

Late of Union Township, Adams
County, Pennsylvania

Leon C. Deatrick, 845 Buchanan
Valley Road, Orrtanna, PA 17353;
David L. Deatrick, P.O. Box 295,
Lampeter, PA 17537; John Leroy
Starner, 4363 Wolfs Church Road,
York, PA 17408

Attorney: David K. James, III, Esq.,
234 Baltimore Street, Gettysburg,
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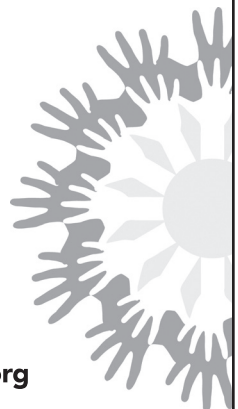
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