

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HELENE and DANIEL J. KOSTAR : CIVIL ACTION
 :
 v. :
 :
 PEPSI-COLA METROPOLITAN :
 BOTTLING COMPANY, INC., :
 PEPSICO, INC., and :
 SERAVALLI, INC. : NO. 96-7130

MEMORANDUM AND ORDER

HUTTON, J.

December 3, 1998

Presently before the Court are Plaintiffs' Motion in Limine (Docket No. 86) and Defendants' opposition thereto (Docket No. 87). Also before the Court are Defendant Pepsi-Cola Metropolitan Bottling Company, Inc.'s Motion to Amend/Vacate the Order Denying Summary Judgment (Docket No. 91) and Plaintiffs' response thereto (Docket No. 92).

I. BACKGROUND

Taken in the light most favorable to the nonmoving party, the facts are as follows. During 1996, Plaintiff Helene Kostar ("Kostar" or Plaintiff) was an employee of Pepsi-Cola Laurel Bottling Company ("Pepsi-Laurel"). Plaintiff worked at a manufacturing plant located on Roosevelt Boulevard in Philadelphia, Pennsylvania. On February 16, 1996, Plaintiff exited the manufacturing building on crutches using a handicapped-access ramp.

As Plaintiff proceeded down the ramp, she fell and suffered physical injuries.

Subsequently, Plaintiff filed a workmen's compensation claim against her employer, Pepsi-Laurel. In the papers filed for her workmen's compensation claim, Plaintiff alleged that her injuries took place on the premises of her employer, Pepsi-Laurel. Plaintiff later withdrew her workmen's compensation claim.

After withdrawing her workmen's compensation claim, Plaintiff and her husband filed a complaint against Defendant Pepsi-Cola Metropolitan Bottling Company, Inc. ("Pepsi-Metro"). In her complaint, Plaintiff alleges that she fell due to ice and snow on the ramp and/or the existence of a defective condition in the ramp. Plaintiff also alleges that Defendant Pepsi-Metro controls, owns, and/or possesses the premises upon which the ramp is located. In asserting this allegation, Plaintiff relied on a deed dated September 5, 1990 which conveyed the property from the Philadelphia Authority for Industrial Development to Defendant Pepsi-Metro. This deed is filed with the Philadelphia Recorder of Deeds.

After several months of discovery, Plaintiff moved this Court for permission to file an amended complaint to join PepsiCo, Inc. ("PepsiCo") as a defendant. Plaintiff based this motion on deposition testimony that suggested PepsiCo employed personnel potentially responsible for the maintenance of the property, particularly ice and snow removal. On December 23, 1997, this

Court granted Plaintiff's motion and Plaintiff filed an amended complaint naming PepsiCo as an additional defendant.

Defendant Pepsi-Metro filed a motion for summary judgment. In their motion, Defendant Pepsi-Metro asserted that summary judgment should be granted because: (1) Pepsi-Metro does not own the property in dispute or (2) Pepsi-Metro cannot be held liable for Plaintiff's injuries as a landlord out of possession under Pennsylvania law even if it did own the property. Defendant PepsiCo also filed a motion for summary judgment. Defendant PepsiCo joined Defendant Pepsi-Metro's motion and also argued that there was no evidence that any PepsiCo employee was responsible for maintenance of any sort, much less ice and snow removal, at the property where Plaintiff fell.

On October 26, 1998, this Court denied Defendant Pepsi-Metro's motion for summary judgment. The Court found that the relevant inquiry was not whether Defendant Pepsi-Metro owned the property where Plaintiff fell. Rather, this Court concluded that the relevant inquiry was whether Pepsi-Metro was the "possessor of land" and, thus, owed Plaintiff a duty of maintenance. This Court also found that there was sufficient evidence to create a genuine issue of material fact concerning whether Pepsi-Metro was the possessor of land where Plaintiff fell. Finally, the Court granted Defendant PepsiCo's motion for summary judgment because there was no evidence that any PepsiCo employee was responsible for

maintenance of any sort where Plaintiff fell.

Defendant Pepsi-Metro now moves for reconsideration of this Court's denial of their motion for summary judgment. In addition, Plaintiffs filed a motion in limine that seeks to exclude a workmen's compensation claim that she filed as a result of the injury at the plant. Plaintiff argues that admission of her workmen's compensation claim would be irrelevant and prejudicial. The Court considers these motions together.

II. DISCUSSION

A. Motion for Reconsideration

1. Standard

"The standards controlling a motion for reconsideration are set forth in Federal Rule of Civil Procedure 59(e) and Local Rule of Civil Procedure 7.1." Vaidya v. Xerox Corp., No. CIV.A97-547, 1997 WL 732464, at *1 (E.D. Pa. Nov. 25, 1997). "The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); see also Drake v. Steamfitters Local Union No. 420, No. CIV.A97-CV-585, 1998 WL 564886, at *3 (E.D. Pa. Sept. 3, 1998). Generally, a motion for reconsideration will only be granted on one of the following three grounds: (1) there has been an intervening change in controlling law; (2) new evidence, which was not previously available, has become available; or (3) it is necessary to correct a clear error

of law or to prevent manifest injustice. See Smith v. City of Chester, 155 F.R.D. 95, 96-97 (E.D. Pa. 1994); see also D'Allesandro v. Ludwig Honold Mfg. Co., No. CIV.A95-5299, 1997 WL 805182, at *1 (E.D. Pa. Dec. 18, 1997).

In the instant motion, the Defendant does not allege that there has been any change in controlling law or that there is any newly discovered evidence. Defendant can only succeed, therefore, on the third ground for reconsideration. Under the third ground for granting a motion for reconsideration, this Court must grant the Defendant's motion to "correct a clear error of law or prevent manifest injustice" resulting from its earlier order denying Defendant's motion for summary judgment. See Walker v. Spiller, No. CIV.A97-6720, 1998 WL 306540, at *2 (E.D. Pa. June 9, 1998) (citing Smith, 155 F.R.D. at 96-97).

2. Merits

Defendant Pepsi-Metro argues that this Court committed error in evaluating the evidence. In their motion for summary judgment, Defendant Pepsi-Metro argued that summary judgment was proper because it did not own the property where Plaintiff fell. Thus, Defendant contended, it owed no duty to the Plaintiff. In her response, Plaintiff counter argued that the Defendant did in fact own the property upon which Plaintiff fell and, therefore, owed a duty to the Plaintiff. This Court, however, found that the correct legal analysis was whether Pepsi-Metro was the possessor of

land where Plaintiff fell. Defendant concedes that this was the correct legal standard, but that the Court was incorrect "in the manner in which the analysis was carried out." Def.'s Mem. of Law in Support of Mot. to Amend/Vacate at 3.

Defendant Pepsi-Metro disagrees with the Court's evaluation of the evidence. First, Defendant argues that the Court made a mistake of fact in interpreting the testimony of Charles Mueller. Second, Defendant contends that the Court erred in relying upon the affidavits submitted by the Plaintiff and a former co-employee. Third and finally, Defendant argues that the Court erred in relying on the numerous other documents submitted by the Plaintiff as evidence suggesting that Pepsi-Metro possessed and/or controlled the property in question.

As a threshold matter, this Court notes that the Plaintiff submitted a deed dated September 5, 1990 indicating that Pepsi-Metro purchased the property upon which Plaintiff fell. Plaintiff supported this documentation with an expert report indicating that a title search suggests that Pepsi-Metro was still the record owner on the date of injury. Defendant submits that it transferred ownership of the property to Pepsi-Laurel, Plaintiff's employer, on January 1, 1992.

While the Court could not conclusively determine who was the title owner on the day of injury, this evidence is important in the Court's denial of summary judgment. On the one hand, the

September 5, 1990 deed and the fact that Pepsi-Metro was the record owner on the date of injury are relevant evidence for a fact-finder to determine whether Pepsi-Metro was "a person who is in occupation of the land with intent to control it" on the date of injury. See Restatement (Second) of Torts § 328E (defining possessor of land). On the other hand, the January 1, 1992 deed and authenticity thereof are also matters for the jury to consider in determining whether Pepsi-Metro was "a person who is in occupation of the land with intent to control it" when Plaintiff injured herself on the property. See id. The Court will now consider each of Defendant's arguments.

a. Deposition Testimony of Charles Mueller

Defendant argues that the Court incorrectly cited to Mr. Mueller's testimony for the conclusion that numerous Pepsi-Laurel employees-- who work at the plant where Plaintiff fell-- are also Pepsi-Metro employees. Defendant states that Mr. Mueller testified that there are officer and directors, not employees, who are employed by both Pepsi-Laurel and Pepsi-Metro. While the Court may have referred to these persons too broadly as employees rather than directors and officers, the Court nonetheless finds that any such error was not material. Mueller also testified in his deposition about the existence of telephone conference calls between Pepsi-Laurel and Pepsi-Metro directors and officers concerning operation of the manufacturing plant. While these conference calls may have

been in the context of calls between managers of all Pepsi entities, there is sufficient evidence to suggest that Pepsi-Metro officers and/or directors were in charge, and thus in control, of the plant in question.

b. Affidavits of Helene Kostar and William Hamilton

Defendant also argues that the Court erred in relying on two affidavits which suggest that Pepsi-Metro controlled and/or owned the premises where Plaintiff injured herself during the time in question. Defendant submits that this is but a "scintilla" of evidence which cannot support the Court's conclusion denying summary judgment. This Court disagrees.

Plaintiff attached the affidavit of William Hamilton, a former employee at the manufacturing plant from 1994 to 1996, in which he states that Defendant Pepsi-Metro would hold its annual employee picnic on the property upon which Plaintiff injured herself. Plaintiff also submitted her own affidavit which lists tasks that she performed as an administrative assistant in the manufacturing plant for Pepsi-Metro. She also describes various Pepsi-Metro activities that took place in the manufacturing plant even after the alleged transfer of ownership to Pepsi-Laurel.

In sum, this evidence raises an issue of whether Pepsi-Metro exerted possession and control of the premises in February of 1996 when Plaintiff was injured. Under Restatement 328E, a reasonable jury could conclude that Pepsi-Metro, while not the

title owner of the property, was in occupation of the property with the intent to control it. While Defendant argues that this evidence is not strong enough to raise an issue for trial, this Court finds that these affidavits, taken together with Plaintiff's other evidence, create an issue of fact.

3. Other Evidence of Possession and Control

Finally, Defendant argues that this Court erred in relying on "other evidence." This "other evidence" offered by the Plaintiff included tax information listing Pepsi-Metro as owner, copies of the vehicle registrations of over 50 trucks at the plant which list Pepsi-Metro as the owner, and copies of water and sewer bills directed to Pepsi-Metro as the owner of the property. Defendant argues that the Court did not state how this evidence demonstrated possession and control as opposed to ownership.

This evidence demonstrated that numerous other entities considered Pepsi-Metro the owner of the premises at the time of Plaintiff's injury. Defendant submits that the transfer of ownership of the property in question was not recorded because of simple human error, that is, someone simply forgot to record the transaction. A reasonable jury could conclude that it less likely that someone forgot to record this transfer of ownership and change the record owner for sewer bills, water bills, and tax purposes. While Defendant is correct that mere ownership is not enough, this evidence also suggests control of the premises. For instance, a

reasonable jury could conclude that Pepsi-Metro not only owns the plant where Plaintiff fell, but still controls the plant because nearly all of the trucks operating out of that plant are registered to Pepsi-Metro.

Defendant also argues that, even if this information listed Pepsi-Metro as the owner, Fraeger Sanders, the plant manager at the facility, testified that Pepsi-Laurel paid all of these sewer, water, and tax bills. This Court finds that it properly considered this evidence. First, this testimony does not explain why Pepsi-Metro is still listed as owner of the premises, and presumably, still liable for these bills if Pepsi-Laurel does not pay them. Second, this testimony also does not explain ownership of the trucks operating out of the plant. Third, in order to accept Defendant's argument, this Court would have to accept the credibility of Mr. Sanders' testimony and reject the credibility of the other entities listing Pepsi-Metro as owner. The Court is unwilling and unable to do so.

4. Conclusion of Possession and Control

In sum, the Court finds that a reasonable jury could conclude from Plaintiff's evidence that Pepsi-Metro was the possessor of land of this property when Plaintiff was injured. See Dumas v. Pike County, 642 F. Supp. 131, 136 (S.D. Miss. 1986) (concluding that summary judgment was improperly granted because an issue of fact remained of whether county exercised control over

premises as "general principles of premises liability are not conditioned upon the defendant's actually owning or holding title to the land. A 'possessor' of land can include one in occupation of land with the intent to control it."). Defendant submits it transferred ownership of the property before Plaintiff was injured. As proof, Defendant offers deposition testimony and a deed that was produced several weeks after Defendant filed for summary judgment.¹ Plaintiff counters with a deed and title search indicating that Defendant does own the property. Plaintiff also offers the deposition testimony suggesting commonality between Pepsi-Metro and Pepsi-Laurel directors and officers who run the plant, tax information listing Pepsi-Metro as owner, the sewer and water bills indicating Pepsi-Metro was the owner, and over 50 vehicle registrations for the trucks at the plant which list Pepsi-Metro as the owner. Further, Plaintiff offers her own affidavit which states that she performed work at the plant for Pepsi-Metro and the affidavit of a former employee which states Pepsi-Metro held events at the plant. Thus, the Court must hold that a genuine issue of material fact still exists on this issue and requires a determination by a jury.

One final point, however, must still be addressed. Defendant Pepsi-Metro also argues that even if the Court finds it did own the property in 1996, then there is no basis for liability

¹ Nevertheless, the Court considered this deed in denying Defendant's motion for summary judgment.

either under Pennsylvania law because Pepsi-Metro is a landlord out of possession. This Court found Pepsi-Metro's arguments in this respect irrelevant for two reasons. First, Plaintiff offered absolutely no evidence of any sort that Pepsi-Metro entered into a landlord-tenant relationship with Pepsi-Laurel. Second, the Court correctly found that the merits of Pepsi-Metro's landlord out of possession argument were irrelevant because the Plaintiff may recover under another theory of liability, possessor of land.

B. Motion in Limine

Plaintiff moves to exclude her workmen's compensation claim file as irrelevant and prejudicial. Defendant counters that this evidence is relevant because Plaintiff admitted she fell on Pepsi-Laurel's premises, not Pepsi-Metro's premises. Defendant also contends that the admission of this evidence would not be prejudicial because this does not involve the collateral source rule.

Under Federal Rule of Evidence 401, "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Fed. R. Evid. 401. "The standard of relevance established by [Rule 401] is not high." Carter v. Hewitt, 617 F.2d 961, 966 (3d Cir. 1980). Once the threshold of logical relevancy is satisfied, the matter is largely within the discretion of the trial court. See

United States v. Steele, 685 F.2d 793, 808 (3d Cir. 1982). Federal Rule of Evidence 402 states: "All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority. Evidence which is not relevant is not admissible." Fed. R. Evid. 402.

Under Federal Rule of Evidence 403, relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Fed. R. Evid. 403. "Rule 403 does not act to exclude any evidence that may be prejudicial, but only evidence the prejudice from which substantively outweighs its probative value. Prejudice within the meaning of Rule 403 involves identifying a special damage which the law finds impermissible." Charles E. Wagner, Federal Rules of Evidence Case Law Commentary 145 (1996-97) (footnotes omitted).

This Court finds that the prejudice that would result from the admission of Plaintiff's workmen's compensation claim would substantially outweigh the probative value. As an initial matter, this Court finds the Plaintiff's statement that she fell on the premises of Pepsi-Laurel has little probative value. As noted, the relevant inquiry is whether Pepsi-Metro was the possessor of land. This duty owed to the Plaintiff as the possessor of land is

broader than mere ownership of a premises.

Further, even though this statement has some-- albeit small-- probative value, this Court finds that the prejudice of introducing statements referring to Plaintiff's filing for workmen's compensation substantially outweighs any probative value under Federal Rule of Evidence 403. See Eichman v. Dennis, 347 F.2d 978, 982 (3d Cir. 1965) (holding court's instructions that plaintiff had right of recovery under workmen's compensation law was prejudicial and thus not a harmless error); Snyder v. Lehigh Valley R.R. Co., 245 F.2d 112, 116 (3d Cir. 1957) ("The possibility that [the jury] might have been influenced to reach a verdict of non-negligence on the part of the defendant by reason of the circumstance that the plaintiff was not receiving workmen's compensation cannot lightly be discounted."). Defendant correctly notes that workmen's compensation evidence is usually found prejudicial based on the receipt of benefits under the collateral source rule. However, even though Plaintiff withdrew her claim and received no workmen's compensation payments in this case, Plaintiff would suffer severe prejudice simply by mention of the fact that Plaintiff filed for workmen's compensation. See LaMade v. Wilson, 512 F.2d 1348, 1350 (3d Cir. 1975) (noting the long line of cases holding that the admission of evidence concerning an injured party's workmen compensation claim, hearing, and award was prejudicial). The jury might erroneously conclude that the

Plaintiff's withdrawal of her workmen's compensation claim has some bearing on the merits of her recovery in this case. See Snyder, 245 F.2d at 116 (finding that jury might conclude that non-receipt of workmen's compensation benefits indicative of absence of liability of defendant). Therefore, given the relative little probative value of Plaintiff's statement that she fell on Pepsi-Laurel's premises in comparison with the substantial prejudice caused by the mention of Plaintiff filing for workmen's compensation, this Court grants Plaintiff's motion in limine and excludes this evidence under Rule 403.

An appropriate Order follows.

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O R D E R

AND NOW, this 3rd day of December, 1998, upon consideration of Defendant's Motions to Amend/Vacate the Order Denying Summary Judgment and Plaintiffs' Motion in Limine, IT IS HEREBY ORDERED that:

- (1) Defendant Pepsi Metro's Motion is **DENIED**; and
- (2) Plaintiffs' Motion in Limine is **GRANTED**.

BY THE COURT:

HERBERT J. HUTTON, J.