

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

ABIGAIL RIVERA,	:	CIVIL ACTION
Plaintiff	:	
	:	
v.	:	NO. 05-4416
	:	
WAL-MART STORES, INC.,	:	
Defendant	:	

MEMORANDUM

STENGEL, J.

October 31, 2005

Abilgail Rivera brings this diversity case sounding in negligence after slipping and falling at a Wal-Mart store located in Bayamon, Puerto Rico. Believing them to be responsible for the negligence occurring at the Puerto Rican store, Rivera has named Wal-Mart Stores, Inc. (“WMSI”) as the defendant. WMSI then filed a motion to dismiss and I will now address that motion.

I. BACKGROUND

Rivera avers that on a rainy August 18, 2004, she entered a Wal-Mart store located in Bayamon, Puerto Rico. As is its custom on rainy days, the Wal-Mart store provided clear plastic bags for all of its patrons’ umbrellas. One of the plastic bags was negligently left on the ground concealing a small puddle of water. Rivera subsequently stepped on the bag covered puddle, lost her balance, fell, and was severely injured.

Within months of her fall, Rivera contacted the claims adjuster for WMSI, Claims Management Inc., and began processing her claim. Claims Management Inc. admitted that it would handle Rivera’s claim arising from her incident in the Puerto Rican store.

On August 18, 2005, Rivera filed her cause of action against WMSI in this court. On September 27, 2005, WMSI filed a motion to dismiss claiming they were not properly served and that Wal-Mart Puerto Rico, Inc. (“WMPRI”) would be the proper defendant in this case.

II. STANDARD of REVIEW

When considering a motion to dismiss under Fed. R. Civ. Proc. 12(b)(6), the court must accept the complaint’s allegations as true and draw all reasonable inferences in plaintiff’s favor. Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1164-65 (3d Cir. 1987).

Under Rule 12(b)(6), a defendant may move to dismiss a complaint for “failure to state a claim upon which relief can be granted.” The rule is designed to screen out cases where “a complaint states a claim based upon a wrong for which there is clearly no remedy, or a claim which the Plaintiff is without right or power to assert and for which no relief could possibly be granted.” Port Auth. v. Arcadian Corp., 189 F.3d 305, 311-12 (3d Cir. 1999). Under Rule 12(b)(6), a complaint should not be dismissed for failure to state a claim “unless it appears beyond doubt that the Plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Conley v. Gibson, 355 U.S. 41, 45-46 (1957). The issue, therefore, is not whether the Plaintiff will ultimately prevail, but whether she is entitled to offer evidence to support her claims. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); See also Maio v. Aetna, Inc., 221 F.3d 472, 482 (3d Cir. 2000).

III. DISCUSSION

WMSI argues Rivera has simply named the wrong defendant. They claim WMPRI is the proper entity to be sued in a negligence case where all of the alleged activity took place in Bayamon, Puerto Rico. In support of this contention WMSI cites Brooks v. Bacardi Rum Corp., 943 F. Supp. 559 (E.D. Pa 1996) (Pennsylvania court did not have personal jurisdiction over Puerto Rican corporation based upon its wholly-owned subsidiaries' contacts to the state), and provides an affidavit stating WMPRI is a separate Puerto Rican corporation. According to the affidavit, WMPRI is the owner, operator, and employer for the Wal-Mart store located in Bayamon, Puerto Rico.¹

In reply, Rivera argues Gizzi v. Texaco, Inc., 437 F.2d 308 (3d Cir. 1971) (court found Texaco liable after an individual owner of a Texaco service station sold a used car with faulty brakes) controls on this issue and establishes the defendant's liability. I believe this is an improper application of Gizzi. In this case, Rivera contends WMSI should be held liable for the negligent actions occurring in one of its wholly-owned subsidiary's stores, not that an agent for the defendant acted with apparent authority as in Gizzi.

The only issue in this motion is whether WMSI can be held liable for actions taken by WMPRI employees. Based upon the reasoning in Clark v. Marriott Env'tl. Servs., Civ. No. 93-3279, 1994 U.S. Dist. Lexis 1328, (E.D. Pa. 1994) (Kelly, J.) (slip and fall case in

¹The affidavit also states that WMPRI is a wholly-owned subsidiary of Wal-Mart Stores Inc.

which the plaintiff sued the wrong entity by naming the defendant corporation instead of its wholly-owned subsidiary); and Rucker v. Marriott, Civ. No. 03-4729, 2004 U.S. Dist. Lexis 461 (E.D. Pa. 2004) (Dalzell, J.) (slip and fall case in which the court found Marriott International was not legally responsible for the acts and omissions of its wholly-owned subsidiary) I believe WMSI should be dismissed from this case as it cannot be held liable for the alleged negligence of WMPRI employees.²

IV. CONCLUSION

Because Rivera has failed to sufficiently allege any facts as to why WMSI should be liable for actions occurring at a WMPRI store, I will grant WMSI's motion to dismiss. An appropriate order follows.

²Although Rivera claims she has alleged sufficient facts to survive a motion to dismiss, See Drexel v. Union Prescription Centers, Inc., 582 F.2d 781 (3d Cir. 1978) (court denied summary judgment to further resolve master-servant/ agency relationship between franchiser and franchisee), the only facts alleged against WMSI is that there is a sufficient nexus between them and WMPRI because their third-party claims adjuster, Claims Management Inc., initially worked with Rivera to adjust her claim. This appears to be an estoppel argument. However, no facts have been plead as to why Claims Management Inc. cannot simultaneously adjust this claim arising in a WMPRI store along with the many claims arising in WMSI's stores. WMSI argues Claims Management Inc. is a separate company and Rivera has not disputed that contention. Furthermore, Rivera does not claim that this Court should pierce the corporate veil and hold the named defendant liable for WMPRI's, or Claims Management Inc.'s, actions. Under Pennsylvania law, "courts will disregard the corporate entity only in limited circumstances when used to defeat public convenience, justify wrong, protect fraud or defend crime." Kiehl v. Action Mfg. Co., 517 Pa. 183, 190 (1987). Rivera has not plead any facts related to those four factors.

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ORDER

STENGEL, J.

AND NOW, this day of October, 2005, upon consideration of defendant's motion to dismiss (Document # 3), it is hereby **ORDERED** that the motion is **GRANTED**. Plaintiff's case is dismissed and the Clerk of the Court shall mark this case as closed for all purposes.

BY THE COURT:

LAWRENCE F. STENGEL, J.