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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MATILDE EK, individually and as successor in interest to ARTURO EK, KARLA ED-ELHADIDY; LUCILA del CARMEN EK, and MARIA EK-EWELL,

Plaintiffs,

vs.

SEE'S CANDIES, INC.; SEE'S CANDY SHOPS, INCORPORATED; and DOES 1-20, inclusive,

Defendants.

Case No. 20STCV49673

NOTICE OF RULING REGARDING DEMURRER OF DEFENDANTS SEE'S CANDIES, INC. AND SEE'S CANDY SHOPS, INC. TO PLAINTIFFS' COMPLAINT

Assigned for All Purposes to:
Hon. Daniel M. Crowley, Dept. 28

Action Filed: December 30, 2020
Trial Date: June 29, 2022

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

On April 13, 2021, at 3:30 pm, the Demurrer to Plaintiffs' Complaint filed by Defendants See's Candies, Inc. and See's Candy Shops, Inc. (collectively, "Defendants") came on regularly for hearing in Department 28 of the above-captioned Court, the Hon. Daniel M. Crowley, Judge, presiding. Donna Silver of Krissman & Silver LLP appeared on behalf of Plaintiffs Matilde Ek, Arturo Ek, Karla Ek-Elhadidy, Lucila del Carmen Ek, and Maria Ek-Ewell. The undersigned, Joseph Lee, of Munger, Tolles & Olson LLP, appeared for Defendants.

The Court adopted the attached tentative ruling as its ruling on the Demurrer.

The parties have agreed that Defendants shall have 30 days from April 13, 2021 within which to file their answer to the Complaint.

DATED: April 14, 2021

MUNGER, TOLLES & OLSON LLP

By: */s/ Joseph D. Lee*
JOSEPH D. LEE

Attorneys for Defendants SEE'S CANDIES, INC. and SEE'S CANDY SHOPS, INC.

Tentative Ruling Regarding Defendants' Demurrer to Plaintiffs' Complaint

DEPARTMENT 28 LAW AND MOTION RULINGS

In light of the COVID-19 pandemic, you are urged to meet and confer with all parties concerning this tentative ruling to see if you can reach an agreed-upon resolution of your matter.

If you are able to reach an agreement, please notify the courtroom staff in advance of the hearing if you wish to submit on the tentative ruling rather than argue the motion. The email address is SSCDEPT28@lacourt.org. COPY THIS EMAIL ADDRESS INTO A NEW EMAIL TO THE COURT. DO NOT CLICK ON THE LINK. If you click on the link your message will be sent to an old email address, and will not be received in the Dept. 28 email box. Do not use any other email address. Include the word "SUBMISSION" in all caps in the Subject line and include the date and time of the hearing, your name, contact information, the case number, and the party you represent, whether that party is a plaintiff, defendant, cross-complainant, cross-defendant, claimant, or non-party in the body of the email. You must include the other parties on the email by "cc."

Please be advised that if you submit on the tentative and elect not to appear at the hearing, the opposing party may nevertheless appear at the hearing and argue the matter, so work this out with the other side. If you submit, but one or both parties still intend to appear, include the words "SUBMISSION BUT WILL APPEAR" in the Subject line.

If you submitted a courtesy copy of your papers containing media (such as a DVD or thumbdrive), unless you request the return of the media, the court will destroy it following the hearing of your matter.

If you cannot reach an agreed upon resolution of your matter and wish to argue your matter, you are urged to do so remotely, via Court-Connect.

Case Number: 20STCV49673 Hearing Date: April 13, 2021 Dept: 28

Demurrer without a Motion to Strike
Having considered the demurring, opposing, and reply papers, the Court rules as follows.

BACKGROUND

On December 30, 2020, Plaintiffs Matilde Ek, Lucila del Carmen Ek, and Maria Ek-Ewell (collectively "Plaintiffs") filed a complaint against Defendants See's Candies, Inc. and See's Candy Shops, Incorporated (collectively "Defendants"). Plaintiffs allege negligence and premises liability arising from the death of Decedent Arturo Ek ("Decedent") from a COVID-19.

On March 3, 2021, Defendants filed a demurrer pursuant to California Code of Civil Procedure section 430.10.

Trial is set for June 29, 2022.

PARTY'S REQUEST

Defendants ask the Court to sustain their demurrer to Plaintiffs' complaint because Plaintiffs remedy is limited to workers' compensation benefits.

LEGAL STANDARD

Meet and Confer

Before filing a demurrer, the demurring party is required to meet and confer with the party who filed the pleading sought to be demurred to, in person or telephonically, for the purposes of determining whether an agreement can be reached through a filing of an amended pleading that would resolve the objections to be raised in the demurrer. (See Code Civ. Proc., § 430.41.)

Demurrer

A demurrer for sufficiency tests whether the complaint states a cause of action. (Hahn v. Mirda (2007) 147 Cal.App.4th 740, 747.) When considering demurrers, courts read the allegations liberally and in context. (Taylor v. City of Los Angeles Dept. of Water and Power (2006) 144 Cal.App.4th 1216, 1228.) In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994.) "A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed." (SKF Farms v. Superior Court (1984) 153 Cal.App.3d 902, 905.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (Hahn, supra, 147 Cal.App.4th at p. 747.) The ultimate facts alleged in the complaint must be deemed true, as well as all facts that may be implied or inferred from those expressly alleged. (Marshall v. Gibson, Dunn & Crutcher (1995) 37 Cal.App.4th 1397, 1403; see also Shields v. County of San Diego (1984) 155 Cal.App.3d 103, 133 [stating, "[o]n demurrer, pleadings are read liberally and allegations contained therein are assumed to be true."])

DISCUSSION

Meet and Confer
The Court finds Defendants have filed a code-compliant meet and confer declaration. (Lee Decl., ¶ 2.)

Premises Liability and Negligence

The elements of a cause of action for premises liability are the same as those for negligence: duty, breach, causation, and damages. (Castellon v. U.S. Bancorp¿(2013) 220 Cal.App.4th 994, 998.) Those who own, possess, or control property generally have a duty to exercise ordinary care in managing the property¿to¿avoid exposing others to an unreasonable risk of harm. (Annocki¿v. Peterson Enterprises, LLC¿(2014) 232 Cal.App.4th 32, 37.) The existence and

scope of duty are legal questions for the court. (Id. at p. 36.) If there is a condition that poses a danger to customers and others on the premises, the property owner is "under a duty to exercise ordinary care either to make the condition reasonably safe for their use or to give a warning adequate to enable them to avoid the harm." (Bridgman v. Safeway Stores, Inc.¿(1960) 53 Cal.2d 443, 446.)

"Ordinarily, negligence may be alleged in general terms, without specific facts showing how the injury occurred, but there are 'limits to the generality with which a plaintiff is permitted to state his cause of action, and . . . the plaintiff must indicate the acts or omissions which are said to have been negligently performed. He may not recover upon the bare statement that the defendant's negligence has caused him injury.' [Citation]." (Berkley v. Dowds (2007) 152 Cal.App.4th 518, 527.) However, there is no requirement that plaintiff identify and allege the precise moment of the injury or the exact nature of the wrongful act. (Hahn v. Mirda (2007) 147 Cal.App.4th 740, 747.)

California Labor Code section 3602 states "[w]here the conditions of compensation set forth in Section 3600 concur, the right to recover compensation is, except as specifically provided in this section and Sections 37036 and 4558, the sole and exclusive remedy of the employee or his or her dependents against the employer." California Labor Code section 3600 states "[l]iability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as otherwise provided in Sections 3602, 3706, and 4558, shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment . . . where the following [three of ten] conditions of compensation occur:

Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.

Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.

Where the injury is proximately cause by the employment, either with or without negligence."

The workers' compensation exclusivity rule applies to all injuries that are collateral to or derivative of an injury compensable under the Workers' Compensation Act. (Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund (2001) 24 Cal.4th 800, 813-814.) "[T]he derivative injury rule governs cases in which the []third party cause of action [is] derivative of the employee injury in the purest sense: It simply would not have existed in the absence of injury to the employee." (Snyder v. Michael's Stores, Inc. (1997) 16 Cal.4th 991, 998.)

Plaintiffs allege the following in their complaint. Between March 1, 2020 and March 19, 2020, Plaintiff Matilde Ek worked at Defendants' candy assembly and packaging line. (Compl., p. 4.) Appropriate and necessary social distancing on the packing line was not implemented. (Ibid.) Workers were working between either inches or a few feet from each other. (Ibid.) Workers were coughing, sneezing, and became infected with COVID-19. (Ibid.) Plaintiff alleges that as

a result, Plaintiff Matilde Ek contracted COVID-19. (Ibid.) Plaintiff Matilde Ek convalesced at home with her husband, Decedent, and daughter, Karla Ek-Elhadidy. (Ibid.) Decedent and Karla Ek-Elhadidy both also became sick with COVID-19. (Ibid.) On April 20, 2020, Decedent died from COVID-19. (Ibid.)

In Kesner v. Superior Court (2016) 1 Cal.5th 1132, the California Supreme Court found an employer liable for an injury claimed by family members of individuals exposed to asbestos in the work place. The family members sustained their own independent injuries from exposure to the asbestos carried home by the employed individuals. (Kesner, supra, 1 Cal.5th at pp. 1142, 1165.) "[T]ake-home exposure[] occurs when a worker who is directly exposed to a toxin carries it home on his or her person or clothing, and a household member is in turn exposed through physical proximity or contact with that worker or the worker's clothing." (Ibid. at p. 1140.)

In Snyder v. Michael's Stores, Inc. (1997) 16 Cal.4th 991, the California Supreme Court found that injuries sustained by a fetus in utero while its mother was acting in the course of her employment were not derivative of its mother's injuries. (Snyder, supra, 16 Cal.4th at pp. 994, 1000.) In Snyder, a pregnant mother and her fetus suffered injuries after being exposed to hazardous levels of carbon monoxide. (Id. at p. 995.) The Court in Snyder made clear that the baby's injuries were her own and not derived from her mother's. (Id. at p. 1000.)

In sum, both the family members in Kesner and the baby in Snyder sustained their own independent injuries as a result of their being exposed to a toxin in a related employee's workspace.

Defendants argue that under the "derivative injury" rule, any claim that "would not have existed in the absence of injury to the employee" falls within the exclusive remedy of the Workers' Compensation scheme, citing Snyder, supra. Nonetheless, Plaintiffs do not contend that their injuries would not have existed in the absence of injury to Mrs. Ek. Under Plaintiff's alleged theory of the case, the injury to Mrs. Ek's injury of having contracted COVID-19 in the work place is irrelevant to Plaintiffs' claims; that injury is not the injury upon which Plaintiffs sue. Instead, Plaintiffs sue upon the injury caused by Mrs. Ek's bringing home the COVID-19 to which she was exposed in the Defendants' workplace. It was her husband's exposure to the COVID-19 brought home by Mrs. Ek that Plaintiffs claim caused Plaintiffs' injury. In this regard, the Court finds Plaintiffs' allegations analogous to those presented in Kesner.

Mrs. Ek did not have to become ill herself for Plaintiffs' injury to occur, and, so, contrary to Defendants' position, Plaintiffs do not allege that their injuries would not have existed in the absence of the workplace injury to Mrs. Ek. Accordingly, Plaintiffs' claimed injuries are not collateral to nor derivative of Mrs. Ek's becoming ill with COVID-19. Were Plaintiffs alleging that their injuries stemmed from Mrs. Ek's illness, say, because they lost income or missed out on Mrs. Ek's companionship while she was sick with the COVID-19 she contracted at work, a different outcome would result. But here, Plaintiffs claim that Defendants sent Mrs. Ek home with the virus, similar to the Kesner defendants sending workers home with asbestos, and that their injuries stem from the harm the exposure to that virus caused their husband and father.

CONCLUSION

The demurrer is OVERRULED.

Defendants are ordered to give notice of this ruling.

Defendants are ordered to file a proof of service of this ruling with the Court within five days.

The parties are directed to the header of this tentative ruling for further instructions.

PROOF OF SERVICE

Matilde Ek, et al. v. See's Candies, Inc., et al.
Los Angeles Superior Court Case No. 20STCV49673

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, CA 90071-3426.

On April 14, 2021, I served true copies of the following document(s) described as

NOTICE OF RULING REGARDING DEMURRER OF DEFENDANTS SEE'S CANDIES, INC. AND SEE'S CANDY SHOPS, INC. TO PLAINTIFFS' COMPLAINT

on the interested parties in this action as follows:

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Attorneys for Plaintiffs

BY ELECTRONIC SERVICE: I served the document(s) on the person listed in the Service List above by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 14, 2021, at Los Angeles, California.

/s/ Seana Flanagin
Seana Flanagin