

IN THE COMMON PLEAS COURT OF SANDUSKY COUNTY, OHIO

Janet Oakleaf
2975 County Road 118
Fremont, OH 43420

Plaintiff,

v.

Elmwood Management Inc., dba Elmwood
Assisted Living of Green Springs
C/O 350 Corporate Circle, Inc., Statutory
Agent
350 Corporate Circle
30100 Chagrin Blvd.
Cleveland, OH 44124

and

John Does I-V,

Defendants.

) Case No.:

) Judge

) **COMPLAINT WITH JURY DEMAND**
) **AND ATTACHED DISCOVERY**
) **REQUESTS**

) Michael A. Bruno (0033780)
) Charles E. Boyk (0000494)
) Nicholas M. Dodosh (0086193)
) Charles E. Boyk Law Offices, LLC
) 405 Madison Ave., Suite 1200
) Toledo, Ohio 43604
) Telephone: (419) 241-1395
) Facsimile: (419) 241-8731
) boykdiscovery@gmail.com

) Attorneys for Plaintiff

The Plaintiff, by and through counsel, alleges as follows:

1. At all times relevant herein, Plaintiff Janet Oakleaf was a seventy-six (76) year old resident at Elmwood Assisted Living of Green Springs in Green Springs, Ohio.
2. Defendant Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs (“Defendant Elmwood”) is a corporation or other business entity doing business in Green Springs, Sandusky County, Ohio and was providing residential

care, medical services, and/or other treatment to its residents, including Plaintiff, for compensation. At all times complained of, Defendant Elmwood acted by and through its employees, agents, and/or servants, who were acting within the scope of their employment.

3. At all times relevant herein, Defendant John Doe I was a male State Tested Nurse Assistant (STNA) who was acting individually and/or as an employee, agent, and/or servant of Defendant Elmwood, whose identity is unknown to Plaintiff despite due diligence.
4. At all times relevant herein, Defendants John Doe II, John Doe III, John Doe IV, and John Doe V were individuals, partnerships, or corporations whose true names and addresses are currently unknown to Plaintiff, despite due diligence, and were involved in the care and/or treatment of Plaintiff during her time at Defendant Elmwood's Green Springs facility.

FIRST CAUSE OF ACTION

5. Plaintiff incorporates by reference the foregoing paragraphs as though fully restated herein.
6. Upon being admitted at Defendant Elmwood's facility, Plaintiff was assessed as a fall risk.
7. On or about February 27, 2010, Plaintiff requested assistance getting from her bed to the restroom, and Defendant John Doe I responded.
8. Rather than use a mechanical device to transport Plaintiff from her bed to the restroom, Defendant John Doe I proceeded to hold Plaintiff up by the back of her gown and instructed Plaintiff to proceed on foot towards the restroom.

9. When Plaintiff got to the point midway between her bed and the restroom, Defendant John Doe I dropped Plaintiff, causing Plaintiff to fall onto the hard floor.
10. As a result of being dropped, Plaintiff sustained severe injuries, suffered severe pain and emotional distress, and was subsequently required to undergo multiple operations and medical procedures.
11. Defendants provided residential care, medical services, and/or other treatment to Plaintiff below the accepted standard of care by negligently failing to transport Plaintiff to the restroom in a manner that would prevent her from falling to the floor, and by negligently dropping Plaintiff and allowing her to fall to the floor. Pursuant to Civil Rule 10(D)(2), see attached Affidavit of Merit, which is incorporated by reference herein.
12. As a direct and proximate result of Defendants' negligence, Plaintiff sustained severe injuries, suffered severe pain and emotional distress, and was subsequently required to undergo multiple operations and medical procedures.

SECOND CAUSE OF ACTION

13. Plaintiff incorporates by reference the foregoing paragraphs as though fully restated herein.
14. Defendant Elmwood, acting individually and/or through its employees, agents, and/or servants, negligently assessed Plaintiff in setting her interim plan of care.
15. As a direct and proximate result of Defendant Elmwood's negligent assessment in setting Plaintiff's interim plan of care, Plaintiff suffered the aforementioned injuries and damages.

THIRD CAUSE OF ACTION

16. Plaintiff incorporates by reference the foregoing paragraphs as though fully restated herein.
17. Defendant Elmwood, acting individually and/or through its employees, agents, and/or servants, negligently failed to provide a safe environment for Plaintiff's treatment and care while residing at Defendant Elmwood's facility.
18. As a direct and proximate result of Defendant Elmwood's failure to provide a safe environment for Plaintiff's treatment and care, Plaintiff suffered the aforementioned injuries and damages.

WHEREFORE, Plaintiff, Janet Oakleaf demands judgment against Defendants, Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs, John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V, jointly and severally, for more than \$25,000.00 in compensatory damages, for reimbursement of all medical bills incurred, and for the costs of this action.

Respectfully submitted,

Michael A. Bruno
Attorney for Plaintiff

JURY DEMAND

Plaintiff hereby respectfully demands a jury trial as to all issues contained herein.

Michael A. Bruno
Attorney for Plaintiff

PRAECIPE

TO THE CLERK:

Please serve summons and complaint upon defendant Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs by certified mail, return receipt requested, at the addresses listed on the caption.

Please serve defendants John Doe I through V personally with summons and complaint (indicating “name unknown”) at the address listed on the caption for Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs.

Michael A. Bruno
Attorney for Plaintiff

TO DEFENDANT ELMWOOD MANAGEMENT INC., DBA ELMWOOD ASSISTED LIVING OF GREEN SPRINGS:

Plaintiff hereby requests that Defendant Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs, pursuant to Rules 26, 33 and 34 of the Ohio Rules of Civil Procedure, respond to the following Requests for Production of Documents and Interrogatories within twenty-eight (28) days of the date of service hereof. Said Defendant is required to produce said documents and tangible evidence hereinafter described by mailing same to Plaintiff's counsel of record: Michael A. Bruno, 405 Madison Avenue, Suite 1200, Toledo, Ohio 43604 within twenty-eight (28) days of the date of service. Pursuant to Rule 26(e) of the Ohio Rules of Civil Procedure, Plaintiff requests that the Defendants reasonably supplement their responses after date of return or before the time of trial.

INSTRUCTIONS FOR RESPONDING

- A. In answering the Request for Production, you are required not only to furnish such documents and tangible evidence as you possess personally, but also documents and tangible evidence which are in the possession of your relative or other who are holding those documents or that tangible evidence on your behalf, your attorneys, your agents, or your employees.
- B. When after a reasonable and thorough investigation using due diligence, you are unable to provide a document because of lack of availability, identify said document and specify in full and complete detail the reason the document is not available to you and what has been done to locate and obtain such document.
- C. Where the Request for Production calls for the production of a document as to which you claim a privilege as a ground for non-production, please set forth with

respect to the document, in addition to any other information requested, its date, author, addressee if any, title, type of tangible thing (letter, memorandum, telegram, chart, report, tape recording), subject matter (without revealing the information as to which privilege is claimed), and with sufficient specificity to permit the Court to make a full determination whether the claim of privilege is valid, each and every fact or basis on which you claim such privilege.

- D. If any document called for by this discovery is not available or accessible, or does not provide information in the full detail requested, this discovery shall be deemed to call for the best documents available on the subject matter.
- E. This Request for Production and answers to interrogatories is deemed to be continuing and to require the furnishing of additional documents and reasonable supplementation of responses whenever additional, updated or revised documents or information become available to you.

DEFINITION OF TERMS USED IN THESE INTERROGATORIES

- A. As used herein, the term "document" means any writing or any other tangible thing of any kind and description, however produced or reproduced, whether draft or final, original or reproduction, in your actual or constructive possession, including, but not limited to: letters, correspondence, resumes, memoranda, notes, films, transcripts, contracts, agreements, licenses, memoranda of telephone or personal conversations, microfilm, microfiche, telegrams, books, magazines, newspapers, brochures, press releases, advertisements, periodicals, bulletins, circulars, pamphlets, statements, notices, reports, rules, regulations, directives, teletype, or telefax messages, communications, minutes of records of meeting, expression of or

statements of policy, lists of persons attending meetings or conferences, reports and/or summaries of investigations, opinions or reports of consultations, appraisals, reports or summaries of negotiations, interoffice communications, financial statements, ledgers, books of account, proposals, prospectuses, offers, orders, receipts, working papers, desk calendars, appointment books, diaries, time sheets, logs, movies, tapes for visual or audio reproduction, recordings, or materials similar to any of the foregoing, however, denominated, and including drawings, graphs, charts, photographs, phone-records, data-processing paper results, data print-outs, data computations (both in existence and in memory components), and other data compilations from which information can be obtained and translated, if necessary, by you through devices into reasonably usual form. The term "document" also includes any copies of each document if the copies are in any way whatsoever not identical copies of the original, by reason of additional writing or notations or otherwise.

B. Person includes natural persons, corporations, trusts, partnerships, joint venture, associations and any other business or legal entity.

C. Identify means the following:

1. If referring to a person it means a statement as to:

- a. The full name, business affiliation, and business title of such person;
- b. The last known business and home address of such persons;
- c. The last known business and home telephone number of such person; and

- d. If such person is not a natural person, state:
 - i. Its name;
 - ii. Its last known business address;
 - iii. Its character, e.g.: corporation, partnership;
 - iv. The name(s) and last known residence address(es) of its officers, directors, partners, and/or principals.

2. If referring to a writing, it means a statement as to:

- a. The nature of such writing and the date it bears;
- b. The title or designation of such writing;
- c. The date or dates of preparation of such writing;
- d. The name of the person or persons who prepared such writing;
- e. The name of the person or person who executed such writing;
- f. The name of the person or persons to whom such writing is addressed;
- g. Any file number used in connection with such writing;
- h. The portion of such writing, described by page and line number, which bears upon the subject inquired of this interrogatory;
- i. The present location of such writing and each copy thereof;
- j. The name and address of the person(s) presently possessing or having custody or control of such writing;
- k. A description of the means and circumstances by which you came into possession of such writing;
- l. The date upon which you came into possession of such writing;

- m. A description of the means and circumstances by which you first became aware of such writing;
- n. The date upon which you first became aware of such writing; and
- o. A brief summary of the contents of such writing; in lieu thereof, a true and complete copy of the writing may be appended to your answers to these interrogatories.

3. If referring to an oral communication, it means a statement as to:

- a. The nature of such oral communication and the date it occurred;
- b. Whether such oral communication was made by person or telephone;
- c. The name of the person(s) who participated in or had knowledge of such oral communication;
- d. The geographical location of each such person at the time of such communication;
- e. The precise words used in the communication by each person present when such communication took place, or if the precise words cannot be stated, what was said by each person in words of substance or effect, or if this cannot be stated, a general description of the subject matter of the communication;
- f. The number of minutes or hours during which such communication occurred;
- g. A description of the means and circumstances by which you became aware of such oral communication; and

- h. The date upon which you first became aware of such oral communication.

REQUEST FOR PRODUCTION NO:

1. A copy of any and all applicable insurance policies of any kind including the face sheet that lists specific policy limits that were in effect at the time of the incident alleged in this complaint.

REQUEST FOR PRODUCTION NO:

2. Copies of any and all witness statements obtained by the defendant or any of its agents concerning the subject matter of this complaint.

REQUEST FOR PRODUCTION NO:

3. A copy of all reports and documents, regardless of the medium upon which the reports are recorded, whether electronic or paper, maintained by the defendant or its agents relative to the accident that is the subject of this complaint, including any and all internal investigation documents and e-mails exchanged internally or externally about the incident.

REQUEST FOR PRODUCTION NO:

4. A copy of all documents, regardless of the medium by which they are stored, relating to the male STNA who was helping the plaintiff to the bathroom at the time of her fall, including but not limited to the person's entire personnel file.

REQUEST FOR PRODUCTION NO:

5. A copy of all documents, regardless of the medium by which they are stored, relating to Plaintiff Janet Oakleaf, including those documents not specifically related to the incident at issue in this litigation.

REQUEST FOR PRODUCTION NO:

6. All training manuals or documents related to the manner in which care should be provided to a patient at high risk of falling.

INTERROGATORY NO:

1. State your full name, birth date, address, Social Security number, business address, occupation or title, and, if the defendant is a corporation, the office you hold with the defendant.

Answer:

INTERROGATORY NO:

2. If it is the defendant's contention that the plaintiff's injuries were caused by some person, firm, or corporation other than the defendant or any agent or employee of the defendant, please identify each such person, firm, or corporation fully, giving name, occupation, address, and a complete description of the way in which each such person, firm, or corporation caused or contributed to the plaintiff's injuries.

Answer:

INTERROGATORY NO:

3. Please state the full name and address of each person other than your attorney who has knowledge of discoverable matters relating in any way to the claim asserted by the plaintiff's complaint.

Answer:

INTERROGATORY NO:

4. Please state the full name and address of the male STNA who was helping the plaintiff to the bathroom at the time of her fall as described in the complaint.

Answer:

INTERROGATORY NO:

5. Please completely identify each person the defendant expects to call as a witness or expert witness at trial, and state for each such person: the name, address and occupation, the subject matter the person is expected to testify about, the substance of all facts and opinions to which the person is expected to testify, a summary of the grounds for each such opinion, experiences in the area of similar or comparable products, and a list of books, treatises, articles, and other works which the person regards as authoritative on the subject on which he/she is expected to testify.

Answer:

INTERROGATORY NO:

6. State the names, addresses, and phone numbers of all the employees that were working in and around the area where the plaintiff was injured on the date of the incident in question.

Answer:

INTERROGATORY NO:

7. State the names, addresses, and phone numbers of each person who may have witnessed or claims to have witnessed the incident described in plaintiff's complaint.

Answer:

INTERROGATORY NO:

8. State whether you have any statements from any witnesses or parties other than yourself concerning the incident described in plaintiff's complaint.

Answer:

INTERROGATORY NO:

9. If the answer to number 8 is affirmative, state the name and address of each such party or witness and the date of such statement.

Answer:

INTERROGATORY NO:

10. Please state whether the male STNA who was helping the plaintiff to the bathroom at the time of her fall was employed by or contracted with Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs to provide assistance to the plaintiff on or about February 27, 2010. If so, what was his formal job title, and what were his duties?

Answer:

INTERROGATORY NO:

11. Please state whether Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs had knowledge or information that Janet Oakleaf was at risk for falls given her health problems. Also, if Elmwood Management Inc., dba Elmwood Assisted Living of Green Springs did possess such knowledge or information, please state the way in which it came into possession of that knowledge or information, and whether that information was conveyed to the male STNA who was helping the plaintiff to the bathroom at the time of her fall and/or to other employees.

Answer:

Respectfully submitted,

Michael A. Bruno
Attorney for Plaintiff