

IN THE LAKE SUPERIOR COURT SITTING IN HAMMOND, INDIANA

CARIN L. LARSON,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 45D05-1909-CT-000975
)	
BNR PIZZA, INC. and)	Judge Stephen E. Scheele
LANGEL'S, INC.,)	
)	
Defendants.)	

LR 45-TR7-4 SUPPORTING BRIEF OF BNR PIZZA, INC'S. IND. TRIAL RULE 12(B)(6) MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT UNDER INDIANA TRIAL RULE 12(E)

- A. The court should dismiss plaintiff's "shotgun" complaint against BNR PIZZA, INC. because plaintiff's complaint allegations are incomplete to support claims for relief under *Ind. Trial Rule 8(A)*, *Ind. Trial Rule 9(F)* and *Ind. Trial Rule 10(B)*; and fails to state a claim upon which relief can be granted.

Plaintiff sues BNR PIZZA, INC. and LANGEL'S, INC. Plaintiff does not allege where the fall occurred or name the BNR PIZZA, INC. employee pushing or causing CARIN L. LARSON to fall (Exhibit 'A,' complaint, ¶6 and ¶7). The complaint does not state the person causing LARSON to fall was a BNR PIZZA, INC. employee; confusingly, the complaint alleges the person causing the fall was an employee of both BNR PIZZA, INC. and LANGELS, INC. yet does not allege Defendants acted in concert or as a single enterprise. The complaint does not allege the place where LARSON fell was related to the business of BNR PIZZA, INC. or to some other unknown location.

Under *Ind. Trial Rule 12(B)(6)* the complaint should be dismissed because the complaint violates *Ind. Trial Rule 8(A)(1)*. The complaint does not plead a short plain statement of the claim showing the pleader is entitled to relief. While *Ind. Trial Rule 8(A)(1)* eliminates technical pleading requirements, a complaint must provide statements of circumstances, occurrences and events that support the cause of action. *Eddie Trail v. Boys and Girls Clubs*, 845 N. E 2d 130, 135 (Ind. 2006), 1A IND. PRAC. RULES OF PROC. Rule 8 (3d. Ed. 2019). Plaintiff's *Ind. Trial Rule 8(A)(1)* statement is not satisfied by lumping defendants together and failing to identify the circumstances upon which the claims for relief are based. What was inspected and at

what premises is unclear; the circumstances of training, hiring and of supervising of the unknown employee and by which defendant are unknown (§§ 6-7).

At ¶7 Plaintiff makes negligent training, hiring and supervision allegations. These are separate torts. The circumstances of when, where or how BNR PIZZA, INC. committed these acts are missing from the complaint. Indiana law recognizes a cause of action against an employer for negligent hiring and retention of an employee. *Levinson v. Citizens Nat'l Bank of Evansville*, 644 N.E.2d 1264, 1269 (Ind. Ct. App. 1994). For claims of negligent hiring and negligent retention, a plaintiff must allege the employer knew the offending employee had a "habit of misconduct" at the time of the hiring or retention. *Levinson*, 644 N.E.2d at 1269". See also: *Sedam v. 2JR Pizza Enterprise*, 84 N.E.3d 1174, 1177 (Ind. 2017). ¶7 does not allege BNR PIZZA, INC. hired the complaint's unknown employee, and does not allege BNR PIZZA, INC. knew or should have known the unknown employee was unfit or needed control. The complaint does not allege where the acts of the employee occurred, or whether it occurred on the property of BNR PIZZA, INC. ¶7 allegations are insufficient against BNR PIZZA INC. and claims for negligent training, hiring and supervision and the complaint should be dismissed, *Gonzalez v. ADT LLC*, 161 F.Supp.3d 648, 657 (N.D. Ind. 2016) [applying Indiana law].

Under Ind. Trial Rule 9(F) to determine the adequacy of a complaint, the time and place of the occurrences are material. Because place of the loss is not specified, BNR PIZZA, INC. is unable to fully prepare a defense and the complaint should be dismissed.

Plaintiff's complaint against BNR PIZZA, INC. violates Ind. Trial Rule 10(B). Plaintiff alleges BNR PIZZA, INC. had a duty to inspect unidentified premises (¶6). This is a separate transaction and occurrence from BNR's duty train, hire and supervise an unknown person at an unknown loss location (¶7); Ind. Trial Rule 10(B). Because the claims set forth in ¶6 and ¶7 are separate and distinct, they should be pled as separate counts 1A. *IND. PRAC. RULES OF PROCEDURE*, §10 *Form of Pleading* (3rd, 2019); 23 *IND. LAW ENCYC. §20 SEPARATE STATEMENT OF CLAIMS* (2019).

The complaint pleads conclusory and vague allegations and omits critical information. The complaint fails to separate out its various causes of action and claims for relief. The complaint states the unknown employee causing the fall was an employee of both BNR PIZZA INC. and LANGELS, INC. The complaint violates Ind. Trial Rule 8 because it does not provide

short and plain statement of the claim showing Larson is entitled to relief. The complaint violates Ind. Trial Rule 9 and Ind. Trial Rule 10. Movant respectfully requests the complaint be dismissed under Ind. Trial Rule 12 (B)(6).

B. Alternatively, the court should order plaintiff to provide a more definitive statement about BNR PIZZA, INC's. conduct, because plaintiff's claims against BNR PIZZA, INC. are too vague.

When legal claims do not correspond clearly to the individual Defendants conduct, the court can allow for a motion for a definite statement. Here the complaint is so vague, indefinite and ambiguous that BNR PIZZA, INC. cannot frame the responsive pleadings. Ind. Trial Rule 12 (E); *Yaksich v. Gastevich*, 440 N.E.2d 1138 (Ind. Ct. App. 1982), *overruled in part on other ground by McDillon v. N. Ind. Pub. Serv. Co.*, 841 N.E.2d 1148 (Ind. 2006); 23 IND. LAW ENCYC. §96 MOTION FOR A MORE DEFINITE STATEMENT; 9 IND. PRACT. §42.31 MOTION FOR MORE DEFINITE STATEMENT (3D ED.) (IND. 2018).

¶6 allegations are based on negligent premises inspections of an unknown premises; ¶7 allegations are based on an unknown defendants' careless hiring of an unknown employee. The complaint does not give BNR PIZZA, INC. adequate information to know what it did to allegedly injure CARIN L. LARSON, where the accident happened, or who, when, and how BNR PIZZA, INC. negligently trained an employee who injured plaintiff.

Thus, in the alternative, BNR PIZZA, INC. respectfully requests this Honorable Court grant BNR PIZZA, INC's. Ind. Trial Rule 12(E) Motion For A More Definite Statement. Specifically, BNR PIZZA, INC. asks the court order plaintiff to provide information regarding the following:

- 1), as alleged in complaint ¶6, state the address, restaurant, or other location where plaintiff claims to have been pushed or fallen;
- 2), as alleged in complaint ¶7 (a), state the name of defendants' employee who pushed or caused CARIN L. LARSON to fall to her left knee; and
- 3), as alleged in complaint ¶7 (b-d), the name of the defendant who failed to train, hire and supervise the employee who allegedly injured CARIN L. LARSON.

Accordingly, BNR PIZZA, INC. respectfully requests appropriate relief consistent with its motion and their supporting Brief.

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