Control Nos. 16012789
16013338
16012746

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

JENNIFER ANDERSON **Plaintiff**	:	
	:	AUGUST TERM, 2014
vs.	:	
	:	NO. 3794
SISTERS SERVING SISTERS, INC. d/b/a SISTERS NIGHT CLUB and JIM ROSS **Defendants**	:	DOCKETED APR 26 2016 F. BROWN DAY FORWARD

JUDGMENT ORDER

And Now, this 26 day of April, 2016, after consideration of the Motion for Post-Trial Relief filed by Defendant Sisters Serving Sisters, Inc., and Plaintiff's Response thereto, and the Cross-Motion for Post-Trial Relief filed by Plaintiff Jennifer Anderson, and Defendants' Response thereto, and, for the reasons set forth in the Memorandum filed this date, it is hereby **ORDERED** that all Post-Trial Motions are **DENIED**.

Judgment is entered in favor of Plaintiff Jennifer Anderson and against Sisters Serving Sisters, Inc. d/b/a Sisters Night Club only in the amount of **One Hundred Twelve Thousand Seven Hundred Seventy Four Dollars and Forty Six Cents ($112,774.46)**.

BY THE COURT:

FREDERICA A. MASSIAH-JACKSON, J.

Control Nos. 16012789
16013338
16012746

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

JENNIFER ANDERSON	:	
Plaintiff	:	
	:	AUGUST TERM, 2014
vs.	:	
	:	NO. 3794
	:	
SISTERS SERVING SISTERS, INC. d/b/a	:	
SISTERS NIGHT CLUB and	:	
JIM ROSS	:	
Defendants	:	

DOCKETED
APR 26 2016
F. BROWN
DAY FORWARD

MEMORANDUM in SUPPORT OF ORDERS DENYING ALL MOTIONS FOR POST-TRIAL RELIEF and GRANTING DELAY DAMAGES

MASSIAH-JACKSON, J.

April 26th, 2016

A. FACTUAL BACKGROUND and PROCEDURAL HISTORY

On June 29, 2013, Jennifer Anderson fell down steps at Sisters Night Club in Philadelphia. Her left ankle was badly bruised and swollen. Club employees summoned an ambulance for transport to Jefferson Hospital.

Ms. Anderson suffered a severe sprain. She missed time from work and went to physical therapy several times per week from August to October, 2013, with gradual return to full mobility by December, 2013.

Plaintiff-Anderson initiated this civil action claiming economic and non-economic losses. On December 9 and 10, 2015, following a non-jury trial, this Court issued Findings of Fact and Conclusions of Law in support of a verdict rendered in favor of Jennifer Anderson and against Sisters Night Club only in the amount of $112,500.00. A verdict was rendered in favor of Club owner, Defendant Jim Ross.

Sisters Night Club filed timely post-trial motions (Control No. 16013338). Plaintiff-Anderson filed timely cross post-trial motions (Control No. 16012746) and a demand for delay damages (Control No. 16012789). Counsel and the Court coordinated a briefing schedule. All parties agreed to waive oral argument. After consideration of the Memoranda of Law this Court concludes that all Motions for Post-Trial Relief are Denied. Plaintiff's Motion for Delay Damages is Granted.

B. LEGAL DISCUSSION

1. Sisters Night Club is Not Entitled to Judgment Notwithstanding the Verdict.

The Defendant-Club breached its duty of care to the Plaintiff-Business invitee and is liable for damages sustained. As the Trial Court indicated the failure of club employees to monitor the stairwell in accordance with Club policy permitted a finding of liability where, as here, their failures caused the injuries.

In Moultrey v. Great A&P Tea Company, 422 A.2d 593 (Pa. Superior Ct. 1980) relied on by the Defendant, the Superior Court explained the notice requirement. 422 A.2d at 596:

> ". . . where the condition is one which the owner knows has frequently recurred, the jury may properly find that the owner had actual notice of the condition, thereby obviating additional proof by the invitee that the owner had constructive notice of it."

Sisters Night Club did not dispute that ice and water regularly fell on the steps from employees and from patrons. In fact, the Club employees were expected to monitor the steps for that reason. December 9, 2015, N.T. 137; December 10, 2015, N.T. 36-45, 61-62, 83-84, 88.

Whether the spill and wet stairway was caused by an employee and/or a patron, the duty owed to Plaintiff-Anderson was the highest duty. The Club, as the landowner, had a duty to protect her not only against known dangers but also against dangers (such as spills) which could have been discovered with reasonable care and reasonable precautions. Accordingly, Plaintiff-Anderson presented sufficient evidence from which the trier of fact could conclude that the spills were foreseeable and reasonably anticipated by the Defendant. The place and

character of the business as well as the Club's past experiences were all evidence that enabled the trier of fact to conclude Sisters Night Club was liable for the harm and injures to Ms. Anderson. See generally, Restatement (Second) of Torts, §343, §343A, §344; Truax v. Roulhac, 126 A.3d 991 (Pa. Superior Ct. 2015) for a comprehensive overview of premises liability law by the court en banc. The Defendant-Club was well aware of the unsafe conditions which existed on the stairway.

Finally, because contributory negligence is no longer the law in Pennsylvania, it was appropriate for the trier of fact assess the relative fault of Plaintiff-Anderson. In addition to economic losses, Plaintiff-Anderson presented uncontradicted and credible evidence of non-economic losses including pain and suffering, embarrassment and humiliation and loss of enjoyment of the pleasures of life. See, Rule 223.3 of the Pennsylvania Rules of Civil Procedure; Findings of Fact Nos. 7, 8, 17, 18; Conclusion of Law No. 8.

2. The Corporate Veil Cannot Be Pierced in this Case.

Plaintiff-Anderson contends that Defendant-Jim Ross, the owner of Sisters Night Club, should be held personally liable for her injures and damages. This Court does not agree.

The Plaintiff's Memorandum states:

> "Defendant Sisters Serving Sisters, Inc. lacked insurance at the time of this incident and has since gone insolvent and thus, essentially, has permitted its sole corporate officer, Defendant Jim Ross, to avoid repercussion.
>
> . . . .
>
> Plaintiff is denied recovery and thus justice and public policy require that the corporate veil be pierced."

Our Appellate Courts generally consider several factors when asked to pierce the corporate veil. None of those factors are present in the case at bar. See, Lumax Industries v. Aultman, 669 A.2d 893 (Pa. 1995); Fletcher-Harlee Corporation v. Szymanski, 936 A.2d 87, 95 (Pa. Superior Ct. 2007):

> ". . . undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs and use of the corporate form to perpetrate a fraud."

Plaintiff-Anderson is unable to point to any of these factors to support her position.

In a related but distinct argument, Plaintiff-Anderson suggests that Mr. Ross should be personally liable predicated on a finding that he participated in tortious activity. See generally, Brindley v. Woodland Village Restaurant, Inc., 652 A.2d 865 (Pa. Superior Ct. 1995). The Plaintiff points to Mr. Ross' installation of dark carpeting and the "faulty" surveillance camera, however, neither of these were the cause of Ms. Anderson's fall.

The Court in Wicks v. Milzoco Builders, Inc., 470 A.2d 86 (Pa. 1983) commented that liability under a participation theory attaches only where the corporate officer actually participates in the wrongful acts. Corporate officers may not be held liable for mere nonfeasance. 470 A.2d at 90; Conclusions of Law Nos. 10 and 11.

Finally, in the absence of any reliable evidence such as pay stubs, tax documents, etc., Mr. Ross cannot be considered the employer of the workers at the Night Club.

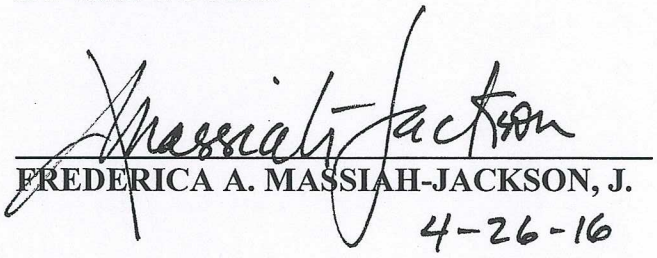
3. The Plaintiff is Entitled to Delay Damages.

Plaintiff-Anderson's Motion pursuant to Rule 238 seeks delay damages in the amount of $274.46. The Defendant-Night Club objects by suggesting that the original service of process was late. In this case, however, where defective service of process was not raised by preliminary objections, the issue has been waived. O'Donnell v. McDonough, 895 A.2d 45, 47-48 (Pa. Superior Ct. 2006). Plaintiff's Motion is Granted.

C. CONCLUSION

For all of the reasons set forth above, the Motions for Post-Trial Relief filed by Sister Night Club and the Cross-Motions for Post-Trial Relief filed by Jennifer Anderson are **DENIED**. Jennifer Anderson's Motion for Delay Damages is **GRANTED**.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON, J.

4-26-16