UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ANDREA CHAPPETTA, Plaintiff, v. ISRAEL SOTO, et al., Defendants.	CIVIL ACTION NO. 3:05cv896 (SRU)

RULING

Andrea Chappetta has sued Regal Entertainment Group and Regal Cinemas, Inc. and any successor-in-interest or affiliates or subsidiaries (collectively "Regal"), asserting claims of negligence and recklessness, arising out of a "sit-and-fall" at Regal's Movieland Cinemas in Yonkers, New York ("Movieland").[1]

Chappetta alleges that she purchased a ticket for a matinee show, entered the theater, and chose a seat. Compl. ¶ 16. As she lowered herself to sit down, the seat collapsed beneath her and she crashed to the floor. *Id.* In count two, Chappetta alleges that Regal's maintenance of the premises (or failure to maintain them) was "careless and negligent." Compl. ¶ 32. She alleges that Regal failed "to inspect, identify and/or remedy a hazardous and/or defective condition on the premises, [and] faile[ed] to supervise, hire, train and/or hold accountable employees designated to perform safety inspections and periodic maintenance." *Id.* In count five, Chappetta alleges that Regal "acted with deliberate, wanton, and/or reckless disregard" of her safety. Compl. ¶ 69. She alleges the same underlying facts as in count two: Regal's failure "to inspect, identify and/or remedy a hazardous and/or defective condition on the premises" and its failure "to

[1] Chappetta has also sued Israel Soto, alleging negligence, recklessness, and statutory recklessness. The claims against Soto stem from a motor vehicle accident, seemingly unrelated to the incident at Movieland.

supervise, hire, train and/or hold accountable employees designated to perform safety inspections and periodic maintenance." *Id.*

Regal has moved to dismiss the recklessness count (count five) and paragraph (e) of the *ad damnum* clause, which relates to that count. Regal argues that the factual allegations of that count "are not predicated on recklessness." Def. Memo. Supp. Motion to Dismiss at 2. Regal cites *Dumond v. Denehy*, 145 Conn. 88, 91 (1958), for the proposition that a complaint alleging recklessness must use explicit language to inform the court and defendant regarding the underlying conduct that is allegedly reckless.[2]

The underlying factual allegations in counts two and five, the negligence and recklessness counts, are identical. Chappetta points out, however, that she has alleged that Regal failed to remedy a hazardous condition and that allegation imputes Regal with knowledge of the danger, a necessary element of recklessness.

The court can dismiss a claim under Rule 12(b)(6) only if "it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. Spalding*, 467 U.S. 69, 73 (1984). The function of a motion to dismiss is "merely to assess the legal feasibility of a complaint, not to assay the weight of evidence which might be offered in support thereof." *Ryder Energy Distribution Corp. v. Merrill Lynch Commodities, Inc.*, 748 F.2d 774, 779 (2d Cir. 1984). The court must accept all the alleged facts as true and draw and view all reasonable inferences in the light most favorable to the plaintiff. *Leeds v. Meltz*, 85 F.3d 51, 53

[2] I note that the cases cited by Regal are all state court cases. State law establishes the elements of the cause of action, but not the specificity with which those elements must be pled. Although the *Dumond* opinion does not appear at odds with the federal standard set forth below, it is the Federal Rules of Civil Procedure and federal standards that determine the pleading requirements in this court.

(2d Cir. 1996). The court "must not dismiss the action 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [her] claim which would entitle him to relief.'" *Cohen v. Koenig*, 25 F.3d 1168, 1172 (2d Cir. 1994).

Chappetta's allegations in count five appear more likely to be a basis for liability under a theory negligence than one of recklessness. It is, nevertheless, possible for Chappetta to prove a set of facts – consistent with those alleged in the complaint – that would support a claim of recklessness.

It is reasonable to infer from Chappetta's allegations, specifically her allegations that Regal failed to "remedy a hazardous and/or defective condition" and failed to "hold accountable employees designated to perform safety inspections and periodic maintenance," that Regal knew of the dangerous condition but refused to act. Chappetta also alleges that Regal acted with "deliberate, wonton, and/or reckless disregard" for her safety, and the facts alleged point to the particular conduct at issue.

Under the federal standard of notice-pleading, the complaint must contain allegations sufficient to alert a defendant to the nature of the claim and to allow it to defend. *Freedom Holdings, Inc. v. Spitzer*, 357 F.3d 205, 234 (2d Cir. 2004). *See* Fed. R. Civ. P. 8(a). Chappetta's complaint satisfies that standard. If her claim of recklessness ultimately lacks merit, it may be dealt with through summary judgment under Rule 56. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002).

Regal's motion to dismiss (doc. # 5) is DENIED.

It is so ordered.

Dated at Bridgeport, Connecticut, this 16th day of March 2006.

/s/ Stefan R. Underhill
Stefan R. Underhill
United States District Judge