

# Mccarty v. pheasant run , inc.

Law, Common Law



## Summary of Case

Mrs. Dula McCarty brought suit against Pheasant Run Inc. for negligence. In 1981, Mrs. McCarty was attacked by a man in her hotel room, beaten and threatened of rape. Mrs. McCarty ultimately fought off her attacker and he fled. The attacker was never identified nor brought to justice. Although Mrs. McCarty did not sustain serious physical injuries, she claimed the incident caused prolonged emotional distress which led to an early retirement. An investigation revealed that a sliding glass door, which was concealed behind curtains, was manipulated and enabled the attacker to gain entry into her hotel room.

Mrs. McCarty made multiple claims of negligence against Pheasant Run Inc., including that they should have had better locking devices on the sliding door; more security personnel; the walkway to her sliding door inaccessible from the ground level; better over all procedures for dealing with non guests; posting signs telling guests to keep their doors locked at all times.

Ultimately, the court did not see it Mrs. McCarty's way. McCarty argued the judge should have granted her motion for judgment notwithstanding the jury's verdict for the defendant.

McCarty did not request the directed verdict on the issue of Pheasant Run's negligence which is a prerequisite to judgment n. o. v. Many accidents are neither the injurer nor the victim's fault and therefore there is no liability. The judge advised Mrs. McCarty that the case was not as one sided as she believed it to be. Additionally, following a jury's verdict, a judge cannot substitute its judgment when the judgment was reasonable (2). Mrs. McCarty

did a poor job in proving that Pheasant Run could have prevented her attack with her advised precautions.

Mrs. McCarty did not provide information of what it would cost Pheasant Run to equip the hotel rooms with improved locking systems and whether the system would have been impenetrable. She also failed to advise the jury on the additional security forces she claimed would have made a difference. In regards to the Mrs. McCarty's sliding door, it was equipped with a lock and an additional safety chain. The safety chain was fastened but the lock was not used. This case had evidence of negligence but none of strict liability.

There were reasonable precautions in place. Elements of Intentional Tort

Tort law enables citizens to seek reimbursement for loss and or suffering from conduct that would be deemed dangerous or unreasonable of others (3). Tort law is non criminal and is dealt with in our civil judicial system. The categories of Tort Law include intentional tort, negligence and strict liability.

An intentional tort case is proved by the plaintiff showing that the defendant intentionally injured him/her (1). In a negligence case, the plaintiff shows that the defendant did not act carefully as the law requires and therefore should be liable for any damages to the plaintiff (1). The strict liability cases occur when a plaintiff suffers damages even though the defendant acted carefully and with no intent of harm being done to them (1).

During a trial the plaintiff will attempt to prove their case by the presentation of evidence to the trier of fact. The evidence usually includes testimony of persons involved; witnesses as well as physical things such as pictures, documentation/records, recordings etc... How a Defense is Triggered

A common defense is that there was a superseding intervening cause which was the cause of the injury to the plaintiff. The plaintiff must then prove that the injury was a result of the tort committed by the defendant and not due to the progression of the prior cause. Another defense, regarding breach of duty, is that a plaintiff must show they have damage that is legally recognized. The plaintiff cannot claim they have suffered but cannot show damages.

Proximate cause refers to the plaintiff being able to show that the damage and or injuries they sustained were a result of the tort they are suing for. An example would be the plaintiff's nose was broke as a result of the defendant flailing his elbow's amongst the crowd. Features in a Negligence Complaint

Scenarios where people are injured as a result of an accident occur more frequently than those where people are injured due to malicious behavior. As a result, the law recognizes a duty to conform to a certain standard of conduct for the protection of others against unreasonable risk of harm. If there is a failure to conform which results in an injury, damage or loss, the injured party has a cause of action for negligence. Additionally, a court will utilize several ways to formulate the negligence standard.

One of the more famous is the " Hand Formula" which determines whether the burden of precaution is less than the magnitude of the accident, if it occurs, multiplied by the probability of occurrence. In a negligence case, there are four elements that must be researched for a plaintiff to recover damages.

These elements include: 1) did a defendant owe the plaintiff a duty to act in a certain way 2) did the defendant breach the duty by failing to act as well as the duty required 3) did the defendant's conduct cause some harm 4) did the defendant's conduct harm the plaintiff (1). If any of these elements are found to not be true then no cause of action in negligence is recognized. It is important to note that it is the responsibility of the plaintiff to prove that the defendant was negligent. There are some differences between negligence and other torts. When establishing negligence, the defendant has a “reasonable person” standard he/she must abide by.

Compared to strict liability, a person has the absolute duty to make safe that which is the subject of the lawsuit (3). Negligence per se is another tort which differs from negligence. Regarding negligence per se, an act performed is shown to be in violation of state law or city ordinance. Malpractice is a form of negligence which takes form in a different field. It is coined “professional negligence” (3). A person is required to act as would a reasonably skilled, prudent, competent, and experienced member of their profession.