

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

ANGEL COLON, et al.,

CIVIL DIVISION: AG

CASE NO.: 2017CA003447

Plaintiffs,

v.

G4S PLC, a foreign corporation; G4S SECURE  
SOLUTIONS (USA) INC., a Florida corporation;  
and G4S US, INC., a Florida corporation,

Defendants.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AMENDED  
COMPLAINT FOR FAILURE TO STATE A CLAIM**

THIS CAUSE came before the court on Defendant G4S Secure Solutions (USA), Inc.'s ("Defendant") Motion to Dismiss Amended Complaint for Failure to State a Claim ("Motion to Dismiss") filed on August 2, 2017. The court has carefully considered the Motion to Dismiss, the court file, the arguments presented at the August 29, 2017 hearing, all applicable case law, and is otherwise fully advised in the premises.

**STATEMENT OF THE CASE**

On June 12, 2016, Omar Mateen ("Mateen") opened fire inside the Pulse nightclub in Orlando, Florida, killing forty-nine people and wounding numerous others. Prior to the Pulse nightclub shooting, Defendant employed Mateen for approximately nine years as an armed security guard. On June 22, 2017, Plaintiffs filed an Amended Complaint against Defendant for negligence and wrongful death. In the Amended Complaint, Plaintiffs allege that Defendant negligently trained Mateen to operate firearms and assisted Mateen in becoming a more proficient shooter, despite being aware of previous "terroristic" threats made by Mateen. There are no

allegations whatsoever that the Defendant employer had any connection with the Pulse nightclub or that it had any direction or control over Mateen at the time of this tragic event. On August 29, 2017, Defendant filed the instant Motion to Dismiss. In it, Defendant argues Plaintiffs' Amended Complaint must be dismissed as a matter of law because Defendant owed no legal duty to Plaintiffs.

### **LEGAL ANALYSIS AND RULING**

On a motion to dismiss, a court must consider "whether, assuming all the allegations in the complaint to be true, the plaintiff would be entitled to the relief requested." *Cintron v. Osmose Wood Preserving, Inc.*, 681 So. 2d 859, 860-61 (Fla. 5th DCA 1996). To state a cause of action, "a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief." *MEBA Med. & Benefits Plan v. Lago*, 867 So. 2d 1184, 1186 (Fla. 4th DCA 2004). "[A] trial court's review of a motion to dismiss is limited to the four corners of the challenged complaint." *Wells Fargo Bank, N.A. v. Bohatka*, 112 So. 3d 596, 600 (Fla. 1st DCA 2013). In order to plead a legally sufficient negligence claim, a plaintiff must establish four components: (1) a legal duty owed by a defendant to the plaintiff; (2) the defendant's breach of the legal duty; (3) causation; (4) which resulted in actual damages. *Knight v. Merhige*, 133 So. 3d 1140, 1144 (Fla. 4th DCA 2014). Whether a party owes a legal duty to another is properly decided on a motion to dismiss. *Id.*

Central to determining whether a defendant owes a legal duty to a plaintiff is "whether the defendant's conduct foreseeably create[s] a broader 'zone of risk' that poses a general threat of harm to others." *McCain v. Fla. Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992). The zone of risk "defines the scope of the defendant's legal duty and the scope of the zone of risk is in turn determined by the foreseeability of a risk of harm to others." *Smith v. Fla. Power & Light Co.*, 857 So. 2d 224, 229 (Fla. 2d DCA 2003). In general, "there is no duty to control the conduct of a

third person to prevent [that person] from causing physical harm to another.” *Carney v. Gambel*, 751 So. 2d 653, 654 (Fla. 4th DCA 1999). Thus, an employer cannot “be an absolute guarantor and strictly liable for any acts committed by his employee against any person under any circumstances.” *Garcia v. Duffy*, 492 So. 2d 435, 439 (Fla. 2d DCA 1986). Rather, a legal duty extends to third parties in scenarios in which an employer is responsible “for bringing a third person into contact with an employee, whom the employer knows or should have known is predisposed to committing a wrong under [the] circumstances . . . .” *Id.*

In *U.S. v. Stevens*, 994 So. 2d 1062, 1064 (Fla. 2008), a victim received a letter containing anthrax and subsequently died after inhaling the deadly toxin. The victim’s estate filed a wrongful death action against the United States government after tracing the strain of anthrax that killed the victim to a governmental research facility in Maryland. *Id.* In the complaint, the victim’s estate alleged the government breached its duty to ensure the anthrax was properly secured. *Id.* The government sought to dismiss the complaint, arguing it owed no duty to the public at large. *Id.* at 1065. Although there was no special relationship between the governmental research facility that created the anthrax and the victim, the Florida Supreme Court held the government owed a legal duty to Mr. Stevens and the general public. *Id.* at 1068-69. The Court reasoned that (1) the government was aware of the risk an ultra-hazardous substance like anthrax posed to the public; (2) the government was aware that, unless it implemented adequate security measures, the general public was exposed to an unreasonable risk of harm from the anthrax; and (3) Mr. Stevens’ death was a reasonably foreseeable result of its failure to implement adequate security measures. *Id.*

Here, relying on *Stevens*, Plaintiffs argue Defendant owed a legal duty to protect Plaintiffs from Mateen. Particularly, Plaintiffs argue that Defendant owed a legal duty to Plaintiffs because Defendant trained Mateen to operate firearms as part of his employment, despite being aware of

prior terroristic threats Mateen made. Taking Plaintiffs' factual allegations as true, the court finds *Stevens* to be distinguishable from the instant facts. In *Stevens*, the government created an ultra-hazardous toxin in a laboratory and owed a duty to the public to implement adequate safeguards to prevent its removal from the laboratory. While the government's duty extended to the general public, it was traceable to a specific location that could be monitored and secured: the governmental research facility. Here, however, although Defendant trained and employed Mateen, Defendant was not capable of controlling Mateen's movement as the government was able to control the anthrax's movement and the research facility's security in *Stevens*. Moreover, in *Stevens*, the government's duty was to safeguard the anthrax to protect the public from its ultra-hazardous risk—a duty that could only exist until the government destroyed or disposed of the anthrax it created in the laboratory. Unlike anthrax, which can be created and destroyed in a laboratory, firearms training is an intangible property that cannot be isolated. Plaintiffs' position, which the court respectfully rejects, would require Defendant to protect the general public from Mateen in perpetuity, without any spatial or temporal limits.

Plaintiffs further argue Defendant owed a legal duty to protect the public from Mateen because Defendant fraudulently assisted Mateen in obtaining a Class G firearms license—despite being aware of Mateen's prior terroristic threats—which Mateen later used to purchase the weapons he used in the shooting. Taking the allegations in the Complaint as true, the court finds Plaintiffs' argument without merit. A Class-G firearms license is not required to purchase a firearm. Rather, a Class-G firearms license permits an individual—such as an armed security guard—to carry a concealed firearm in a professional capacity. *See Fla. Stat. § 493.6115*. Mateen's Class-G firearms license therefore had no legal impact on his ability to purchase the firearms used in the shooting.

In sum, the court finds that Defendant owed Plaintiffs no legal duty because Defendant's actions did not bring Plaintiffs "into contact with [Mateen], whom [Defendant] . . . should have known [was] predisposed to committing a wrong under [the] circumstances . . . ." *Garcia*, 492 So. 2d at 439. For instance, Mateen was not on-duty as an armed security guard at the Pulse nightclub or armed with weapons provided by Defendant when he committed the shooting. Moreover, Mateen's Class-G firearms license, which Defendant assisted Mateen in obtaining, had no bearing on Mateen's legal ability to purchase a firearm. While Defendant's training may have enhanced Mateen's ability to handle a firearm proficiently, firearms training is distinguishable from the tangible, ultra-hazardous substance in *Stevens*. Without any time, spacial or distance limitations, this case can be analogized to holding the military liable for training a sharpshooter who at some time in the future shoots another based on his marksmanship. The court accordingly finds that Defendant owed no legal duty to Plaintiffs and the general public. *Garcia*, 492 So. 2d at 439.

Plaintiffs lastly argue Defendant owed a legal duty to Plaintiffs pursuant to the undertaker doctrine. The undertaker doctrine provides that "[w]hen one undertakes to provide a service to others, whether one does so gratuitously or by contract, the individual who undertakes to provide the service—i.e., the 'undertaker'—thereby assumes a duty to act carefully and to not put others at an undue risk of harm." *Surloff v. Regions Bank*, 179 So. 3d 472, 475 (Fla. 4th DCA 2015) (quoting *Clay Elec. Co-op., Inc. v. Johnson*, 873 So. 2d 1182, 1187 (Fla. 2003)). Simply put, the undertaker doctrine imposes a legal duty to protect third-parties from foreseeable risks when providing someone with a service. *Id.* For instance, in *Clay Elec.*, the Florida Supreme Court held that an electrical company owed a duty to third-party motorists to maintain a roadway's streetlights when it undertook the task of maintaining the roadway's streetlights for the local government. *Clay Elec.*, 873 So. 2d at 1186-87.

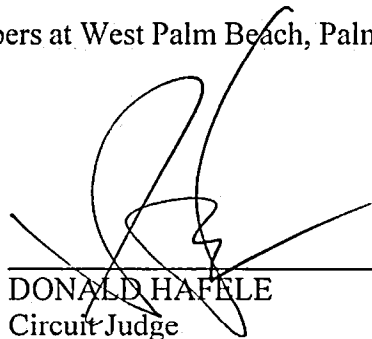
Here, Plaintiffs argue Defendant “undertook to determine Mateen’s fitness to carry a firearm” and therefore owed a legal duty to protect Plaintiffs and the general public from Mateen. Plaintiffs, however, have misconstrued the undertaker doctrine’s applicability. The doctrine applies when a risk to third-parties is associated with the undertaking of a service: for instance, if Defendant undertook to provide armed security to the Pulse nightclub and stationed Mateen at the Pulse nightclub, despite being aware of Mateen’s threats as alleged in the Amended Complaint. However, as noted *supra*, Mateen’s presence at the Pulse nightclub was wholly unrelated to any service Defendant undertook to provide. The court therefore finds that Defendant owed no legal duty to Plaintiffs pursuant to the undertaker doctrine.

Because Plaintiffs have not established that Defendant owed a legal duty to Plaintiffs under the instance facts, Plaintiffs have failed to plead a legally sufficient negligence claim. *Knight v. Merhige*, 133 So. 3d at 1144. Defendant’s Motion to Dismiss is therefore granted.

Accordingly, it is hereby

**ORDERED AND ADJUDGED** that Defendant’s Motion to Dismiss Amended Complaint for Failure to State a Claim is **GRANTED** and Plaintiffs’ Amended Complaint is **DISMISSED**. If the Plaintiffs seek to amend, the court will so permit the filing of a Second Amended Complaint within fifteen (15) days of this Order. If the Plaintiffs instead desire that this Order serve as a Final Order, counsel for the Plaintiffs is directed to so advise the court within that same period of time.

**DONE AND ORDERED**, in Chambers at West Palm Beach, Palm Beach County, Florida  
this 2 day of January, 2018.

  
DONALD HAFELE  
Circuit Judge

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