

Notice: This opinion is subject to formal revision within thirty days of the filing date before publication. Please notify the Supreme Court Administrator of any typographical errors or other corrections needed prior to November 20, 2024.

EBCI
CHEROKEE SUPREME COURT
CHEROKEE, NC
2024 OCT 21 PM 12:52

The Cherokee Supreme Court

Eastern Band of Cherokee Indians
Qualla Boundary, Cherokee, North Carolina

FILED

SYLVIA M. GREENE,

PLAINTIFF-APPELLANT,

V.

CSC-19-07

OPINION

HARRAH'S NC CASINO COMPANY, LLC,
AND TRIBAL CASINO GAMING
ENTERPRISE,

DEFENDANTS,

AND SMOKEY MOUNTAIN PROPERTIES,
LLC,

DEFENDANT-APPELLEE.

Allen Stahl & Kilbourne, PLLC, by James W. Kilbourne, Jr., for Plaintiff-Appellant Sylvia M. Greene.

McAngus Goudelock & Courie, PLLC, by John E. Spainhour, for Defendant-Appellee Smokey Mountain Properties, LLC.

PIPESTEM, Justice B. TOINEETA.

Plaintiff-Appellant Sylvia M. Greene (Ms. Greene or Plaintiff) appeals pursuant to C.C. § 7-2(e) from the 15 November 2019 order in CV 19-323 entered by Judge Randle L. Jones in the Cherokee Court that dismissed her verified complaint purporting to assert premises liability-based

Opinion of the Court

negligence claims against Defendant-Appellee Smokey Mountain Properties, LLC (Smokey Mountain Properties or Defendant) pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. In the complaint, Plaintiff sought damages from Smokey Mountain Properties, as well as from Defendants Harrah's NC Casino Company, LLC (Harrah's NC), and Tribal Casino Gaming Enterprise (TCGE), stemming from a 26 May 2018 incident that occurred in Cherokee, NC, in which Plaintiff tripped, fell and sustained a broken ankle while stepping over a chain that was blocking a pedestrian bridge that she and her husband were attempting to use to walk from Harrah's Cherokee Casino (the Casino) to Stonebrook Lodge, a hotel located across the street from the Casino and owned by Smokey Mountain Properties, where the couple planned to stay the night.¹ The trial court concluded that the complaint against Smokey Mountain Properties warranted dismissal pursuant to Rule 12(b)(6) because the claim(s) alleged therein failed to sufficiently allege a duty of care owed to Plaintiff. Specifically, the court stated that the claims alleged were predicated "upon a theory of negligence involving premise[s] liability," which required Plaintiff to sufficiently allege, among other things, "the existence of a legal duty or standard of care owed" to her by Smokey Mountain Properties, and since Smokey Mountain Properties "did not own, possess, or control the property where [Ms. Greene] sustained injury," or have control over the alleged dangerous condition located thereon, i.e., the pedestrian bridge, Smokey Mountain Properties "owed no duty to . . . [her] with respect to any condition existing on the property." Therefore, the court held that Plaintiff's complaint failed to state a claim for which relief may be granted against Smokey Mountain Properties. In arriving at its determination, the trial court ultimately decided to adopt and follow North Carolina law on the duty or standard of care for

¹ As noted in Plaintiff's brief to this Court, the claims alleged in her complaint against Harrah's NC and TCGE "were unaffected by" the trial court's 15 November 2019 order, and Harrah's NC and TCGE are not parties to the appeal in the instant matter, which only involves Smokey Mountain Properties.

Opinion of the Court

negligence as set out in *Lampkin ex rel. Lapping v. Housing Management Resources, Inc.*, 220 N.C. App. 457, 725 S.E.2d 432, *disc. rev. denied*, 366 N.C. 242, 731 S.E.2d 147 (2012), which the court found persuasive and opined was the majority rule among United States jurisdictions regarding the duty of care owed to a guest or invitee² by owners or occupiers of land, who have no control over the alleged dangerous condition that injures their invitee, specifically that “the duty to protect from a condition on property arises from a person’s control of the property and/or condition, and in the absence of control, there is no duty.” *Id.* at 460, 725 S.E.2d at 435. On 13 December 2019, Plaintiff filed a notice of appeal with this Court from the trial court’s 15 November 2019 order.

On 23 November 2020, the parties presented their respective oral arguments to this Court. Having carefully reviewed the controlling laws and precedents, as well as the record, briefs, and oral arguments of the parties, this Court concludes that the trial court did not err in dismissing Plaintiff’s complaint against Smokey Mountain Properties pursuant to Rule 12(b)(6). Accordingly, as set forth herein, we affirm the trial court’s order dismissing the complaint.

BACKGROUND

According to the 29 May 2019 complaint, Ms. Greene and her husband (the Greenes) traveled to Cherokee, North Carolina on 26 May 2018, where they had booked a room at Stonebrook Lodge, which is owned and operated by Smokey Mountain Properties.³ That night, the

² See *Black’s Law Dictionary* (11th ed. 2019) (defining “invitee” as “[s]omeone who has an express or implied invitation to enter or use another’s premises, such as a business visitor or a member of the public to whom the premises are held open”).

³ When reviewing an order dismissing a complaint pursuant to Rule 12(b)(6), this Court’s is required to treat the factual allegations contained in the complaint as true, but the Court is not “required to accept as true allegations in a complaint that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Campos v. E. Band of Cherokee Indians*, No. CSC-19-06, 2024 WL _____, at *__ n. 10 (E. Cherokee Sup. Ct. 2024) (citation omitted). Thus, this Court views the factual allegations and background alleged in the complaint here in the light most favorable to Plaintiff.

Opinion of the Court

Greenes dined at a Ruth's Chris Steakhouse housed inside the Casino, which is located across the street — specifically PaintTown Road/U.S. Route 19 (U.S. 19) — from Stonebrook Lodge.

The Greenes finished their dinner sometime between 9:00 p.m. and 10:00 p.m. and decided to walk back to their room at Stonebrook Lodge by way of a pedestrian bridge located on or near Casino property that provided access to and from the Casino for employees and patrons thereof who park their vehicles on or near U.S. 19, as well as for patrons (like the Greenes) who stay at nearby hotels (like Stonebrook Lodge) located across U.S. 19 from the Casino. On their walk back to Stonebrook Lodge, the Greenes encountered a chain that stretched across the pedestrian bridge that impeded their path across the bridge. Ms. Greene attempted to step over the chain to continue along the bridge, but she tripped, fell, and broke her ankle in the process.

Harrah's NC and/or TCGE had placed the chain across the pedestrian bridge, which was located on property that was under the control of Harrah's NC and/or TCGE. At the time of the accident, the bridge was not well-lit, and no signs were posted to warn Casino patrons, like the Greenes, about the chain. Smokey Mountain Properties' marketing materials for Stonebrook Lodge at that time highlighted the hotel's location as being "in the center of Cherokee's casino district, across the street from Harrah's Cherokee Casino and Event Center."

Plaintiff's complaint further alleged that Harrah's NC, TCGE and Smokey Mountain Properties were liable for premises liability-based negligence claim(s), specifically (1) "Premises Liability – Negligent Creation of [an] Unsafe Condition," (2) "Premises Liability – Negligent Failure to Correct [an] Unsafe Condition," and (3) in the alternative, "Premises Liability – Failure to Detect [an] Unsafe Condition" based upon certain alleged acts and/or omissions respectively committed by Harrah's NC, TCGE, and Smokey Mountain Properties pertaining to the pedestrian bridge and the immediate surrounding area, which Plaintiff alleged directly and proximately

Opinion of the Court

caused her injury, including pain and suffering, loss of enjoyment of life, and mental anguish.⁴ Even though Smokey Mountain Properties did not own, possess, or control the property where Ms. Greene was injured or have control over the allegedly unsafe pedestrian bridge located across U.S. 19 from Stonebrook Lodge, Plaintiff contended that Smokey Mountain Properties had breached its duty of care owed to visitors or invitees, like Ms. Greene, by negligently creating the unsafe condition involving the pedestrian bridge because, despite having knowledge of said dangerous condition, Smokey Mountain Properties published advertising materials to the public emphasizing Stonebrook Lodge's proximity to the Casino, which Plaintiff contended encouraged patrons, like the Greenes, to use the pedestrian bridge to travel between the Casino and Stonebrook Lodge, and by negligently failing to correct said dangerous condition (or in the alternative by negligently failing to detect it), because the pedestrian bridge was located in an area with heavy foot traffic frequented by Casino patrons who spend the night at Stonebrook Lodge, such that Smokey Mountain Properties had an affirmative duty to warn visitors, like Ms. Greene, about the presence of the chain blocking the pedestrian bridge, the dim-lighting, and the lack of warning signage, especially at night, which Smokey Mountain Properties failed to do.

On 30 July 2019, Smokey Mountain Properties filed an answer and motion to dismiss requesting that the trial court dismiss Plaintiff's complaint pursuant to Rule 12(b)(6). On 14 August 2019, the trial court held a hearing on the motion. At the hearing, Defendant argued that the trial

⁴ With respect to Harrah's NC and TCGE, Plaintiff generally alleged that these two defendants had breached their duty of care owed to visitors or invitees, like Ms. Greene, by (1) negligently creating an unsafe condition by placing the chain over the pedestrian bridge, especially without providing warning signage and adequate lighting to alert Casino patrons to the presence of the chain, (2) negligently failing to correct the unsafe condition involving the pedestrian bridge, which was located in an area with heavy foot traffic and frequently used by patrons of the Casino staying the night at Stonebrook Lodge and other nearby hotels; and (3) in the alternative, by negligently failing to detect the unsafe condition involving the pedestrian bridge. As noted earlier, Plaintiff's claims against Harrah's NC and TCGE are not before us on appeal. Consequently, we do not discuss those claims regarding these two defendants further in this opinion.

Opinion of the Court

court should reject Plaintiff's expansive theory of liability that sought to hold Defendant liable for Plaintiff's injuries when Plaintiff was injured by a dangerous condition over which Defendant had no control and that existed across the street from Stonebrook Lodge on property that Defendant did not own, occupy or control simply because Defendant mentioned in its promotional materials that Stonebrook Lodge is located across the street from the Casino. Defendant acknowledged that, pursuant to C.C. § 7-2(d), the trial court had the option to decide whether North Carolina law or the law of another jurisdiction should be adopted and applied with respect to the applicable duty or standard of care pertaining to Plaintiff's alleged premises liability-based negligence claim(s), but maintained that the most persuasive authority was North Carolina law, as articulated in *Lampkin*, which reflected the majority among United States jurisdictions, such that the trial court should adopt and apply said law and conclude that because Defendant did not own, occupy or control the property on which Ms. Greene was injured or control the alleged dangerous condition that caused injury, Plaintiff's claims against Defendant failed for lack of duty and, accordingly, that Plaintiff's complaint against Defendant should be dismissed pursuant to Rule 12(b)(6). Defendant also asserted that the theory of liability that Plaintiff was advancing to the trial court — that an occupier of Tribal land, like Smokey Mountain Properties, has an affirmative legal duty to warn about off-site dangerous conditions over which it has no control — would open the floodgates to potentially unending liability, and that the trial court should clearly reject said theory. Finally, noting that Plaintiff's complaint failed to allege that she did not see the chain that she tripped over, but rather that she tried to step over the chain and got tangled up with it, Defendant asserted that it made no logical sense to impose a duty to warn in the instant matter because the alleged danger was one that was obviously visible to Plaintiff.

Opinion of the Court

In response, Plaintiff noted that she did not dispute Defendant's characterization of North Carolina law as articulated in *Lampkin* or that its application in the instant matter would result in Plaintiff's premises liability-based negligence claim(s) failing for lack of a cognizable duty of care on the part of Defendant. Plaintiff further noted that, pursuant to C.C. § 7-2(d), the trial court could consider decisions of the North Carolina courts, including *Lampkin*, regarding the applicable standard or duty of care, but that the court was not bound to follow those decisions, and that North Carolina was merely one of many legal jurisdictions that the trial court could look to for guidance on the issue. Ms. Greene also asserted that, when looking to other United States jurisdictions for guidance on the applicable duty or standard of care, the trial court needed to be mindful of the uniqueness of the Tribe's property structure vis-à-vis those jurisdictions, that property lines were an invention of Europeans that were forced upon the Tribe, and that the court "should look towards Cherokee law and tradition to understand that property ownership is not a line on a map and that everyone is interconnected and has a responsibility to watch out for those that they bring onto the reservation." She maintained that the trial court should decline to adopt North Carolina law as articulated in *Lampkin*, which focuses on ownership, occupation, or control of the property on which the dangerous condition is located or control of said condition, and that the court, instead should look for guidance from other legal jurisdictions that focus on foreseeability with respect to the applicable duty or standard of care. Finally, Plaintiff contended that Defendant's stated concerns about potential unending liability for owners or occupiers of Tribal land were overblown.

On 15 November 2019, the trial court entered an order dismissing Plaintiff's complaint against Smokey Mountain Properties pursuant to Rule 12(b)(6). In its order, the trial court indicated that it found *Lampkin* to be particularly "on point and persuasive," and that *Lampkin* and the line of North Carolina cases of which it is a part, reflects the majority rule among United States

Opinion of the Court

jurisdictions regarding a property owner or occupier's duty of care with respect to an alleged dangerous condition over which the owner or occupier has no control that is located on property that the owner or occupier does not possess, occupy, or control. More specifically, the trial court emphasized therein that North Carolina case law establishes that owners or occupiers of land have a duty of care to keep their own premises safe for an invitee, but they are not insurers of the visitor's safety when the visitor is located off their premises, nor are they obligated to protect against injury from an alleged dangerous condition over which they have no control, *Lampkin*, 220 N.C. App. at 464, 725 S.E.2d at 437, and that *Lampkin* (and the line of cases of which it is a part) establish that "the duty to protect from a condition arises from a person's control of the property and/or condition, and [in the] absence of control, there is no duty." As noted earlier, ultimately, the trial court decided to adopt and apply North Carolina law to the case at hand and concluded, consistent with *Lampkin*, that because Smokey Mountain Properties "did not own, possess, or control the property where [Ms. Greene] sustained injury," Smokey Mountain Properties "owed no duty to [Ms. Greene] with respect to any condition existing on the property," and thus, Smokey Mountain Properties could not "be liable in a claim for negligence." Plaintiff subsequently appealed to this Court from the trial court's 15 November 2019 order on 13 December 2019.

DISCUSSION

On appeal, Plaintiff primarily argues that the trial court erred by dismissing her complaint against Smokey Mountain Properties pursuant to Rule 12(b)(6) because, in reviewing and ultimately deciding to dismiss the complaint, the trial court allegedly failed to comply with Tribal Council's mandate to the Cherokee courts in C.C. § 7-2(d), which provides, in pertinent part:

In deciding cases and controversies over which it has jurisdiction, the Judicial Branch shall be bound by the laws, customs, traditions, and precedents of the [EBCI]. If there is no applicable Cherokee law, the Judicial Branch shall look next to Federal law, then to North

Opinion of the Court

Carolina law, and finally to the law of other jurisdictions for guidance.

Id. § 7-2(d) (2024). More specifically, Ms. Greene contends that the trial court violated C.C. § 7-2(d) by (1) failing to consider or apply Cherokee customs and traditions — the Cherokee Common Law — before looking to the English Common Law that had been adopted by North Carolina with respect to the applicable duty of care for her premises liability-based negligence claim(s); (2) incorrectly opining that C.C. § 7-2(d) “require[d] the [c]ourt to consider the holdings of North Carolina [c]ourts and apply them as precedent when deemed appropriate” with respect to the duty of care when this provision merely instructs the court to look to North Carolina law for “guidance” if neither EBCI law nor federal law applies; (3) erroneously determining that it was “appropriate” to adopt and apply North Carolina common law in the instant case because Cherokee courts should only do so “when the outcome is consistent with Cherokee custom and tradition,” which she contends is not the case here; and (4) improperly foreclosing Plaintiff from developing how Cherokee custom and tradition informs or affects the applicable duty of care owed to an invitee, such as Ms. Greene, by an inviter business, such as Smokey Mountain Properties. Ms. Greene further maintains that the question she presented to the trial court “was whether the legal duty of a business extended to inform its invitees of inherent dangers they would foreseeably encounter, but which existed outside the boundary of its leasehold of a possessory holding,” and that the trial court erred by failing to consider this question in the context of Cherokee custom and tradition as required by Tribal law.

Plaintiff specifically identifies, for the first time on appeal in her briefing to this Court, the Cherokee community values of *Gadugi* and *Duyvhta*, which she contends are two of the Tribe’s customs and traditions that are particularly important to the applicable duty of care owed to a business invitee by owners or occupiers of Tribal land with respect to an alleged dangerous

Opinion of the Court

condition that they do not control and that exists on property that they do not own, occupy, or control. Plaintiff further contends for the first time on appeal that “[a]n expert in Cherokee custom and tradition could guide the Court to understand the application of these principals [sic] to particular cases and controversies [sic].” According to Ms. Greene, the application of these two specific customs and traditions (and potentially others) provides compelling guidance to adopt case law from other legal jurisdictions that focuses on foreseeability, as opposed to the inviter’s ownership, occupation or control of the property on which the invitee is injured or control of the dangerous condition, with respect to the duty of care. Plaintiff also specifies for the first time on appeal *Detsadaligenvdisgesdi*, *Detsadageyusesdi*, and *Detsadagtiyesdi* and contends that these values⁵ “would be important to consider in evaluating this case” and that “[t]he application of these customs and traditions would yield different outcomes when applied to the guidance of non-Cherokee law” with respect to the duty of care.

In sum, Plaintiff maintains that, in violation of C.C. § 7-2(d), the trial court followed North Carolina law as if the court was required to do so and improperly dismissed and failed to review the legal authority that she submitted regarding the applicable duty of care, which she contends “would more closely harmonize with Cherokee custom and tradition.” Finally, in view of these alleged errors, Plaintiff asks us to reverse the trial court’s order dismissing Plaintiff’s complaint pursuant to Rule 12(b)(6) and to remand this matter to the trial court for further proceedings.

In response, Smokey Mountain Properties argues that the trial court did not violate C.C. § 7-2(d) or otherwise err by deciding to adopt and apply North Carolina law as articulated in *Lampkin* and ultimately dismissing Plaintiff’s complaint against it pursuant to Rule 12(b)(6). Defendant

⁵ As support, Plaintiff references a one-page document titled “Cherokee Community Values” attributed to Benny Smith (2009) by Ryan B. Mackey and identified with Cherokee Nation Community and Cultural Outreach (of the Cherokee Nation in Oklahoma), and notes in her brief that “there is [sic] no reasons to believe these particular values are unique to Western Cherokee.”

Opinion of the Court

further contends that, to the limited extent Plaintiff mentioned any argument to the trial court related to Cherokee customs and traditions and the duty of care she sought to establish, said argument was generic and generally asserted that Tribal members have a responsibility to look out for each other and the people they invite onto Tribal lands. Further, the trial court properly rejected Plaintiff's argument to that effect because the court highlighted its concerns about the strained and broad theory of liability Plaintiff had proposed and explicitly concluded that no credible record had been presented to the court that Plaintiff's expansive interpretation has been or is the public policy or culture of the Tribe. According to Defendant, because no controlling EBCI or federal law existed with respect to the duty of care applicable to Plaintiff's premises liability-based negligence claim(s) here, the trial court, consistent with C.C. § 7-2(d), properly considered case law from North Carolina and other jurisdictions, including the case law provided by Plaintiff, as potential persuasive authority on the applicable duty of care before the court ultimately decided to apply North Carolina law regarding the duty of care owed to an invited guest by owners or occupiers of land with respect to a dangerous condition over which they have no control that exists on off-site property over which they have no ownership or control. Because it was undisputed that Ms. Greene was injured on off-site property, which Smokey Mountain Properties did not own, occupy or control, by an alleged dangerous condition over which Smokey Mountain Properties had no control, Defendant argues that the trial court correctly concluded that Plaintiff's premises liability-based negligence claim(s) against it failed for lack of duty, and accordingly, that the trial court correctly dismissed Plaintiff's complaint against it pursuant to Rule 12(b)(6).

At the outset, we note this Court's recent opinion in *Campos v. Eastern Band of Cherokee Indians*, No. CSC-19-06, 2024 WL _____, at *__ (E. Cherokee Sup. Ct. 2024), a case with substantially similar arguments as to those raised by Plaintiff here regarding an alleged violation

Opinion of the Court

of C.C. § 7-2(d) by the trial court. In *Campos*, this Court determined, in pertinent part, that the trial court did not violate C.C. § 7-2(d) or otherwise err by not holding a hearing to ascertain whether there were Cherokee customs and traditions (Cherokee common laws) that controlled and/or informed the duty of care applicable to the premises liability-based negligence claim(s) before electing to adopt and apply North Carolina law (as articulated in *Lampkin*) with respect to such claims against three defendants (the adjacent property defendants), who occupied or controlled property adjacent to the property on which the plaintiff's wife was injured — a road, specifically U.S. 19, situated in between the respective properties on which the Casino and Stonebrook Lodge are located — but who did not own, occupy or control the property on which the injury was sustained nor have control over the dangerous condition that caused injury — an allegedly deficient crosswalk that the plaintiff's wife was using to cross U.S. 19 when she was struck by a third-party motorist.⁶ *Campos*, 2024 WL _____, at *__. This Court, as did the trial court in *Campos* (and in *Greene*), ultimately found North Carolina law, as articulated in *Lampkin*, to be the most persuasive authority regarding the applicable duty of care owed for the premises liability-based negligence claim(s) brought by the plaintiff against the adjacent property defendants, applied the principles articulated in *Lampkin* to said claim(s) within the framework of the Tribe's unique property ownership structure,⁷ and ultimately affirmed the trial court's order dismissing said

⁶ The three named Defendants here in *Greene* — Harrah's NC, TCGE, and Smokey Mountain Properties — were the adjacent property defendants in *Campos*. The plaintiff in *Campos* alleged quite similar premises liability-based negligence claim(s) against the adjacent property defendants to those alleged against Smokey Mountain Properties here and similarly sought to establish a common law duty with respect to such claim(s) that would result in the imposition of liability on these respective defendants even though they did not control the respective dangerous conditions that injured their respective invitees and the dangerous conditions were located on off-site properties that they did not own, occupy, or control. *Campos*, 2024 WL _____, at *__.

⁷ As noted in *Campos*, “[u]nder the Tribe's unique property structure, Tribal lands located on the Qualla Boundary are held in trust by the Federal Government for the Tribe,” and does not allow for or recognize fee simple ownership rights in Tribal land; nevertheless, “Tribal citizens (members) are eligible to hold possessory interest rights in Tribal lands,” which “are transferable to other Tribal citizens or first-generation lineal descendants of Tribal citizens,” and “Tribal citizens or non-Tribal citizens, may enter into a lease with the Tribe or a possessory interest holder in Tribal lands and thereby hold leasehold interest rights in Tribal lands.” *Campos*, 2024 WL _____, at *__ n.5 (citing C.C.

Opinion of the Court

claim(s) pursuant to Rule 12(b)(6) due to the lack of a cognizable duty of care owed by the adjacent property defendants.⁸ *Campos*, 2024 WL _____, at * __. In short, *Campos* is both highly-instructive and controlling precedent in the instant matter involving the premises liability-based negligence claim(s) brought by Ms. Greene. Therefore, based on the governing law in this jurisdiction and the record before us, the trial court did not violate C.C. § 7-2(d) in reviewing Plaintiff's complaint or otherwise err in applying the principles of North Carolina law as articulated in *Lampkin* to dismiss said claim(s) against Smokey Mountain Properties in the instant matter pursuant to Rule 12(b)(6) for lack of a cognizable duty of care owed to Plaintiff.

First, with respect to the arguments that the trial court allegedly violated C.C. § 7-2(d) (instructing that “[i]n deciding cases and controversies over which it has jurisdiction, the Judicial Branch shall be bound by the laws, customs, traditions, and precedents of the [EBCI],” and if none applies, “the Judicial Branch shall look next to Federal law, then to North Carolina law, and finally to the law of other jurisdictions for guidance”), this Court explained in *Campos* that this statutory provision is a mandate from Tribal Council to the Cherokee courts that (1) “requires the Cherokee courts to analyze and apply pertinent EBCI laws, customs, traditions, and precedents as controlling law in deciding matters over which the courts have jurisdiction and only permits the courts to consider legal authority from other jurisdictions when there is no applicable EBCI legal authority,” *Campos*, 2024 WL _____, at * __; (2) “provides a specific sequence that Cherokee courts are to follow in looking to other jurisdictions for guidance on the issues before them,” *Campos*, 2024

§ 47B-2 (2020); Ord. No. 453 (2019); C.C. § 47B-3 (2022)). As there were no allegations regarding the identity of the lessors being the Eastern Band of Cherokee Indians (EBCI or the Tribe) or a possessory interest holder, this Court employed the term “owner” to refer to the Tribe or a possessory interest holder of Tribal land and [the term] ‘occupier’ to include leasehold interest holders in Tribal land, recognizing that the legal rights of ownership and occupancy under the Cherokee Code are not the same as under North Carolina law.” *Campos*, 2024 WL _____, at * __ n.20.

⁸ We note that the plaintiff in *Campos* also alleged claim(s) against the EBCI, which the trial court ultimately determined required dismissal pursuant to Rule 12(b)(1) based on the defense of sovereign immunity, a determination that this Court affirmed on appeal. *Campos*, 2024 WL _____, at * __.

Opinion of the Court

WL _____, at * __, but that, “[w]ith the exception of federal law that expressly and directly applies to the EBCI or Indian tribes generally, . . . none of the legal authority from other jurisdictions, including North Carolina, carries controlling or precedential value in the Cherokee courts,” *Campos*, 2024 WL _____, at * __; and (3) “directs the Cherokee courts to look first to North Carolina law, and then to other jurisdictions” for guidance as potential persuasive authority, *Campos*, 2024 WL _____, at * __.⁹ We further emphasized therein that while Tribal Council has instructed the Cherokee courts to “develop a system of precedent based on the common law, customs, and traditions of the [EBCI],” *Campos*, 2024 WL _____, at * __ (quoting C.C. § 7-3(b) (2020)), and specifically entrusted “the trial court, as the fact-finder with the judicial responsibility to assess the credibility of witnesses, [with] the responsibility, when presented with a colorable claim under Cherokee custom and traditions, to develop the record . . . regarding an alleged Cherokee common law claim, defense, or duty advanced by a party,” *Campos*, 2024 WL _____, at * __ (citing C.C. § 7-4 (2020)), the Court noted a plaintiff cannot expect such a claim, defense, or duty to survive summary dismissal “by merely reciting the words ‘Cherokee common law’ or ‘custom and traditions’ in the complaint,” *Campos*, 2024 WL _____, at * __.

At a minimum, a plaintiff must articulate a colorable Cherokee common law claim or identifiable Cherokee custom and traditions in the complaint (along with any supporting documentation attached thereto and incorporated therein) and sufficiently allege how the purported Cherokee common law or the specific custom and traditions apply to, materially bear on, and potentially control the issue(s) at hand while also providing a forecast of evidence to support the existence of the asserted Cherokee common law, or a roadmap to show how alleged Cherokee custom and traditions can be utilized to inform the establishment of legal duties or standards owed by the Tribe or another party.

⁹ With respect to persuasive authority, we also noted therein that “Cherokee courts have frequently decided to follow the guidance of North Carolina law, unless the court finds that the law of another jurisdiction more similarly situated to the EBCI, like another Tribal Nation, is more persuasive and/or provides a better legal standard or framework for the issue(s) before the court.” *Campos*, 2024 WL _____, at * __ n.22.

Opinion of the Court

Campos, 2024 WL _____, at * __ (footnote omitted). Thus, if a party seeking to advance a Cherokee common law claim, defense, or duty fails to provide the trial court with a foundational standard therefor and to articulate a colorable Cherokee common law claim or defense, or to identify Cherokee customs and traditions that materially apply to the case at hand and provide pertinent evidence in support either in the complaint and supporting materials or in a response to a motion to dismiss, the trial court may properly dismiss the complaint pursuant to Rule 12(b)(6). *Campos*, 2024 WL _____, at * __ (concluding that the record showed, among other shortfalls, that the plaintiff's complaint was facially insufficient, lacked adequate allegations that identified or supported even a colorable Cherokee common law claim or any specific Cherokee customs and traditions necessary to provide a basis for the trial court to hold a hearing regarding the plaintiff's purported Cherokee common law breach of customs and traditions claim or the common law duty of care purportedly based on Cherokee customs and traditions that he contended should apply to his premises liability based negligence claim(s) against the adjacent property defendants that together "weigh[ed] in favor of dismissal" pursuant to Rule 12(b)(6)). Additionally, this Court emphasized in *Campos* that the plaintiff's belated attempts on appeal to (1) name Cherokee concepts, such as *Gadugi* and *Duyykta*, (2) offer non-specific witness testimony of Cherokee experts, and (3) provide related arguments in support thereof with respect to the establishment of a purported Cherokee common law claim, defense or duty, that he did not present to the trial court were procedurally improper under the EBCI local rules of appellate procedure promulgated by this Court and the North Carolina Rules of Appellate Procedure, such that the plaintiff's belated submissions and arguments to that effect to this Court would not be considered by the Court and warranted dismissal pursuant to E.B.C.I. R. App. P. 9(b)(1) and N.C. R. App. P. (10)(a)(1). *Campos*, 2024 WL _____, at * __ (dismissing the plaintiff's belated assertions and

Opinion of the Court

arguments regarding Cherokee customs and traditions not raised in the trial court) (citing E.B.C.I. R. App. P. 9(b)(1) (2020); N.C. R. App. P. 10(a)(1) (2020); *State v. Bursell*, 372 N.C. 196, 199-200, 827 S.E.2d 302, 305 (2019)).

In the instant matter, Plaintiff's complaint does not even contain the words "culture and tradition," let alone adequate allegations that identify or support a colorable Cherokee common law claim, defense or duty, or any specific Cherokee customs and traditions necessary to warrant the trial court holding a hearing on the alleged duty of care that Plaintiff contends applies to her premises liability-based negligence claim(s) against Smokey Mountain Properties.¹⁰ Likewise, Plaintiff's response to Defendant's motion to dismiss that she filed in the trial court contains no mention of any Cherokee customs and traditions, and at the motion to dismiss hearing, Plaintiff merely made generic assertions regarding Cherokee concepts of land ownership and a vague contention that "everyone is connected and has a responsibility to watch out for those who they bring onto the reservation" without providing any foundation to support her broader contentions with respect to the duty of care she contends should be applied to the premises liability-based negligence claim(s) here, and when the trial court specifically asked Plaintiff's counsel if he had "[a]nything further" to raise or add regarding the matter at the end of the hearing, counsel responded in the negative. Simply put, as was the case in *Campos*, Plaintiff failed to sufficiently articulate any colorable Cherokee customs and traditions alleged to inform or expand the duty of care applicable to her premises liability-based negligence claim(s) here, and to the extent that she seeks to raise and develop arguments with respect to the applicable duty of care based on Tribal

¹⁰ Unlike the plaintiff in *Campos*, Plaintiff here did not purport to allege a separate Cherokee common law breach of custom and traditions claim against Smokey Mountain Properties apart from the premises liability-based negligence claim(s). However, like the plaintiff in *Campos*, Ms. Greene asserts that that the application of Cherokee custom and traditions should result in the establishment of a common law duty with respect to the premises liability-based negligence claim(s) that would hold Smokey Mountain Properties liable for her injuries even though she was injured by an alleged dangerous condition that Smokey Mountain Properties did not control located on property that Smokey Mountain Properties did not own, occupy or control.

Opinion of the Court

customs and traditions for the first time in this Court, we dismiss these arguments and do not consider them. *See Campos*, 2024 WL _____, at *__. Hence, as was the case in *Campos*, in view of the similar aforementioned deficiencies in the instant case and the lack of any Cherokee laws or proffered customs and traditions that controlled or were alleged to control at the time the trial court rendered its decision in this matter, we conclude that the trial court did not violate C.C. 7-2(d) by determining that “no credible record” had been presented to demonstrate that Plaintiff’s expansive theory of liability “has been or is the public policy of the [EBCI]” without the trial court sua sponte holding a hearing when neither party alleged any Cherokee customs and traditions that purportedly controlled or expanded the duty of care applicable to Plaintiff’s premises liability-based negligence claim(s), such that the trial court could look to North Carolina law and then to other jurisdictions for guidance in accordance with C.C. § 7-2(d).

Like the trial court’s order in *Campos*, 2024 WL _____, at *__, the trial court’s order here does contain a misstatement regarding the weight that North Carolina law carries under C.C. § 7-2(d) — specifically that Cherokee courts are required to apply holdings of North Carolina courts as precedent in the matters before them. Nevertheless, like the court in *Campos*, 2024 WL _____, at *__, n.21, the trial court here correctly noted in its analysis that Cherokee courts are not “bound by North Carolina law,” and it does not appear to this Court that the trial court violated C.C. § 7-2(d) by incorrectly placing undue weight on North Carolina law as controlling authority or otherwise erred in finding North Carolina law (as articulated in *Lampkin*) to be the most persuasive with respect to the duty of care pertaining to the premises liability-based negligence claim(s) that she alleged against Smokey Mountain Properties, and in electing to adopt and apply it to said claim(s) here.

Opinion of the Court

Having concluded that the trial court did not violate C.C. § 7-2(d), this Court must review whether the trial court erred in dismissing Plaintiff's alleged premises liability-based negligence claim(s) against Smokey Mountain Properties pursuant to Rule 12(b)(6) based on the application of the principles in *Lampkin*, which now have been applied by this Court to the substantially similar premises liability-based negligence claim(s) lodged against the adjacent property defendants in *Campos*, 2024 WL _____, at * __. A reviewing court can properly dismiss a plaintiff's complaint pursuant to Rule 12(b)(6) "if there is a want of law to support a claim of the sort made, an absence of facts sufficient to make a good claim, or the disclosure of some fact which will necessarily defeat the claim." *Teesateskie v. E. Band of Cherokee Indians Minors Fund*, 13 Am. Tribal Law 180, 188-89 (E. Cherokee Sup. Ct. 2015) (per curiam) (quoting *Dalenko v. Wake Cnty. Dep't of Human Servs.*, 157 N.C. App. 48, 54-55, 578 S.E.2d 599, 603 (2003)). This Court reviews the trial court's decision to grant a motion to dismiss pursuant to Rule 12(b)(6) de novo. *Teesateskie*, 13 Am. Tribal Law at 188.

To state a prima facie case of negligence, a plaintiff must allege the existence of a legal duty or standard of care owed to the plaintiff by the defendant, a breach of that duty, and a causal relationship between the breach of duty and certain actual injury or loss sustained by the plaintiff. *Campos*, 2024 WL _____, at * __ (citing *Peace River Elec. Coop., Inc. v. Ward Transformer Co.*, 116 N.C. App. 493, 511, 449 S.E.2d 202, 214 (1994), *disc. rev. denied*, 339 N.C. 739, 454 S.E.2d 655 (1995)). As set forth in *Campos*, which constitutes controlling precedential authority here, the duty to "protect [an invitee] from a condition on property arises from a person's control of the property and/or condition, and in the absence of control, there is no duty." *Campos*, 2024 WL _____, at * __ (quoting *Lampkin*, 220 N.C. App. at 460, 725 S.E.2d at 435). Accordingly,

Opinion of the Court

under the premises liability-based negligence principles articulated in *Lampkin* and applied by this Court in *Campos*, the duty to keep one's premises (i.e., property) safe

does not extend to guarding against injuries caused by dangerous conditions located on adjacent property if the individual has no control over the property and/or the alleged dangerous conditions located thereon unless the individual engaged in "affirmative action [that] *created* the dangerous condition that injure[d] the plaintiff off of [the individual's] premises."

Campos, 2024 WL _____, at *__ (alterations in original) (quoting *Lampkin*, 220 N.C. App. at 461, 725 S.E.2d at 435 n.3). As in *Campos*, here Smokey Mountain Properties did not own, occupy, or control the property where the alleged dangerous condition was located, which was across the street from Stonebrook Lodge, or control the alleged dangerous condition involving the pedestrian bridge, nor did Plaintiff sufficiently allege that Smokey Mountain Properties engaged in affirmative acts that created the alleged dangerous condition. Moreover, as in *Campos*, to the extent that Plaintiff appears to contend that general advertisements that highlighted Stonebrook Lodge's proximity to the Casino constituted affirmative acts on the part of Smokey Mountain Properties that created the alleged dangerous condition involving the pedestrian located on the off-site property, we reject said contention. *See Campos*, 2024 WL _____, at *__ (citing *Dunning v. Forsyth Warehouse Co.*, 272 N.C. 723, 723-25, 158 S.E.2d 893, 893-95 (1968)). Consequently, in view of the above, the trial court correctly concluded that Smokey Mountain Properties did not owe Ms. Greene any duty with respect to the alleged dangerous condition involving the pedestrian bridge, and thus, the trial court did not err in dismissing Plaintiff's premises liability based negligence claim(s) against Smokey Mountain Properties pursuant to Rule 12(b)(6) for lack of a cognizable duty of care. *See Campos*, 2024 WL _____, at *__ (citing *Ward Transformer Co.*, 116 N.C. App. at 511, 449, S.E.2d at 214).

Opinion of the Court

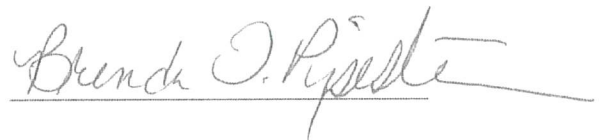
Accordingly, we affirm the trial court's order dismissing Plaintiff's complaint against Smokey Mountain Properties pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure.

AFFIRMED.



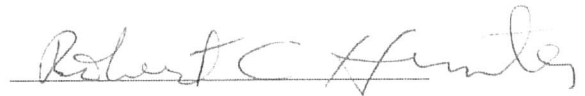
Kirk Saunooke

Chief Justice



Brenda Toineeta Pipestem

Associate Justice



Robert C. Hunter

Associate Justice