

STATE OF VERMONT
RUTLAND COUNTY, SS

JUN - 4 2008

NANCY PARKER,)	
)	
v.)	Rutland Superior Court
)	Docket No. 856-12-07 Rdev
CUMBERLAND FARMS OF VERMONT, INC.))	
and A&W CLEANING SERVICE, INC.)	

DECISION

**A&W Cleaning Service’s Motion for Dismissal, filed Mar. 26, 2008
Cumberland Farms’ Motion for Judgment on the Pleadings, filed Apr. 2, 2008**

Plaintiff Nancy Parker, who is proceeding *pro se*, alleges that she injured her right wrist after slipping and falling in a Cumberland Farms convenience store on November 18, 2004. She contends that the slip was caused by chemicals left on the floor by defendant A&W Cleaning Service, and that both the cleaning service and Cumberland Farms breached their duty to maintain the floor in a safe and reasonable manner. On December 19, 2007, Ms. Parker filed a complaint seeking compensatory damages, including medical expenses.

On March 26, 2008, A&W Cleaning Service filed a Motion for Dismissal, arguing that Ms. Parker filed her complaint 31 days beyond the applicable three-year statute of limitations for personal injury claims. Cumberland Farms raised the same issue in a Motion for Judgment on the Pleadings filed April 2, 2008. Both Defendants effectively seek a ruling from this court that Ms. Parker’s cause of action accrued when she injured her right wrist on November 18, 2004, and therefore that the complaint was 31 days too late when it was filed on December 19, 2007.

Motions to dismiss for failure to state a claim should not be granted “unless it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” *Lodge at Bolton Valley Condominium Assoc. v. Hamilton*, 2006 VT 41, ¶ 4, 180 Vt. 497 (mem.) (quotations omitted). Motions for judgment on the pleadings are reviewed under essentially the same standard. The court considers all of the factual allegations in the complaint as true, and draws all reasonable inferences in favor of the non-moving party. *Fercenia v. Guiduli*, 2003 VT 50, ¶ 6, 175 Vt. 541; 5C Wright & Miller, Federal Practice & Procedure: Civil 3d § 1368.

Statutes of limitations are intended to prevent the adjudication of stale claims by imposing limits on the time within which a plaintiff may seek damages against a particular defendant. Under 12 V.S.A. § 512(4), actions seeking damages for personal injuries “shall be commenced within three years after the cause of action accrues.” Under the so-called “discovery rule,” however, the statute of limitations does not automatically begin to run upon the date of the plaintiff’s injury. Instead, “the cause of

action shall be deemed to accrue as of the date of the discovery of the injury.” *Id.* This means that the statute of limitations begins to run “at the time a plaintiff discovers or reasonably should have discovered the basic elements of a cause of action, including the existence of an injury and its causes.” *Gettis v. Green Mountain Economic Development Corp.*, 2005 VT 117, ¶ 22, 179 Vt. 117; *Lillicrap v. Martin*, 156 Vt. 165, 175 (1989). In other words, the statute of limitations does not begin to run until the plaintiff discovered, or should have discovered, that her injury may have been caused by the negligence of a particular defendant. *Rodrigue v. Valco Enterprises, Inc.*, 169 Vt. 539, 540–41 (1999) (mem.).

In this case, the complaint alleged that Ms. Parker slipped and fell in a Cumberland Farms convenience store on November 18, 2004. The complaint also alleges that Ms. Parker slipped because chemicals were left on the floor by A&W Cleaning Service. Even though the complaint does not make any allegations showing when Ms. Parker discovered that her injury was caused by the negligence of a particular defendant, the court cannot conclude on the basis of the record before it that plaintiff should have discovered the legal cause of her injuries before December 19, 2004, and “that there exist no facts or circumstances that would entitle the plaintiff to relief.” *Hamilton*, 2006 VT 41, ¶ 4.

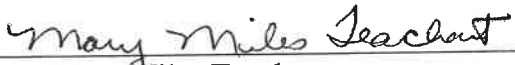
For these reasons, Ms. Parker is granted leave to amend her complaint in order to allege facts, if any, that show that her complaint was filed within the statute of limitations period. *Fortier v. Byrnes*, 165 Vt. 189, 194 (1996).

ORDER

For the foregoing reasons,

- (1) A & W Cleaning Service’s Motion to Dismiss is *denied*;
- (2) Ms. Parker is granted leave to amend her complaint within 15 days to allege facts showing that her claim is not time-barred; and
- (3) Defendant Cumberland Farms’ Motion for Judgment on the Pleadings, filed April 2, 2008, is *denied*.

Dated at Rutland, Vermont this 30th day of May, 2008.



Hon. Mary Miles Teachout,
Presiding Judge