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DISTRICT OF COLUMBIA COURT OF APPEALS

No. 24-CV-1061

TARANEH BAHRAMPOUR, APPELLANT,

v.

TRADER JOE’S COMPANY, INC., APPELLEE.

Appeal from the Superior Court
of the District of Columbia
(2024-CAB-000460)

(Carl E. Ross, *Judge*)

(Submitted March 26, 2026)

Decided October 15, 2026)

Mohaimina Haque was on the briefs for appellant.

Mariana D. Bravo and *Stephen G. Rutigliano* were on the brief for appellee.

Before BLACKBURNE-RIGSBY, *Chief Judge*, and MCLEESE and HOWARD, *Associate Judges*.

HOWARD, *Associate Judge*: Appellant Ms. Taraneh Bahrapour appeals the trial court’s November 13, 2024, Order granting appellee Trader Joe’s Company, Inc.’s Motion to Reconsider and dismissing Count I of Ms. Bahrapour’s Complaint. In its motion to reconsider, Trader Joe’s raised the issue of whether Ms. Bahrapour’s Complaint pleaded sufficient facts to maintain her negligence cause

of action against Trader Joe’s for failing to warn consumers that their breaded fish fillets may contain bones that could cause injury to consumers. Under de novo review, we reverse the judgment of the Superior Court and remand for further proceedings in accordance with this opinion.

I. Background

On May 30, 2023, Ms. Bahrampour consumed a fish fillet from a frozen “Oven Ready Breaded Cod Fillets” product that was produced and sold by Trader Joe’s Company, Inc.¹ Trader Joe’s “Oven Ready Breaded Cod Fillets” packaging claims to be “Par-Cooked Premium Alaskan Cod Fillets, coated with seasoned batter and crispy breadcrumbs.” The fish fillet product’s image pictured a manufactured fish product, and the first listed ingredient was “Alaska Cod.” While Ms. Bahrampour ate the fish fillet, a fish bone became lodged in her esophagus. Ms. Bahrampour immediately went to urgent care, and once evaluated, she was told to go to an emergency room.

In John Hopkins Medicine Sibley Memorial Hospital’s Emergency Room, doctors conducted an esophagogastroduodenoscopy (EGD) scan, which revealed

¹ Bahrampour purchased the Oven Ready Breaded Cod Fillets from the Trader Joe’s store located at 2101 Wisconsin Avenue, NW, Suite A, Washington, DC 20007.

that a fish bone was impacted in her proximal esophagus, causing tenting (narrowing) of her esophageal wall. Approximately twenty-two hours after the fish bone became lodged in her esophagus, doctors performed surgery on Ms. Bahrampour to remove the fish bone. Prior to the surgery, Ms. Bahrampour was experiencing pain and swelling. The fishbone that the surgeons removed from Ms. Bahrampour's esophagus was approximately 5/8 of an inch long. As a result of this incident, Ms. Bahrampour claims to have suffered severe physical and emotional pain, lost wages, continued physical impairment, and medical treatment costs.

On January 19, 2024, Ms. Bahrampour filed a Complaint against Trader Joe's Company, Inc., which included duty to warn, negligence, breach of warranty, strict products liability, and a violation of the District of Columbia Consumer Protection Procedures Act as causes of action. On April 5, 2024, Trader Joe's filed a Motion to Dismiss all counts of the Complaint. The trial court dismissed all counts except the negligence claim (Count I) because there were sufficient facts presented to show Trader Joe's failed to warn consumers about possible bones. On August 13, 2024, Trader Joe's filed a Rule 59(e) Motion to Reconsider the trial court's decision to deny the dismissal of Count I because the court held that as a matter of law consumers should reasonably expect bones in any fish product. On August 22, 2024, Ms. Bahrampour filed her opposition, which argued that failure to warn cases do not include a reasonable expectation analysis. On November 17, 2024, the trial court

granted Trader Joe’s Motion to Reconsider and dismissed all of the Complaint’s counts. Ms. Bahrampour timely appealed.

II. Standard of Review

Motions to reconsider “that claim an error of law are reviewed de novo.” *Callahan v. 4200 Cathedral Condo.*, 934 A.2d 348, 353 (D.C. 2007) (citation modified). A motion to reconsider “seek[s] relief from the adverse consequences of the original order on the basis of error of law” and not an improper factual basis. *Wallace v. Warehouse Emps. Union No. 730*, 482 A.2d 801, 804 (D.C. 1984) (citation modified). The Superior Court treated appellee’s motion as a Motion for Reconsideration of an Interlocutory Order under Super. Ct. Civ. R. 54(b), the result of which was the dismissal of Ms. Bahrampour’s complaint under Rule 12(b)(6) for failure to state a negligent failure to warn claim. *See* Super. Ct. Civ. R. 12(b)(6). Therefore, our review of the underlying issue here is that of a Rule 12(b)(6) dismissal.

We review an order granting a Rule 12(b)(6) motion to dismiss a complaint de novo. *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 543 (D.C. 2011). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Tovar v. Regan Zambri Long, PLLC*, 321 A.3d 600, 609 (D.C. 2024) (citation modified). “A claim

has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citation modified). “Any uncertainties or ambiguities in the complaint must be resolved in favor of the [complainant].” *Id.* (citing *Hillbroom v. PricewaterhouseCoopers LLP*, 17 A.3d 566, 572 (D.C. 2011)). “Dismissal under Rule 12(b)(6) is appropriate where the complaint fails to allege the elements of a legally viable claim.” *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007) (citation modified).

III. Discussion

On appeal, the parties present one central question: whether there exists a duty to warn consumers of the possibility of fish bones in Trader Joe’s “Oven Ready Breaded Cod Fillets” –more specifically, whether, as a matter of law, the risk of the presence of fish bones in fish fillets is obvious such that no duty to warn applies.

We start with the failure to warn elements:

(1) the defendant had a duty to warn, i.e., knew or should have known of the risk of a reasonably foreseeable harm from the product in question; (2) the defendant breached that duty, i.e., the warning label was inadequate in that it failed to advise the user of the attendant risks and failed to provide specific directions for safe use; and (3) the breach proximately caused the plaintiff’s injury, i.e., defendant’s

failure to provide an adequate warning was a substantial factor in bringing about the harm at issue.

Fuller v. Chem. Specialities Mfg. Corp., 702 A.2d 1239, 1241 (D.C. 1997) (citing *E. Penn Mfg. Co. v. Pineda*, 578 A.2d 1113, 1119-23 (D.C. 1990)) (emphasis added).

The exception to a defendant’s knowledge of the risk of harm remains the obvious risk doctrine, which reasons that there is no duty to warn “when the danger, or potentiality of danger, is generally known and recognized.” *Delahanty v. Hinckley*, 564 A.2d 758, 760 (D.C. 1989) (citation modified); *see also Wash. Metro. Area Transit Auth. v. Barksdale-Showell*, 965 A.2d 16, 24-25 (D.C. 2009) (stating that “there is no duty to warn when a danger is as well known to the plaintiff as it is to the defendant”). However, when a risk is “peculiarly foreseeable to the defendant but not the plaintiff,” it imposes a duty on the defendant to ensure the plaintiff is aware of those risks. *Barksdale-Showell*, 965 A.2d at 25 (citing *Ellis v. Safeway Stores, Inc.*, 410 A.2d 1381, 1383 (D.C. 1979)); *see also Reeves v. Wash. Metro. Area Transit Auth.*, 135 A.3d 807, 813-15 (D.C. 2016) (finding that, when a foreseeable harm is known only to the defendant and the defendant is on notice to repudiate that harm, there exist sufficient facts for a jury to determine).

“Knowledge of a dangerous condition implies not only that the condition is recognized, but also that the chance of harm and the gravity of the threatened harm are appreciated.” *Barksdale-Showell*, 965 A.2d at 25 (citation modified). “Obvious

means that both the condition and the risk are apparent to and would be recognized by a reasonable [person], in the position of the [complainant], exercising ordinary perception, intelligence, and judgment.” *Id.* (citation modified). Within the context of food, the risk aspect of the knowledge question splits into two main categories of cases: “unknown-ingredient” cases and “unknown-harm” cases. *Mills v. Giant of Md., LLC*, 508 F.3d 11, 14 (D.C. Cir. 2007). “Unknown-ingredient” cases relate to situations where reasonable consumers would not expect to find a specific ingredient in a food product. *Id.* (citing *Livingston v. Marie Callender’s Inc.*, 72 Cal. App. 4th 830, 832, 839-40 (1999) (discussing MSG in fresh vegetable soup); *Brown v. McDonald’s Corp.*, 101 Ohio App. 3d 294, 298-301 (1995) (discussing a seaweed-derived ingredient in a hamburger)). “Unknown-harm” cases “encompass[] situations where reasonable consumers are not aware of the harm that a food may cause to certain people. In other words, although consumers may know the ingredients in a certain food, they may not know the harm that the food or the food’s known ingredients can bring about.” *Id.*

Given the dualities, this court burdens factfinders with determining the level of obviousness that pertains to a particular risk. *See Reeves*, 135 A.3d at 814-15. Moreover, these considerations may only be reversed as a matter of law “when the evidence would not permit differences of opinion by reasonable jurors.” *Pineda*, 578

A.2d at 1115; *see also Barksdale-Showell*, 965 A.2d at 19 (“The issue of the reasonableness of WMATA’s conduct was one for the jury”).

At present, the only issues are whether as a matter of law it was obvious to consumers that Trader Joe’s breaded fish fillets contained bones and, if so, whether the risk involved with eating food that contains fish bones was also obvious. The parties agree that Trader Joe’s Oven Ready Fish Fillets had no warning label and that Ms. Bahrapour was injured after her consumption of the fish fillet, which establishes the second and third elements of a negligent failure to warn case. Moreover, Trader Joe’s admits it knew fish bones may be latent in their product. Thus, the only question is whether that risk was obvious to consumers, including Ms. Bahrapour. Ms. Bahrapour argues that Trader Joe’s knew that there could be latent bones in their breaded fish fillets and that those latent bones presented a foreseeable harm to consumers, creating a duty to warn consumers about the risks because the product’s marketing as oven ready, pre-cooked, and breaded could give a consumer a false sense of safety when eating the product. In contrast, Trader Joe’s argues that the matter of law determination in the trial court’s July 16, 2024, Order preempts any need to warn because the order declared that fish bones are expected as a matter of law.

At the motion to dismiss stage, Ms. Bahrapour did not fail to allege a legally viable claim. As to the “unknown-ingredient” part of the case, when drawing the facts in Ms. Bahrapour’s favor, she relied on the product’s packaging and believed that “oven-ready” and “breaded” suggested a bone-free fish product. In applying the reasonable expectation test, this court has held that “it is unrealistic to deny recovery as a matter of law if, for example, a person is injured from a chicken bone while eating a sliced chicken sandwich in a restaurant, simply because the bone is natural to chicken.” *Hochberg v. O’Donnell’s Rest., Inc.*, 272 A.2d 846, 849 (D.C. 1971). But “[i]t is a different matter if one is injured by a bone while eating a chicken leg or a steak or a whole baked fish.” *Id.* *Hochberg* suggests that the preparation of the dish or food item presents a factual issue that may change what is reasonable to expect in that product; so, Ms. Bahrapour’s claim at this stage may be viable.

Some may believe one should always expect fish bones in any fish product at any production stage because they are simply too hard to remove and are a natural part of the meat. *See Yong Cha Hong v. Marriott Corp.*, 656 F. Supp. 445, 449 (D. Md. 1987) (“Everyone but a fool knows that tiny bones may remain in even the best filets of fish”) (citing *Ex parte Morrison’s Cafeteria of Montgomery, Inc.*, 431 So. 2d 975 (Ala. 1983)); *Polite v. Carey Hilliards Rests., Inc.*, 338 S.E.2d 541, 542 (Ga. Ct. App. 1985) (holding that a one-inch fish bone in a fish fillet did not render the fillet injurious to health). However, it is just as plausible that a jury could decide that

Trader Joe's had a duty to warn consumers that their product is a "whole fish fillet" and "may contain bones" because it is foreseeable that a person may not know this specific product, given its presentation, has bones and may cause injury. *See Zabner v. Howard Johnson's, Inc.*, 201 So.2d 824, 826 (Fla. Dist. Ct. App. 1967) ("It is true one can expect . . . fish bones in a whole baked or fried fish, but . . . [t]here is a distinction between what a consumer expects to find in a fish stick and in a baked or fried fish"). This dichotomy is precisely why we burden factfinders to resolve such a conflict, particularly in the District of Columbia, where it has not been decided whether, as a matter of law, fish bones are an obvious ingredient in fish fillets.

Even if the trial court was correct that fish bones, as a matter of law, are an obvious ingredient of fish fillets, Ms. Bahrapour presents the additional question of whether the harm from the fish bone was obvious, which raises the "unknown-harm" aspect of this case. Ms. Bahrapour argues that, even accepting that consumers should reasonably expect to find fish bones in fish fillets, consumers could not reasonably expect to be harmed by fish bones ingested when consuming the fillets, particularly to the extent of hospitalization and surgery. Trader Joe's argues that awareness of the condition—fish bones in a fish fillet—necessarily includes awareness of the harm posed by consuming fish bones because the two are inseparable.

Whether the harm caused by consuming fish bones was obvious to consumers is another question of fact that should have been left to the factfinders. There are cases where the harm is inseparable from the condition itself, such as the dangers of lethal weapons such as guns, *see Delahanty*, 564 A.2d at 760, temporary gas and stomach discomfort from drinking milk when lactose intolerant, *see Mills*, 508 F.3d at 15, and bodily injuries from rubber exercise bands snapping back, *see Jamieson v. Woodward & Lothrop*, 247 F.2d 23, 29-30 (D.C. Cir. 1957). While the harm of, for example, temporary discomfort from swallowing a fish bone can perhaps be seen as an obvious danger or harm of eating fish, there is no case law that supports finding that a lodged fish bone requiring hospitalization and surgery was an obvious harm of eating a Trader Joe's fish fillet. As such, these questions are ones that should be determined by a factfinder as a basis for determining whether Trader Joe's had a duty to warn.

At present, we see no reason to create a special exception that bans consumers from recovery based on injuries stemming from fish bones being latent in fish products. And even if as a matter of law fish bones are expected, the test stays the same. Namely, should the consumer have reasonably expected the object at the stage of manufacturing and known the risks of the object's inclusion without an explicit label warning against it? Given that we typically retain such considerations for a jury—unless it is clear no possible juror could agree—we cannot ignore that a

reasonable person can distinguish between a whole baked fish, a raw fish fillet, and a frozen, “oven-ready,” breaded fish fillet that appears manufactured. Thus, Ms. Bahrampour sufficiently stated a claim for relief that is plausible on its face, and Trader Joe’s motion to dismiss should have been denied.

IV. Conclusion

For the foregoing reasons, the judgment of the trial court is reversed and the case is remanded for further proceedings in accordance with this opinion.

So ordered.