

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
VIRGINIA, LYNCHBURG DIVISION

Sarah Broggin v. Atlantic Housing Foundation, Inc., et al.

Broggin · No. 6:25-CV-00013 · Decided March 20, 2026

SUMMARY

The court denied defendants’ motions to strike portions of Sarah Broggin’s second amended complaint and to dismiss her negligence per se claims. The court held that allegations and exhibits concerning fire-code violations and nonfunctioning fire-safety equipment were material and pertinent, and that the complaint sufficiently alleged negligence per se under Virginia law. The negligence per se claims were permitted to proceed to discovery.

CASE DETAILS

COURT	United States District Court for the Western District of Virginia, Lynchburg Division
WRITING FOR THE COURT	Norman K. Moon
JURISDICTION	United States District Court for the Western District of Virginia
DECIDED	March 20, 2026
DOCKET	6:25-CV-00013
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 12(f) to strike allegations and exhibits from Broggin's second amended complaint and moved under Rule 12(b)(6) to dismiss her negligence per se claims. The district court denied both motions.
STANDARD OF REVIEW	On a Rule 12(f) motion, allegations may be stricken when they are redundant, immaterial, impertinent, or scandalous and their inclusion may prejudice the adverse party; such motions are highly disfavored. On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws reasonable inferences in the plaintiff's favor, and asks whether the complaint states a facially plausible claim for relief.
PRECEDENTIAL VALUE	unpublished district court opinion
PARTIES	Sarah Broggin v. Atlantic Housing Foundation, Inc., et al.

TOPICS

motions to dismiss

pleadings

negligence

civil procedure

construction law

PRACTICE AREAS

civil procedure

negligence

real estate

construction law

QUESTIONS PRESENTED

1. Whether Paragraph 15 and two exhibits attached to the second amended complaint were immaterial or impertinent and should be stricken under Federal Rule of Civil Procedure 12(f).
2. Whether Broggin sufficiently alleged negligence per se under Virginia law based on alleged violations of the Virginia Statewide Fire Prevention Code and related fire-safety requirements.
3. Whether the age of the apartment building, which was constructed in 1970, defeated the negligence per se claims at the pleading stage.

HOLDINGS

1. The allegations and exhibits were material and pertinent because they logically related to Broggin's claims that Defendants negligently failed to maintain the property and fire-safety equipment. Defendants had not shown that the material had no possible relation to the controversy or would cause significant prejudice, so the motion to strike was denied.
2. Broggin sufficiently alleged negligence per se because she identified statutes or codes that could create a duty, alleged that she was within the protected class, alleged the type of harm addressed by the fire-safety requirements, and alleged that Defendants' violations proximately caused her injuries. Counts II and IV could proceed to discovery.
3. The building's construction in 1970 did not defeat the negligence per se claims at the pleading stage because the Statewide Fire Prevention Code could require maintenance of existing fire-safety equipment even if it did not require installation of new, state-of-the-art systems.

KEY QUOTATIONS

“The purpose of a motion to strike is to clean up the pleadings, streamline litigation, and avoid necessary forays into immaterial matters.” (II.A)

“Because Defendants have failed to show that Exhibits 1 and 2 and Paragraph 15 “have no possible relation or logical connection to the subject matter of the controversy” and that they “may cause some form of significant prejudice,” Defendants have not satisfied Rule 12(f)’s standard to strike and their motion must be denied.” (III.A)

“The fact that the apartment building in question was built in 1970 is not a get-out-of-jail-free card.” (III.B)

FACTUAL BACKGROUND

On June 6, 2023, a fire began in a first-floor apartment at the Waters at James Crossing Apartments, where Broggin lived in a third-floor unit. The fire smoldered for nearly an hour and produced heavy smoke, but no smoke alarm or fire alarm sounded. Broggin alleged that the building lacked functioning smoke alarms or other fire-safety equipment, became trapped by the smoke and fire, and suffered severe burns and other physical injuries.

PROCEDURAL HISTORY

Broggin sued her landlord and property manager for negligence and negligence per se arising from injuries sustained in an apartment fire. After filing a second amended complaint, Defendants moved to strike Paragraph 15 and two attached exhibits and to dismiss Counts II and IV. The district court denied both motions and allowed the negligence per se claims to proceed to discovery.

DISPOSITION

other

CASES CITED

- Simmons v. Nationwide Mut. Fire Ins. Co., 788 F. Supp. 2d 404, 407 (W.D. Pa. 2011)
- Trout v. Colormatrix Corp., 2013 WL 756340, at *1 (D.S.C. Feb. 26, 2013)
- Mitchell v. First Central Bank, Inc., 2008 WL 4145449, at *1 (N.D. W. Va. Sept. 8, 2008)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Kensington Volunteer Fire Dep't, Inc. v. Montgomery Cnty., 684 F.3d 462, 467 (4th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 679 (2009)
- In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig., 402 F. Supp. 2d 434, 437 (S.D.N.Y. 2005)
- CTH 1 Caregiver v. Owens, 2012 WL 2572044, at *5 (D.S.C. July 2, 2012)
- California Dept. of Toxic Substances Control v. Alco Pacific, Inc., 217 F. Supp. 2d 1028, 1032–33 (C.D. Cal. 2002)
- GTSI Corp. v. Wildflower Int'l, Inc., 2009 WL 2160451, at *4 (E.D. Va. July 17, 2009)
- Steves & Sons, Inc. v. JELD-WEN, Inc., 988 F.3d 690, 728 (4th Cir. 2021)
- Cooper v. Ingersoll Rand Co., 628 F. Supp. 1488, 1493 (W.D. Va. 1986)
- Hamilton v. Glemming, 187 Va. 309, 316 (Va. 1948)
- McKeown v. Rahim, 446 F. Supp. 3d 69, 76 (W.D. Va. 2020)
- Schlimmer v. Poverty Hunt Club, 268 Va. 74 (2004)

OPINION

UNITED STATES DISTRICT COURT AT Ea VA WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION 3/20/2026 LAURA A. AUSTIN, CLERK BY: s/ ARLENE UTTLE
SARAH BROGGIN, DEPUTY CLERK Plaintiff, CASE NO. 6:25-CV-00013 v. ATLANTIC
HOUSING FOUNDATION, MEMORANDUM OPINION AND INC., ET AL., ORDER

Defendants. JUDGE NORMAN K. Moon Plaintiff Sarah Broggin (“Broggin”) was seriously injured in an apartment fire.

She is suing her landlord and her landlord’s property manager (collectively, “Defendants”) for negligence and negligence per se based on how they maintained the property and its fire monitoring equipment. Defendants have moved to strike Paragraph 15 of the second amended complaint and two attached exhibits, Dkt. 36, and have also moved to dismiss Broggin’s negligence per se claims (Counts IIT and IV).

Both motions will be denied. I. BACKGROUND On June 6, 2023, a fire broke out in a first-floor apartment at the Waters at James Crossing Apartments (“James Crossing Apartments”). Dkt. 33 § 12. Broggin lived in a third-floor unit directly above where the fire started. /d. 11, 12.

For nearly an hour, the fire on the first floor smoldered and created heavy smoke that gradually filled the first and second-floor apartments and stairwells. /d. § 14. During that time, no smoke alarm or alarm system sounded to warn Broggin and her fellow residents about the danger. /d.

In fact, the Fire Investigation Report suggests there were no functioning smoke alarms throughout the entire apartment building. /d. § 15; see also Dkt. 33-2. Because Broggin had no warning about the deadly smoke and fire below her and no way to extinguish the fire, she became trapped in her third story apartment. Dkt. 33 ¶ 17. She suffered severe burns and other physical injuries and is suing Defendants for those alleged harms.

Id. II. LEGAL STANDARDS A. Motion to Strike Motions to strike are ordinarily brought pursuant to Federal Rule of Civil Procedure 12(f), which provides that courts “may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). “The purpose of a motion to strike is to clean up the pleadings, streamline litigation, and avoid necessary forays into immaterial matters.” *Simmons v. Nationwide Mut.*

Fire Ins. Co., 788 F. Supp.2d 404, 407 (W.D. Pa. 2011). However, motions to strike under Rule 12(f) are highly disfavored, and should only be granted if the redundant, immaterial, impertinent, or scandalous material will prejudice the adverse party. See, e.g., *Trout v. Colormatrix Corp.*, 2013 WL 756340, at *1 (D.S.C. Feb. 26, 2013); *Mitchell v. First Central Bank, Inc.*, 2008 WL 4145449, at *1 (N.D.

W.Va. Sept.8, 2008). B. Motion to Dismiss To survive a Rule 12(b)(6) motion, a plaintiff’s complaint must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A court must accept plaintiff’s factual allegations as true and must draw all reasonable inferences in the plaintiff’s favor.

See *Kensington Volunteer Fire Dep’t, Inc. v. Montgomery Cnty.*, 684 F.3d 462, 467 (4th Cir. 2012). Although a complaint “does not need detailed factual allegations,” a plaintiff must provide

“more than labels and conclusions [or] a formulaic recitation of the elements of a cause of action” in order to “state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570; see *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

III. ANALYSIS A. Exhibits 1 and 2 and Paragraph 15 are material and pertinent. Defendants move to strike Exhibits 1 and 2 to Broggin’s second amended complaint and Paragraph 15 of that pleading. Dkt. 36. They argue that Exhibit 1—which is a June 22, 2021 report from the City of Lynchburg showing active fire and building code violations at James Crossing Apartments—is “immaterial and impertinent” because it does not specifically reference Broggin’s building and is dated two years before the fire.

Id. at 3. They also assert that Exhibit 2—which is a one-page excerpt of the Fire Investigation Report—is “immaterial” because it is incomplete and fails to provide meaningful context. *Id.* at 4. Defendants also seek to strike paragraph 15 of the second amended complaint for similar reasons.¹ Defendants do not suggest that Exhibits 1 and 2 or Paragraph 15 are scandalous² or redundant.³ Therefore, their Rule 12(f) motion relies exclusively on immateriality and impertinence.

Immaterial matter is “that which has no essential or important relationship to the claim for relief,” and, relatedly, impertinent material “consists of statements that do not pertain to, and are not necessary to resolve, the disputed issues.” *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 402 F.Supp.2d 434, 437 (S.D.N.Y. 2005). Exhibits 1 and 2 and Paragraph 15 clearly relate to Broggin’s claims that Defendants were negligent and negligent per se by not maintaining their property in a safe and lawful manner.

Specifically, Exhibit 1 shows that Defendants were in violation of the fire and building codes (at least in 2021), which, if unrebutted, 1 Paragraph 15 states: “The Fire Investigation Report notes there was no extinguishing system at the complex, nor was there evidence of a fire/smoke detector present.” Dkt. 33. 2 “Scandalous” allegations include those that “cast a cruelly derogatory light on a party to other persons.” *CTH 1 Caregiver v. Owens*, 2012 WL 2572044, at *5 (D.S.C.

July 2, 2012). 3 Redundant allegations are those that “are needlessly repetitive.” *California Dept. of Toxic Substances Control v. Alco Pacific, Inc.*, 217 F.Supp.2d 1028, 1032–33 (C.D.Cal.2002). could create a permissible inference that those violations or similar violations existed at the time of the fire.⁴ Likewise, Exhibit 2 suggests that the fire department official responsible for investigating the June 6, 2023 blaze witnessed four non-functioning fire detectors at the scene.

These exhibits support Broggin’s theory that she would not have been trapped in a dangerous apartment fire had Defendants complied with their obligations under Virginia law. Because Defendants have failed to show that Exhibits 1 and 2 and Paragraph 15 “have no possible relation or logical connection to the subject matter of the controversy” and that they “may cause some form of significant prejudice,” Defendants have not satisfied Rule 12(f)’s standard to strike and

their motion must be denied.⁵ See *GTSI Corp. v. Wildflower Int'l, Inc.*, 2009 WL 2160451, at *4 (E.D.

Va. July 17, 2009) (citing 5C Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* §§ 1380, 1382 (3d ed. 2004)). B. Broggin has sufficiently alleged negligence per se. Defendants also move to dismiss Broggin's negligence per se claims.

To state a claim for negligence per se under Virginia law, a plaintiff must allege "(1) that there was a statute or an ordinance; (2) that the injured party was within the class of persons for whose protection or benefit the statute was designed; (3) that the harm which occurred was the type of harm the statute was designed to protect against; and (4) that the violation of the statute must have been the proximate cause of the injury." See *Cooper v. Ingersoll Rand Co.*, 628 F. Supp. 1488, 1493 (W.D.

Va. 1986) 4 In discovery and at summary judgment, Defendants may produce evidence that the 2021 fire and building code violations were remedied. But at this stage, the Court must grant Broggin all reasonable inferences—which would include an inference that the violations persisted. 5 It is worth noting that Broggin is the master of her complaint. See *Steves & Sons, Inc. v. JELD-WEN, Inc.*, 988 F.3d 690, 728 (4th Cir.

2021). She decides which facts to include and which legal theories to rely upon. *Id.* Her allegations cannot be stricken because Defendants believe they are incomplete or fail to provide meaningful context. Defendants will have an opportunity to tell the complete story (or at least their version of it); but not at this preliminary stage. (citing *Hamilton v. Glemming*, 187 Va. 309, 316 (Va.

1948)); see also *McKeown v. Rahim*, 446 F. Supp. 3d 69, 76 (W.D. Va. 2020) (citing *Schlimmer v. Poverty Hunt Club*, 268 Va. 74 (2004)). Defendants challenge the sufficiency of Broggin's allegations as to the first element—i.e., the existence of a relevant statute or ordinance that creates a duty. Specifically, they assert that: 1.

The Virginia Statewide Fire Prevention Code ("SFPC") does not apply because Broggin's apartment building was built in 1970 and the SFPC only requires Defendants to maintain the fire equipment and systems that were in place at the time of constructions, Dkt. 35 at 4; 2.

The International Fire Code ("IFC"), which was incorporated by reference into the SFPC, is not an independent source of law and therefore Broggin's IFC claim falls with her SFPC claim, *id.* at 4–5; 3. Broggin's citation to Part I of the Virginia Uniform Statewide Building Code ("USBC") only applies to new construction and is therefore inapplicable to a building that was constructed in 1970, *id.* at 5–6; and 4.

Any claim premised on the International Building Code (“IBC”) does not apply unless the USBC applies, *id.* at 6–7. Defendants’ first argument—that the SFPC does not apply to the apartment building at issue— must be rejected at this stage.

The fact that the apartment building in question was built in 1970 is not a get-out-of-jail-free card. While the SFPC may not require Defendants to install new, state-of-the-art fire monitoring and suppression systems, the SFPC does require Defendants to maintain existing fire prevention and safety systems. See 13 Va. Admin. Code §§ 5-52-20(C), 5- 552-100(A), (B).

Broggin’s second amended complaint sufficiently alleges that her apartment building had some fire safety equipment and that Defendants breached their duty to maintain that equipment. See, e.g., Dkt. 33 ¶¶ 16, 18–25, 43.

For example, Exhibit 1 to the second amended complaint shows that the City of Lynchburg cited Defendants for violations of the SFPC and the USBC, which creates a permissible inference that Defendants had some duties under those state codes and breached those duties. Dkt. 33-1. Similarly, Exhibit 2 references four smoke detectors at the scene of the fire that appeared to be broken, suggesting that the safety equipment existed but was not properly maintained by Defendants.

Dkt. 33-2. At this stage, Broggin is not required to allege anything more to state a claim for negligence per se based on the SFPC. Because Broggin’s SPFC allegations are sufficient for Counts II and IV to proceed to discovery, the Court declines to address Defendants’ other Rule 12(b)(6) arguments at this time.® If, at the conclusion of discovery, Defendants believe Broggin has no evidence that Defendants violated the USBC or IBC, it can present its arguments at summary judgment.

Finally, Defendants suggest in passing that Broggin violated Rule 11 by bringing her negligence per se claims. Dkt. 35 at 7-8. Obviously, given the disposition of Defendants’ motion to dismiss, the Court disagrees. Therefore, the Court will not be awarding Defendants any attorneys’ fees or costs at this time. IV. CONCLUSION For the foregoing reasons, Defendants’ motions to strike (Dkt.

36) and dismiss (Dkt. 35) are DENIED, and the hearing scheduled for April 1, 2026 is cancelled. The Clerk shall provide a copy of this Order to all counsel of record. It is so ordered. Entered this 20th day of March, 2026. wen Merten fer’ _ NORMAN Kk. MOON SENIOR UNITED STATES DISTRICT JUDGE 6 Broggin pleads one negligence per se count per Defendant; however, those counts each rely on multiple statutes or codes as the sources of potential duties.

Defendants did not object to this shotgun approach (i.e., having multiple distinct theories in a single count). Therefore, Counts II and IV can proceed to discovery based on the sufficiency of

Broggin's SPFC allegations. Broggin should be prepared, however, for the Court to conduct a more searching inquiry of her building code theories at the summary judgment stage.

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/united-states-district-court-for-the-western-district-of-virginia-united-states-district-court-for-t/2026/sarah-broggin-v-atlantic-housing-foundation-inc-et-al-mnobbz9g>