

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

ERIC BROWN, Individually and as *
Administrator of the ESTATE OF
LORETTA LEWIS, *

Plaintiff, *

vs. *

CASE NO. 4:21-CV-71 (CDL)

MEDSCOPE AMERICA CORPORATION *
and AVANTGUARD MONITORING
CENTERS, LLC, *

Defendants. *

O R D E R

Loretta Lewis suffered from chronic obstructive pulmonary disease ("COPD"), a condition which substantially limited her major life activities. Because of this disability, she needed a reliable way to summon emergency medical personnel if she encountered a medical emergency while alone at home. Due to her medical condition and associated disability, she and her family were concerned that she would not be able to reach a telephone to call the public 9-1-1 service if she needed an ambulance. Having seen advertisements touting push button medallion-type devices worn around one's neck which would be on her person at all times and could-with the click of a button-promptly alert a service in case of an emergency, Lewis and her family thought this was just what she needed. The promotional information for the device led

Lewis and her family to believe that the service would provide, at a minimum, service that was at least substantially similar to what Lewis would receive from a standard 9-1-1 telephone call service. They understood that all the relevant information needed to assure that Lewis would receive a prompt and reasonable emergency response would be provided by the vendor to the emergency personnel. So, Lewis purchased a device from MedScope America Corporation.

While at home alone one day, Lewis felt that she could not breathe. She pressed the MedScope medallion, and a 9-1-1 certified operator employed by MedScope's partner, AvantGuard Monitoring Centers, LLC, answered Lewis's call. The operator notified the local 9-1-1 services agency of the call, who dispatched an ambulance to Lewis's home. But the operator did not discover that Lewis's home was locked, and the dispatched paramedics could not access the home until a firetruck arrived. According to the complaint, this delay caused Lewis to suffer an extended hypoxic event leading to serious brain injury that hastened her death three days later while in the hospital. Plaintiff Eric Brown, Loretta Lewis's son, now brings claims against Defendants MedScope and AvantGuard under Georgia's Fair Business Practices Act and under general tort law. Defendants filed motions to dismiss Plaintiff's complaint in its entirety. For the following reasons, those motions to dismiss (ECF Nos. 7 & 11) are denied.

MOTION TO DISMISS STANDARD

"To survive a motion to dismiss" under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must include sufficient factual allegations "to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. In other words, the factual allegations must "raise a reasonable expectation that discovery will reveal evidence of" the plaintiff's claims. *Id.* at 556. But "Rule 12(b)(6) does not permit dismissal of a well-pleaded complaint simply because 'it strikes a savvy judge that actual proof of those facts is improbable.'" *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 556).

FACTUAL ALLEGATIONS

The Court summarizes the facts alleged in Brown's complaint in greater detail here, given that these allegations, which must be accepted as true, are the sole source from which the Court must ascertain whether the asserted claims are plausible.

When Lewis purchased her MedScope medallion, she entered into a contract with MedScope obligating MedScope to provide her with both the medallion and a medical alarm monitoring service. Compl.

¶ 6, ECF No. 1. Specifically, MedScope represented that its system was intended for individuals with disabilities who may have trouble calling 9-1-1 directly in the event of a medical emergency. When the customer pressed a button on the medallion, the device was designed to initiate a voice call to a 9-1-1 certified response operator. Because of her underlying medical condition, particularly her COPD, Lewis and her family determined that she needed this kind of emergency notification system. *Id.* ¶¶ 10, 92, 94. It is reasonable to infer from the allegations that she believed this system was a matter of life and death, not just a convenience, and that MedScope intended to create this impression.

Prior to purchasing the system, Lewis and her son, Eric Brown, studied MedScope's website and viewed informational videos and tutorials about MedScope's devices. *Id.* ¶ 11. One of these videos stated that MedScope would "send someone immediately" and "contact [the customer's] physician" if alerted by a customer. *Id.* ¶ 17. The videos also represented that "MedScope monitoring personnel are highly skilled representatives and are on call 24 hours a day 7 days a week." *Id.* ¶ 19. MedScope's website claimed that calls would be answered by MedScope's 9-1-1 certified response operators, though these calls were actually answered by 9-1-1 certified response operators employed by AvantGuard. *Id.* ¶ 23.

Lewis activated her MedScope device on December 11, 2019, and told the operator that she could not breathe. *Id.* ¶¶ 39, 41. The

operator stated that they worked with the "MedScope Monitoring Center" despite actually working for AvantGuard. *Id.* ¶¶ 42-43. The operator relayed the emergency call to the public 9-1-1 service. But the AvantGuard/MedScope operator allegedly omitted several important pieces of information. Regarding Lewis's condition, the operator informed the 9-1-1 dispatcher that Lewis simply was "having trouble breathing" instead of accurately reporting that she "cannot breathe." *Id.* ¶¶ 44-45. And the operator did not mention her underlying medical condition of COPD. *Id.* ¶ 110. The Avant Guard/MedScope operator also did not inform the 9-1-1 dispatcher of any obstacles that the paramedics may encounter in trying to enter Lewis's home so that they would be fully prepared to reach Lewis immediately upon their arrival. Specifically, the operator did not inform the dispatcher that Lewis was home alone. *Id.* ¶ 46. The operator also did not notify the dispatcher that the doors to her home were locked, having failed to even ask Lewis that question. *Id.* ¶¶ 47-48. Plaintiff alleges that had a call been made directly to the official 9-1-1 dispatch service, the dispatcher would have made those inquiries of the caller.

Emergency medical services ("EMS") were dispatched approximately three minutes after Lewis alerted MedScope and Avantguard, but EMS could not access Lewis's house because the doors were locked. *Id.* ¶¶ 52-55. EMS was not equipped to enter

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