

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Clifford S. Wilkins and	:	
Suzanne K. Wilkins,	:	
	:	C.A. No. 08-08-0071
Plaintiffs,	:	
	:	
v.	:	
	:	
Bruce Callahan and	:	
Debra Andre Callahan	:	
a/k/a Deborah L. Andre,	:	
	:	
Defendants.	:	

Decision after inquisition at bar

Date Submitted: October 22, 2008

Date Decided: October 30, 2008

Damages awarded to Plaintiffs in the amount of \$34,550.00.

Clifford S. and Suzanne K. Wilkins, 230 Tiffort Court, Crestview, Florida 32539, *pro se* Plaintiffs.

Bruce and Debra Andre Callahan, 209 West Loockerman Street, Apt. A, Dover, Delaware 19904, *pro se* Defendants.

Trader, J.

In this civil action, the plaintiffs obtained a default judgment against the defendants when they failed to answer the complaint and failed to appear at a hearing on plaintiffs' motion for default judgment. After an inquisition at bar, I hold that the plaintiffs are entitled to damages for loss of rent as well as intentional destruction of the property, but I disallow damages for loss of wages and room and board.

The relevant facts are as follows: On or about June 1, 2001, the Plaintiffs, Clifford and Suzanne Wilkins, leased a townhouse located at 524 Schooner Way, Dover, to the Defendants, Bruce and Debra Callahan. In February and March 2006, the rent was not paid, and thereafter the defendants failed to pay the increase in rent from \$875 to \$1200, even though they remained in occupancy of the premises. In July 2007, the Plaintiff's found that extensive damage had been done to the rental property by the Defendants. The Defendants were notified of the damages and the violations of the rental agreement. On March 31, 2008, the Plaintiffs did a walk through of the rental property and found that the repairs had not been made. Eviction proceedings were initiated and the Defendants vacated the premises by July 31, 2008. The City of Dover condemned the property as unfit for human occupancy on August 5, 2008.

The plaintiffs filed a complaint for breach of the rental agreement and the defendants failed to answer the complaint. On August 15, 2008, the Plaintiffs filed a motion for default judgment in the amount of \$34,550.00 for damages to the property, loss of wages, meals and lodging during clean up and renovation, and past due rent plus court costs. On October 22, 2008, I entered a default judgment against the Defendants since they failed to file an answer to the complaint and failed to appear at the hearing on

the motion for default judgment. Immediately following the entry of the default judgment, the Court held an inquisition at the bar to determine the amount of damages.

At the inquisition, the Plaintiffs requested damages in the amount of \$46,844.11, but the complaint and the motion for default judgment requests \$34, 550.00 in damages. The Plaintiffs are not entitled to a greater award than the amount requested in their complaint without amending the complaint. *See* 61B Am. Jur. 2D *Pleading* § 936 (2008).

I conclude that the plaintiffs are entitled to damages for breach of contract. The damages that resulted from the breach of contract are limited to those that were proximately caused by the offending party. *Atwell v. Rhis, Inc.*, C.A. No. 02C-12-003 WLW, Witham, R.J. (July 28, 2006). Additionally, the damages allowed must be actual, reasonable, reasonably foreseeable, and consequential resulting from the breach. *See Id.*

At the inquisition before this court, the allowable contractual damages proven by a preponderance of the evidence are as follows:

Two months back rent (\$875 X 2)	\$1750.00
Five months rental adjustment (\$1200-\$875) X 5	\$1625.00
Two months lost rent during repair (\$1200 X 2)	\$2400.00
Less: Security deposit	\$(875.00)

Thus, the total amount of damages for breach of the lease agreement is \$4900.00.

I allow damages for the intentional destruction of the plaintiff's property. The destruction of the townhouse was extreme and the defendants' conduct was atrocious. The damages allowable for the intentional destruction of the rental property by the

defendants are limited to those that are actual, reasonable, reasonably foreseeable, and consequential resulting from the breach. *See Atwell v. Rhis, Inc.*, C.A. No. 02C-12-003 WLW, Witham, R.J. (July 28, 2006). Damages in this case are for the costs of repair of the damaged property. Damages must be proven by a preponderance of the evidence. *Werner v. Spunt*, 2000 WL 33653461, at *5 (Del. Com. Pl.). At the inquisition at bar before this court, the allowable damages proven by a preponderance of the evidence are as follows:

Labor for repairs	\$17,840.00
Materials for Repairs	\$11,996.62
Dumpster	\$425.00

The total damages due for the intentional destruction of the rental property are \$30,261.62.

As to the damages for loss of wages and room and board, I disallow those damages under the economic loss doctrine. “The economic loss doctrine is a judicially created doctrine that prohibits recovery in tort where a product has damaged only itself (i.e., has not caused personal injury or damage to *other* property) and, the only losses are economic in nature.” *Brasby v. Morris*, 2007 WL 949485, at *6 (Del. Super. Ct.) (citing *Marcucilli v. Boardwalk Builders*, 1999 WL 1568612 (Del. Super. Ct.)). Initially, this doctrine was applied to products liability actions, but nearly all courts have expanded the doctrine to any commercial dispute “where the alleged damages do no harm to a person or to property *other than the bargained for item.*” *McKenna v. The Terminex International Co.*, 2006 WL 1229674, at *2 (Del. Super. Ct.). “Economic loss is defined as ‘any monetary loss, costs of repair or replacement, loss of employment, loss of

business, or employment opportunities, loss of goodwill, and diminution in value.”

Brasby, 2007 WL 949485, at *6. To apply the economic loss doctrine, there must be an analysis of the contract and tort claims asserted. *McKenna*, 2006 WL 1229674, at *2.

The economic loss doctrine prohibits certain claims in tort where “overlapping claims in contract adequately address the injury alleged.” *Brasby*, 2007 WL 949485, at *6. The reason for this is that contract law generally provides a better and more specific remedy than tort law and purports the ability of individuals to allocate the business transaction risks. *Id.* If an action is based on a breach of the terms of a contract between the parties, then the plaintiff must sue in contract and not in tort. *McKenna*, 2006 WL 1229674, at *2. Contract and tort claims can co-exist in an action where the defendant breaches a duty imposed by law independent of the duties imposed by the contract. *Id.* Based on the economic loss doctrine, the damages for loss of wages and room and board are not reasonably foreseeable. Accordingly, those damages are not allowed.

In conclusion, the grand total of allowable damage is \$35,161.62 before court costs. However, the plaintiffs only asked for a total of \$34,550.00 in their Complaint. Therefore, as the amount cannot exceed the amount in the Complaint, the default judgment will be granted in the amount of \$34,550.00. Accordingly, judgment is entered on behalf of the plaintiffs, Clifford and Suzanne Wilkins and against the defendants, Bruce and Debra Callahan in the amount of \$34, 550.00, plus costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge