

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

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Re: ***Freibott v. Miller and Caravatti et al.***  
C.A. No. S08C-11-025 RFS

*Upon Defendant Kristin Konstruction Company of Delaware, Inc.'s  
Motion for Summary Judgment. Granted.*

Date Submitted: March 21, 2012  
Date Decided: May 17, 2012

Dear Ms. Caravatti and Counsel:

In this negligence action, Defendant Kristin Konstruction Company of Delaware, Inc. ("Kristin") has filed a motion for summary judgment against Plaintiff Marie-Louise Caravatti ("Caravatti"). The motion is granted.

During the night hours of February 8 and 9, 2007, a sprinkler pipe burst in one of the units at Indian Harbor Villas Condominiums located in Bethany Beach, Delaware. The sprinkler was located in Unit 3 owned by Defendants David Miller and Lynn Miller (“the Millers”). The leaking water caused damage in Unit 2, owned by Plaintiffs Frederick Freibott and Elaine Freibott (“the Freibotts”). The water also damaged Unit 4, which was owned by Caravatti. These owners were not present in the units at the time of the flooding.

After learning of the incident, Caravatti visited her unit on February 10, 2007. As vice-president of the Indian Harbor Condominium Association, Caravatti and Beth Ann Van Auken, the property manager, surveyed the damaged units and agreed that fans should be brought in immediately. Caravatti left later in the day and returned May 20, 2007. She found her unit in disarray. In the meantime, Albert F. Stavola (“Stavola”), Kristin’s owner and president, had entered Unit 4 to prepare an estimate of the cost to repair the damage. The Freibott Plaintiffs had hired Defendants Diamond Restoration, Inc. (“Diamond”) and Kristin to perform demolition on damaged areas (also known as remediation). It is uncontested that Diamond performed demolition work in Unit 4.

On November 28, 2008, the Freibotts filed a Complaint in this Court against the Millers, Indian Harbor Villas (“IHV”)(under various names), IHV’s president, Randall A. Snowling, and Kristin.

On February 6, 2009, Caravatti filed a Complaint in negligence against IHV, Kristin and Diamond. Caravatti seeks damages of approximately \$70,000.00 to repair her unit and return it to its condition prior to the flood. The cases were consolidated under the Freibott caption on June 30, 2009.

Briefing on Kristin's motion is complete, and the issues are ripe for decision. A motion for summary judgment shall be granted only where, considering the facts in a light most favorable to the nonmoving party, there is no material issue of fact in dispute.<sup>1</sup>

Caravatti and Kristin agree that they had no written or verbal agreement for Kristin to perform remediation work in Caravatti's unit. They also agree that Stavola entered Unit 4 to prepare an estimate for repairs.

They disagree as to who authorized Stavola's entry into Unit 4. Caravatti challenges the accuracy of Stavola's estimate and its effect on IHV's insurance carrier's assessment of damages.

Caravatti's Complaint does not state a claim against IHV's insurance company. For this reason, Caravatti's argument that she was short-changed by the carrier is not an appropriate response to Kristin's motion for summary judgment. As a matter not properly before the Court, the insurance issue is not addressed herein.

An action in negligence requires a showing by a preponderance of the evidence that the defendant's allegedly negligent act or omission violated a duty which was owed

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<sup>1</sup>*Pullman, Inc. v. Phoenix Steel Corp.*, 304 A.2d 334 (Del.Super.1973).

to the plaintiff.<sup>2</sup> The plaintiff must also show a reasonable connection between the negligent act or omission and the plaintiff's injury, that is, proximate cause.<sup>3</sup>

Kristin argues that there is no evidence that it performed any demolition work in Unit 4 or that Kristin was negligent in any way. In response, Caravatti focuses on Kristin's unauthorized entry into Unit 4 and the inaccuracy of Stavola's damages estimate. In her deposition testimony, Caravatti abandoned her claim against Kristin for negligently performed work. When asked for facts in support of her allegation of negligent demolition, she answered as follows:

I don't believe that I'm saying in there that they both [Kristin and Diamond] performed demolition and caused damage and/or performed negligently; certainly in the estimate that they produced and why they went in there in the first place without my permission. (Caravatti Dep. at 149.)

As to a specific allegation against Kristin, Caravatti stated:

They entered my unit and I don't know what they did in there. (*Id.*)

These statements confirm Kristin's assertions that it did not perform work in or cause damage to Caravatti's unit. What remains of Caravatti's claim is her argument that Kristin entered her unit without her permission. This is a claim of trespass, which is not pled and therefore not before the Court.

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<sup>2</sup>*Culver v. Bennett*, 588 A.2d 1094, 1097 (Del.1991).

<sup>3</sup>*Id.*

The record shows that there is no material issue of fact in dispute and that Kristin is entitled to judgment as a matter of law. Kristin's Motion for summary judgment is **GRANTED.**

**IT IS SO ORDERED.**

Very truly yours,

Richard F. Stokes

Original to Prothonotary

