

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

| | | |
|-------------------------------|---|--------------------------|
| JOSEPH STAEDT and, |) | |
| MARIE STAEDT |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| AIR BASE CARPET MART, Inc., a |) | C.A. No. N10C-07-075 CLS |
| Delaware Corporation |) | |
| |) | |
| Defendants. |) | |
| |) | |
| |) | |
| |) | |
| |) | |

ORDER

AND NOW, TO WIT, this 3rd day of January, 2012, **IT IS HEREBY ORDERED** as follows:

On December 6, 2011, this Court denied Defendant’s, Air Base Carpet Mart Inc. (“Air Base”) Motion for Summary Judgment to dismiss Plaintiffs’ Joseph and Marie Staedt (“Plaintiffs”) negligence claims. On December 14, 2011, Air Base timely¹ moved for an order certifying an interlocutory appeal to the Delaware Supreme Court of this Court’s

¹ Supreme Court Rule 42(c)(i) states that application must be made within 10 days of the entry of the order from which the appeal is sought. Here, the order was entered on December 6, 2011 and the application was filed on December 14, 2011. Thus, the application was timely filed.

December 6, 2011 denial of the Motion for Summary Judgment.

Supreme Court Rule 42(b) sets forth the criteria to apply in determining whether an issue should be certified from the trial court. In considering whether certification is proper, the court must conclude that (1) there is a substantial issue; (2) an established legal right exists; and (3) one or more criteria set forth in the rule.

“Interlocutory appeals are addressed to the discretion of the Court and are accepted only in *exceptional* circumstances.”² Interlocutory appeals are only accepted in situations where there are important and urgent reasons for an immediate determination by the Delaware Supreme Court.³

Generally, “an order directed to the pleadings falls within the class of interlocutory orders which are unappealable because it does not establish a legal right between the parties.”⁴ There are however, certain rulings on the pleadings that substantially affect the merits of the case or change the status of the parties which warrant an appeal.⁵ Air Base has not established that in this case.

Air Base contends that there is an unsettled question of law as to whether a landowner owes a business invitee a duty to warn or protect of a

² *DVI Fin. Serv., Inc. v. Imaging Managing Associates, Inc.*, 1995 WL 269073, at *1 (Del. Super. Ct. Apr. 13, 1995) (emphasis added).

³ *Id.*

⁴ *Levinson v. Conlon*, 385 A.2d 717, 720 (Del. 1978).

⁵ *Id.*

condition if the business invitee already knows of the condition. However, in *Koutoufaris v. Dick*, which was cited in the Court's order, the Delaware Supreme Court held that the Delaware comparative negligence statute modified the common law rule which absolutely barred recovery whenever a plaintiff assumed a risk of physical harm.⁶ Thus, it is settled in Delaware that a business invitee may still recover for injuries if they were aware of the dangerous condition.⁷

Additionally, after considering the pleadings, issues and Court order denying summary judgment, this Court finds that the December 6, 2011 decision does not determine a substantial issue or establish a legal right that warrants Certification of an Interlocutory Appeal. The December 6, 2011 order states that a genuine issue of material fact exists as to proximate cause and whether Air Base fulfilled its duty in warning and protecting Plaintiff, Joseph Staedt. Hence, in concluding that genuine issues of material fact exist on these two issues, the Court permitted the parties to move forward with the litigation. A ruling that orders parties of a litigation to proceed forward, is generally not a basis for an interlocutory appeal.⁸

⁶ 604 A.2d 390, 398 (Del. 1992).

⁷ *Id.*

⁸ *Levinson*, 385 A.2d at 720.

For the foregoing reasons, Air Base's Application to Certify the Interlocutory Appeal is **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.