

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

MATTHKKII JOHNSON,	:	
	:	
Plaintiff,	:	
	:	
v.	:	K10C-08-020 RBY
	:	
1001 Mattlind Way, LLC,	:	
	:	
Defendant.	:	

Submitted: October 7, 2011
Decided: January 9, 2012

*Upon Consideration of Defendant's
Motion for Summary Judgment*

**GRANTED
ORDER AND OPINION**

Michael A. Pedicone, Esq., Schuster Jachetti LLP, Wilmington, Delaware for Plaintiff.

Elizabeth A. Saurman, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware for Defendant.

Young, J.

SUMMARY

_____ In this personal injury action, predicated on premises liability, Mattikkii Johnson (Plaintiff) seeks damages from 1001 Mattlind Way, LLC (Defendant). Plaintiff claims that she sustained injury at her place of employment. Defendant leased the premises to Plaintiff's employer. As a landowner out of possession, Defendant did not owe Plaintiff a duty. Defendant's motion for summary judgment is **GRANTED**.

FACTS

_____ Plaintiff was employed as an outside sales representative for Addus Health Care. Defendant leases the premises located at 1003 Mattlind Way to Addus as office space.

The premises is located in a business park in Milford, Delaware. It has its own outside entrance. Parking is shared with other tenants in the park. The parking lot is accessible by way of a common road adjacent to a main road.

The lease delegates certain maintenance responsibilities to the respective parties. Addus, as tenant, is responsible for day to day repairs inside the premises and maintenance of the sidewalk in front of the premises. As landlord, Defendant is responsible for repairs mandated by statute, code, regulation or local ordinance. Additionally, Defendant maintains building systems, such as heating and plumbing.

On March 9, 2009, Plaintiff asserts that she was injured when she tripped on a ripped piece of carpet in the premises. Plaintiff filed this negligence action, claiming that Defendant had a duty to maintain the carpet, failed to fulfill that duty

and thereby caused injury to Plaintiff. Subsequently, Defendant filed the instant motion for summary judgment.

STANDARD OF REVIEW

____ Summary judgment is appropriate where the record exhibits no genuine issue of material fact so that the movant is entitled to judgment as a matter of law.¹ “Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if it seems desirable to inquire more thoroughly into the facts in order to clarify the application of the law to the circumstances.”² The record is to be considered in the light most favorable to the non-moving party.³ “A landowner’s duty toward a plaintiff in a negligence action is a matter of law for the Court to decide.”⁴

DISCUSSION

Defendant argues that it was not under a duty to maintain the safety of the premises as the landlord. On that basis, Defendant argues that there is no genuine issue of material fact. Plaintiff, of course, refutes this contention, arguing that Defendant was under a duty to maintain a safe premises when Plaintiff sustained injury.

Landowners have a duty “to exercise reasonable care to keep the premises

¹ *Tedesco v. Harris*, 2006 WL 1817086 (Del. Super. June 15, 2006).

² *Id.*

³ *Id.*

⁴ *Argoe v. Commerce Square Apartments Ltd.*, 745 A.2d 251 (Del. Super. 1999).

safe for business invitees.”⁵ “This includes making safe any dangerous condition on the land which the landowner either knows about or should discover upon a reasonable inspection of the property.”⁶ However: “Generally, a landowner who has neither possession nor control of the leased premises is not liable for injuries to third persons.”⁷ Such circumstances exist “where an owner leases a commercial unit to a tenant who conducts a business on the premises.”⁸ “But an exception arises, justifying the imposition of liability on an out-of-possession owner, where the owner ‘retains control of portions of the land which the lessee is entitled to use.’”⁹ The control retained must be “actual control,” meaning “actual management of the leased premises.”¹⁰ A landowner does not retain “actual control” by the mere fact that it enjoys the right to inspect or retake the premises.¹¹

Pursuant to the lease agreement, Defendant relinquished to Addus possession and control of the premises upon commencement of the lease term. Addus used the premises to conduct a business. Although Defendant may have retained some control

⁵ *Id.* at 254.

⁶ *Id.*

⁷ *Volkswagen of America, Inc. v. Costello*, 880 A.2d 230, 233 (Del. 2005).

⁸ *Argoe*, 745 A.2d at 255.

⁹ *Volkswagen*, 880 A.2d at 233 (quoting *Craig v. A.A.R. Realty Corp.*, 576 A.2d 688 (Del. Super. 1989)).

¹⁰ *Argoe*, 745 A.2d at 254 (quoting *Craig*, 576 A.2d at 695).

¹¹ *Id.* at 255.

over the interior space, such control was not managerial. There is no evidence that Defendant entered the premises regularly. There is no evidence that Defendant influenced the day to day routine in the premises. Defendant's control did not amount to "actual control," as contemplated in this context. Accordingly, Defendant did not owe Plaintiff, as Addus' business invitee, a duty to maintain the premises.

Plaintiff nevertheless argues that Defendant was under a duty to maintain the premises because, if it intended to shift that duty, it must have done so in a conspicuous writing separate from the rental agreement. Plaintiff relies upon *25 Del. C. § 5305* as addressed in *Johnson v. ADJ Realty of Delaware, LLC*.¹²

In *Johnson*, the Court recognized that, pursuant to § 5305, a landlord may place primary responsibility for maintenance of a premises upon the tenant, thereby absolving the landlord of the residual duties otherwise owed to the tenant.¹³ If the landlord so desires, it must do so in a conspicuous writing separate from the rental agreement.¹⁴ *Johnson* does not mean, as Plaintiff contends it does, that a landlord may only levy maintenance duties upon a tenant if it executes a separate writing to that effect. The *Johnson* Court found that, considering that the landlord agreed to repair the premises after receiving notice, the landlord never intended to shift its

¹² 2010 WL 1138820 at *4 (Del. Super. Mar. 17, 2010).

¹³ *Id.* at *4 (citing *Koutoufaris v. Dick*, 604 A.2d 390, 401 (Del. 1992)).

¹⁴ *Id.*

Johnson v. 1001 Mattlind Way
K10C-08-020 RBY
January 9, 2012

responsibility and § 5305 did not apply.¹⁵

There is no evidence that Defendant executed a separate writing to transfer any responsibility under § 5305. As evidenced by the delegation of duties in the rental agreement, there is no indication that Defendant intended to absolve itself of responsibility under § 5305. As was the case in *Johnson*, § 5305 does not apply to these facts.

Plaintiff was in the premises as Addus' business invitee. As a commercial lessor, Defendant did not owe Plaintiff a duty to maintain the premises. Absent that duty, Plaintiff has no sustainable claim against Defendant, 1001 Mattlind Way, LLC.

CONCLUSION

Defendant's motion for summary judgment is **GRANTED**.

SO ORDERED.

/s/ Robert B. Young

J.

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¹⁵ *Id.*