

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH and SHARON	§
WALDEN,	§ No. 409, 2008
	§
Plaintiffs Below-	§
Appellants,	§ Court Below—Superior Court
	§ of the State of Delaware
v.	§ in and for Kent County
	§ C.A. No. 07C-10-016
ALLSTATE INSURANCE	§
COMPANY,	§
	§
Defendant Below-	§
Appellee.	§

Submitted: November 5, 2008  
Decided: December 22, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 22<sup>nd</sup> day of December 2008, upon consideration of the appellants’ opening brief and the appellee’s motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The appellants, Kenneth and Sharon Walden (the “Waldens”), filed an appeal from the Superior Court’s August 15, 2008 order dismissing their personal injury lawsuit. The appellee, Allstate Insurance Company (“Allstate”), has moved to affirm the judgment of the Superior Court on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and AFFIRM.

(2) The record reflects that, in December 2005, the Waldens filed a pro se complaint against Allstate in the Superior Court, claiming damages as the result of living in a moldy rental unit owned by Robert and Lucille Prato ( the “Pratos”). Allstate was the homeowners insurer for the Pratos. The Waldens also filed an action against the Pratos in the Superior Court. Allstate moved to dismiss the complaint against it on the ground that the Waldens could not prosecute a direct action against an insurance carrier based upon the alleged negligence of its insured.<sup>1</sup> The Superior Court granted Allstate’s motion to dismiss on that ground. On appeal, this Court affirmed the judgment of the Superior Court.<sup>2</sup>

(3) The record reflects that trial proceeded in the Superior Court on the Waldens’ claims against the Pratos.<sup>3</sup> The jury found that the Pratos were negligent in permitting water to flood the Waldens’ rental unit, but also found that no damages had been proven and, therefore, determined that there was no liability on the part of the Pratos. The record also reflects that the Waldens filed a second complaint against Allstate in October 2007, which claimed personal injuries as a result of the mold in their rental unit. On

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<sup>1</sup> *Kaufmann v. McKeown*, 193 A.2d 81, 83 (Del. 1963); *Delmar News, Inc. v. Jacobs Oil Co.*, 584 A.2d 531, 533-34 (Del. Super. 1990).

<sup>2</sup> *Walden v. Allstate Insurance Co.*, Del. Supr., No. 487, 2006, Holland, J. (Oct. 27, 2006).

<sup>3</sup> The record reflects that trial was limited to the Waldens’ claim for rent and/or for money damages as the result of water damage to personal property.

April 4, 2008, the Superior Court granted the Waldens' motion to amend the complaint to add the Pratos as defendants. The Superior Court explained to the Waldens that Allstate was not a proper party to their lawsuit and, therefore, dismissed Allstate as a defendant.<sup>4</sup>

(4) The attorney representing the Pratos filed a discovery request in connection with the Waldens' lawsuit requesting the Waldens to provide information concerning their alleged personal injuries, including the name of an expert to testify that their alleged personal injuries were caused by the mold in their rental unit. The Waldens refused to respond to the discovery request. On June 26, 2008, a hearing was held before the Superior Court commissioner on the Pratos' motion to compel discovery responses. The Waldens stated on the record that they would not respond to the discovery request. The commissioner granted the Pratos' motion to compel and ordered the discovery responses to be served by July 31, 2008. On July 10, 2008, the Waldens, inexplicably, withdrew their amended complaint against the Pratos. On August 15, 2008, the Superior Court dismissed the Waldens' lawsuit, since there were no defendants left in the case.<sup>5</sup>

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<sup>4</sup> The Superior Court also correctly explained to the Waldens that this Court's October 27, 2006 order did not give them the right to proceed directly against Allstate within the context of the litigation at that time.

<sup>5</sup> At the hearing, the Waldens continued to insist that Allstate was the proper defendant.

(5) In their appeal, the Waldens claim that the Superior Court should not have dismissed their lawsuit. They contend that they are owed money for personal injuries they suffered as a result of their moldy rental unit, but have not received any of the money they are owed.

(6) While the Waldens obviously believe that they have been wronged by the Superior Court's dismissal of their personal injury lawsuit, in reality, their ill-conceived decision to withdraw their claims against the Pratos led inevitably to that result. The Superior Court had already properly dismissed Allstate<sup>6</sup> and, when the Waldens subsequently withdrew their claims against the Pratos, there were no defendants left in the case. At that point, the Superior Court had no choice but to dismiss the Waldens' claims.

(7) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>6</sup> *Kaufmann v. McKeown*, 193 A.2d at 83; *Delmar News, Inc. v. Jacobs Oil Co.*, 584 A.2d at 533-34.

NOW, THEREFORE, IT IS ORDERED that Allstate's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice