

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

<b>ROBERT WENTELER,</b>	:	
	:	<b>C.A. No: 09C-07-011 RBY</b>
_____ <b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>COMCAST OF DELMARVA, INC.:</b>	:	
	:	
<b>Defendant/Third-Party</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>CABLENET SERVICES</b>	:	
<b>UNLIMITED, INC.,</b>	:	
	:	
<b>Third-Party Defendant/:</b>	:	
<b>Fourth-Party Plaintiff. :</b>	:	_____

*Submitted: March 15, 2013  
Decided: June 11, 2013*

***Upon Consideration of Third-Party Defendant/Fourth-Party Plaintiff Cablenet Services Unlimited Inc.'s Response and Adoption of Fourth-Party Defendant's Motion for Summary Judgment  
DENIED***

**ORDER**

H. Cabbage Brown, Jr., Esq., and Andre M. Beauregard, Esq., Brown, Shiels & Beauregard, LLC, Dover, Delaware for Plaintiff.

Louis J. Rizzo, Jr., Esq., and Sandra F. Clark, Esq., Reger, Rizzo & Darnall, LLP, Wilmington, Delaware for Comcast of Delmarva, Inc.

Matthew E. O'Byrne, Esq., Casarino, Christman, Shalk, Ransom & Doss, P.A., Wilmington, Delaware for Cablenet Services Unlimited, Inc.\_\_\_\_

Young, J.

### **SUMMARY**

While many factors regarding the interworkings of many of the dealings among the various organizations which have had some role in the installation of cable for Robert Wentler (“Plaintiff”) have been agreed upon, the significance of those factors creates an area of unresolved responsibilities. Accordingly, material fact issues remain, therefore Defendant Cablenet’s Motion for Summary Judgment is **DENIED**.

### **FACTS**

Plaintiff alleges in his complaint, filed July 6, 2009, that he was injured when he tripped or was caught up in a cable lying on top of the grass in his yard. In May 2007, Comcast of Delmarva, Inc. (“Comcast”) replaced the cable wiring to Plaintiff’s home. At the time the work was completed, the new cable was left above the ground, not buried as the previous cable had been. The actual work was performed by Robert Croom operator of Old Fashion Communications, Inc. (“OFC”) Comcast has an agreement with Cablenet Services Unlimited, Inc. (“Cablenet”) whereby Cablenet provides installation, disconnection and maintenance services assigned by Comcast through orders. Cablenet hired OFC as a subcontractor.

At the time the wiring was replaced, Plaintiff alleges that he was told that the cable would be buried in about five days. Eight weeks after installation, the cable still had not been buried. On July 8, 2007, Plaintiff, who normally only traversed this area of his yard when he needed to go to his storage shed, allegedly became caught by the cable. According to the Complaint, the cable became wrapped around his left foot and ankle. Plaintiff was in a wheelchair at that time. He claims the wheels of the wheelchair came to rest on the cable causing it to pull tight. As a result, the Plaintiff

*Wenteler v. Comcast, et al.*  
C.A. No.: 09C-07-011 RBY  
June 11, 2013

claims to have suffered injuries to his foot, as well as incurring pain to his upper body when he was thrown to the ground.

Comcast's records show that Plaintiff called in on June 4 and June 15, 2007. Plaintiff alleges those calls pertained to the unburied wire. Comcast's work order history also shows work orders for Plaintiff dated June 4, 20 and July 2, 2007. Despite both the calls and work orders, the cable had still not been buried on July 8, 2007, when the alleged injuries to the Plaintiff occurred.

The contract between Cablenet and Comcast allegedly required Cablenet to complete and submit certain forms after work was completed. One purpose of these forms was to identify further work that needed to be done, such as the need to return to a customer's home to bury wires. OFC completed the proper paperwork and submitted it to Cablenet. It appears that Cablenet was then responsible for passing that paperwork on to Comcast, and for handling invoicing and payments. Comcast alleges that it never got any paperwork from Cablenet, identifying a need for further work on Plaintiff's property. Cablenet alleges that it did submit the paperwork.

No one disputes that OFC was paid for its completed work. However, Comcast contends that it did not have notice, because of Cablenet's failure to fulfill the paperwork requirements of the need to return and bury the wire. Cablenet claims that it did submit the paperwork, as evidenced by payment, and that even had it not submitted the paperwork Comcast was still on notice of the need to bury the wire based on both the nature of the work completed and Plaintiff's calls to the company.

Plaintiff argues that Comcast was negligent in failing to bury the wire in a timely fashion, or for leaving it on the property without proper identification and

placement. OFC filed a Motion for Summary Judgment with this Court, claiming it owed no duty to the Plaintiff, and that its actions were not the proximate cause of his alleged injuries.

Fourth Party Defendant OFC's Motion for Summary Judgment was granted by this Court on February 15, 2013. At that time, the Court also heard Cablenet's Motion for Summary Judgment. That Motion was also granted by the Court on February 15, 2013. However, Comcast subsequently filed a Motion for Reargument, which was granted by this Court, bringing Cablenet back in as a party to the case. As a result, additional arguments regarding Cablenet's Motion for Summary Judgment were presented to the Court on March 15, 2013. The decision of the Court regarding OFC remains in effect. This is the Court's opinion regarding Cablenet's Motion for Summary Judgment following reargument.

### **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.<sup>1</sup> "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."<sup>2</sup> The movant bears the initial burden of establishing that no genuine issue of material fact exists.<sup>3</sup> Upon

---

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

<sup>2</sup> *Id.*

<sup>3</sup> *Ebersole v. Lowengrub*, 54 Del. 463 (Del. 1962).

making that showing, the burden shifts to the non-movant to show evidence to the contrary.<sup>4</sup> When considering a motion for summary judgment, the Court considers the facts in the light most favorable to the non-movant.<sup>5</sup>

### **DISCUSSION**

Cablenet argues that summary judgment should be granted in its favor as it allegedly produced all appropriate documents to Comcast after the work was done, thus ending its involvement in the transaction. Apparently, the actual documents in question have not been produced despite motions to compel. However, Cablenet asserts that the fact that it was paid by Comcast for the work in question indicates that the appropriate documents were given to Comcast. The issue of what documents were passed between Cablenet and Comcast remains an issue, because of the open discovery matters. As a result of the aforementioned motions to compel, the parties reached an agreement with the Court whereby a proposed order was filed. That order precludes Comcast from introducing any additional documents concerning the contractual relationship or requirements between it and Cablenet or the work performed at Plaintiff's property other than the documents already identified or produced. While it is certainly true that Comcast will not be allowed to introduce documents that fall within the purview of the order in support of its contention that it did not receive notice, there is a broader issue that remains unresolved at this juncture. Comcast's claim is that Cablenet is also at fault for the alleged injury to the

---

<sup>4</sup> *Id.*

<sup>5</sup> *Tedesco*, 2006 WL 1817086, at \*1.

*Wenteler v. Comcast, et al.*  
C.A. No.: 09C-07-011 RBY  
June 11, 2013

Plaintiff because it failed to provide Comcast notice that the cable line need to be buried. The documents in question are only part of the answer to that question. A fact dispute remains regarding Cablenet's duties in connection with Plaintiff's claim. Otherwise stated, what role, if any, Cablenet played in causing the Plaintiff's alleged injury is unresolved.

Cablenet has argued that, even if the paperwork in question was not properly submitted, it has no responsibility for Plaintiff's injuries. It is Cablenet's position that Comcast was on notice that the wire needed to be buried because that was always something that needed to be done in this situation. Cablenet further argues that the Plaintiff's phone calls to Comcast were in reference to the unburied wire, which would, at the very least, put it on notice of the issue at that point. Again, whether or not Comcast was on notice of the issue, in the absence of the referenced paperwork, is an issue of fact. The same is true for the content of the phone calls made between the Plaintiff and Comcast. Even if these facts are not themselves disputed, there still is a dispute about what they mean.

### **CONCLUSION**

At this stage in the proceedings genuine issues of material fact remain. For that reason, Cablenet's Motion for Summary Judgment is **DENIED**.

**IT IS SO ORDERED.**

/s/ Robert B. Young

J.

*Wenteler v. Comcast, et al.*  
C.A. No.: 09C-07-011 RBY  
June 11, 2013

RBY/lmc

oc: Prothonotary

cc: Counsel

Opinion Distribution

File