

was the extent of Chaps' involvement with the property. Woodale has had exclusive use of the property since entering the lease.

3. On June 7, 2004, plaintiffs filed a complaint seeking damages resulting from the ingestion of arsenic and other substances suffered by the minor Plaintiff, Jordan Ottinger, while living on property located next to the Delaware National Country Club.

4. On June 12, 2007, Chaps brought this motion for summary judgment on the ground that there are no disputed facts and that Chaps is entitled to judgment as a matter of law. Chaps contends that it is merely the titled owner of the property and that because Woodale maintained possession and control, Chaps is not liable for any injury caused by a condition on the property.

5. Under Delaware law, a landowner who has neither possession nor control of the leased premises is not liable for injuries to third persons.¹ Thus, a lessor of land is not subject to liability to his lessee or others upon the land with the consent of the lessee or sublessee for physical harm caused by any dangerous condition which comes into existence after the lessee has taken possession.² 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."³ Under these circumstances, it is necessary to show actual control because "once a landlord leases property, he generally relinquishes both control and possession of the leased area to the lessee."⁴

6. Chaps involvement in this transaction is unique because it purchased the property from Hercules Country Club and leased it immediately to Woodale. Delaware premises-liability

¹ *Volkswagen of America, Inc. v. Costello*, 880 A.2d 230, 233 (Del. 2005)(citing *Craig v. A.A.R. Realty Corp.*, 576 A.2d 688, 694 (Del. Super. Ct. 1989), *aff'd* 571 A.2d 786 (Del. 1990)).

² *Id.*

³ *Id.* (citing *Craig*, 576 A.2d at 694).

⁴ *Id.* (citing *Argoe v. Commerce Square Apts. Ltd. Partnership*, 745 A.2d 251, 255 (Del. Super. Ct. 1999)).

law imposes a duty only on landowners that either retain possession or create dangerous conditions before relinquishing possession.⁵ Given the simultaneous nature of the purchase and lease transaction, the record does not support any finding of control on the part of Chaps.

7. Arguing the exception to the rule, Plaintiffs contend that Chaps is liable as an out-of-possession owner which retained control of portions of the land which the lessee is entitled to use. Specifically, they cite a provision in the lease that requires Woodale to seek written approval from Chaps before making any alterations or additions to the land—including removal of trees and movement of dirt.

8. Actual control in the context of the duty owed by a landlord means the authority to manage, direct, superintend, restrict or regulate.⁶ Neither the right to inspect the premises by the landlord nor the reservation of a right to inspect coupled with a right to retake control under certain circumstances amounts to control.⁷

9. In spite of years of discovery, no evidence has been presented to suggest that Chaps was ever asked to or authorized changes to the land.

There being no issue of material fact, Defendant Chaps 901, LLC's motion for summary judgment is GRANTED.

IT IS SO ORDERED.

/s/ Susan C. Del Pesco
Judge Susan C. Del Pesco

Original to Prothonatary
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⁵ *Volkswagen*, 880 A.2d at 235.

⁶ *Craig*, 576 A.2d at 695

⁷ *Id.*