

**SUPERIOR COURT  
OF THE  
STATE OF DELAWARE**

WILLIAM C. CARPENTER, JR.  
JUDGE

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RE: Albert Kentrus v. Rite Aid of Delaware, Inc. et al.  
C.A. No. N15C-04-234 WCC

On Defendant JEM IV, LLC's Motion for Summary Judgment - GRANTED

Submitted: November 12, 2018

Decided: November 26, 2018

**LETTER OPINION**

Dear Counsel:

The Court has before it a Motion for Summary Judgment filed by JEM IV, LLC and has received responses from Plaintiffs as well as Defendants Rite Aid of Delaware (Rite Aid) and Deaton McCue and Company, Inc. (Deaton McCue). From these submissions and the documents and depositions attached, the Court believes that oral argument is not necessary, and based upon the pleadings filed, the Court will grant JEM IV, LLC's Motion.

The law in this area is not disputed. It was set forth in Judge Cooch's Memorandum Opinion in *Heaps v. Luna*:

Numerous Delaware cases have addressed the "control" issues raised by this motion. "Control in the context of the duty owed by a landlord means the authority to manage, direct, superintend, restrict or regulate." To determine whether a non-possessory landlord owed a duty to protect business invitees from hazardous conditions requires analysis of "whether the landowner/landlord had control of the premises." "The element of duty in a negligence action is an issue of law for the Court to decide." "Neither the right to inspect the premises by the landlord, nor the reservation of a right to inspect coupled with the right to retake control under certain circumstances amounts to control."

The precise issue here is whether the landlord "exercised actual control" over the area where the accident occurred. The mere fact that a landowner has the right to inspect or retake a parcel does not constitute actual control. Actual control does not require exclusive control, but rather some degree of actual control. Finally, although possession and control are related concepts, "it is possible for a landowner to retain some possession, but relinquish all control to a lessee or another party."<sup>1</sup>

Here there is no dispute that JEM IV, LLC is made up of a group of European investors. They have no employees located in the United States or on this particular property and, from all accounts, simply consider the property to be an investment, receiving monthly financial statements from the management company they have hired to oversee the property. One investor of the group comes to the United States each year and will visit the property, but takes no further action in managing or controlling it. JEM IV, LLC has hired Deaton McCue to manage the property and they oversee the maintenance of all common areas. The tenants have land leases for their properties and they are responsible for the land area they lease. The questions for this litigation are whether the grass strip where Plaintiff Albert Kentrus fell was maintained and controlled by Rite Aid or by Deaton McCue and whose negligence caused his injuries.

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<sup>1</sup> *Heaps v. Luna*, 2012 WL 7760048, at \*3 (Del. Super. Ct. Dec. 31, 2012).

JEM IV, LLC is a non-possessory landlord who had no control of the premises. They did not manage, direct, supervise, restrict or regulate the shopping center in any fashion. This responsibility was given to Deaton McCue and, to the extent the incident occurred on common land controlled by them, they would be held liable. If the area is part of the land lease that Rite Aid has undertaken, they would be held responsible. Under the facts here, JEM IV, LLC does not exercise sufficient actual control to find they owed a duty to Plaintiff Albert Kentrus to protect him from hazardous conditions.

There are documents provided in Rite Aid's response reflecting a desire by the owners to allow free travel and access to the various businesses who have leases in the shopping center. While these documents reflect restrictions placed on lease owners from constructing objects that would deter free access, the Court finds it is not sufficient to meet the "control" requirement as set forth in *Heaps*. While it is unclear who decided to build the sidewalk that ends in a grassy area, it does not change the obligations of the owners in this litigation.

Based upon the above, the Court will grant JEM IV, LLC's Motion for Summary Judgment.

IT IS SO ORDERED.



Judge William C. Carpenter, Jr.

WCCjr:twp