

**SUPERIOR COURT
of the
STATE OF DELAWARE**

Susan C. Del Pesco
JUDGE

NEW CASTLE COUNTY COURTHOUSE
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Submitted: May 10, 2004
Decided: May 13, 2004

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Re: *Victoria Pesta v. Gail Warren, individually, and Gary Warren, individually, and Gail and Gary Warren, jointly as owners of 604 West Avenue, New Castle, DE, an apartment building.*
C.A. No. 03C-04-294 SCD

Dear Counsel:

The plaintiff has filed a motion for partial summary judgment seeking a ruling that her claim is not governed by 25 *Del. C.* §1501. It states:

No person who enters onto private residential or farm premises owned or occupied by another person, *either as a guest without payment or as a trespasser*, shall have a cause of action against the owner or occupier of such premises for any injuries or damages sustained by such person while on the premises unless such accident was intentional on the part of the owner or occupier or was caused by wilful or wanton disregard of the rights of others.¹

¹ DEL. CODE ANN. tit. 25, § 1501 (2002). (emphasis added)

Plaintiff contends that at the time of the accident, she was visiting a tenant of the defendant-landlord, and thus was neither a *guest without payment* nor a *trespasser*. Were she either, she would be required to prove that her injuries were the result of either intentional or willful and wanton conduct on the part of the owner.

On June 26, 2001, Victoria Pesta (“Plaintiff”) visited Regina Sheetz at 604 West Ave, Apartment C in New Castle (“604 West”). As plaintiff descended the external stairway, which was the sole means of ingress and egress, she claims that a loose step caused her to fall and sustain injuries. On the date in question, the apartment building was owned by Gail and Gary Warren (“Landlord”). Sheetz was interested in renting the apartment and was given a key by Landlord so that she could clean the apartment prior to signing a lease. Landlord required that Sheetz pay a security deposit before signing a lease which deposit was never paid, so no lease commenced. Landlord claims that it was not until after the incident in question that Sheetz’ presence in the apartment was known.²

On July 20, 2001, Landlord filed an action for Debt and Summary Possession in the Justice of the Peace Court. A default judgment for two months rent, June and July, and a Writ of Possession were entered on August 24, 2001. On September 11, 2001, after the expiration of the appeal period, the Constable posted an Eviction Notice at 604 West. Landlord now claims that Sheetz was not a tenant. Plaintiff argues that the landlord made a judicial admission in the Justice of the Peace Court action that Sheetz was a tenant, and is now barred from taking a contrary position.

Summary judgment may be granted if there are no material issues of fact, viewing the record in light most favorable to the non-moving party.³ A judicial admission is a formal statement by a party in the course of judicial proceedings, which removes an admitted fact from the field of controversy.⁴ Judicial admissions are recognized in Delaware.⁵ The legal significance of the dispute is that if Sheetz was a tenant, there is case law for the proposition that while a tenant may be entitled to the protection of 25 *Del. C.* § 1501, a landlord is not.⁶ On the other hand, if Sheetz has no legal status, i.e. was a trespasser, plaintiff is arguably a trespasser, too.

I conclude that the doctrine of judicial estoppel is applicable to this dispute. The landlord sought the benefit of the remedies available under the landlord-tenant statute to secure a

² *Bell v Halfen*, 493 A.2d 304 (Del. 1985).

³ *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979).

⁴ 29A Am Jur 2d, Evidence § 770 (1994).

⁵ *Krauss v. State Farm Mutual Automobile Ins. Co.*, Del. Super., C.A. No. 03C-08-252, Cooch, J. (Apr. 23, 2004) (Mem. Op.) at 11.

⁶ *Ford v. Ja-Sin*, 420 A.2d 184 (Del. 1980); *Mosher v. Evans*, Del. Super., C.A. No. 96C-01-020, Terry, J. (Mar. 31, 1998) (Op.) 1998 Del. Super. LEXIS 183.

judgment against Sheetz and to have her evicted. The predicate of that complaint is the notion that Sheetz was a tenant. That assertion cannot now be repudiated.

The standard of care which is applicable to the claim against the landlord is negligence.⁷ Thus, plaintiff's motion for partial summary judgment is GRANTED.

IT IS SO ORDERED.

Very truly yours,

Susan C. Del Pesco

Original to Prothonotary

⁷ *New Haverford Partnership v. Stroot*, 772 A.2d 792 (Del. 2001); see also *Naidu v. Laird*, 539 A.2d 1064 (Del. 1988).