IN THE SUPREME COURT OF THE STATE OF DELAWARE

WANDA SANCHEZ-CASTILLO,	)
	) No. 184, 2010
Plaintiff Below,	)
Appellant,	) Court Below: Superior Court
	) of the State of Delaware in
v.	) and for New Castle County
	)
GIUSEPPE CHIRICO,	) C.A. No. 08C-10-104
	)
Defendant Below,	)
Appellee.	)

Submitted: November 3, 2010
Decided: November 24, 2010

Before **STEELE**, Chief Justice, **BERGER** and **RIDGELY**, Justices.

O R D E R

This 24th day of November, 2010, it appears to the Court that:

(1)   Wanda Sanchez-Castillo filed a complaint against her landlord, Giuseppe Chirico, after she allegedly tripped on a broken floor tile in her apartment and broke several bones in her leg and injured her back. After trial, Sanchez-Castillo asked the judge to reformulate a jury instruction related to landlord duties and to replace the first special verdict interrogatory. The judge denied both requests. After a jury verdict for Chirico, Sanchez-Castillo appeals. We **AFFIRM**.

(2)   Sanchez-Castillo allegedly tripped over a broken floor tile in her rental apartment and broke two bones in her leg and injured her back. She sued

Chirico for negligence by failing to inspect and repair the property. Chirico denied liability, arguing that he had neither actual nor constructive notice of the defect and could not be liable. During the prayer conference at the end of trial, Sanchez-Castillo objected to the special verdict interrogatory which asked the jury to decide whether Chirico had actual or constructive notice of the defective condition. Sanchez-Castillo requested that the judge both instruct the jury regarding a landlord's duty to reasonably inspect and discover dangerous conditions on the premises and replace the first listed special verdict interrogatory. She requested that the judge ask the jury whether Chirico was negligent and whether that negligence was a proximate cause of Sanchez-Castillo's injuries. The judge denied both requests. The jury determined that Chirico lacked actual and constructive notice of the defect, and returned a verdict for Chirico on the basis of the first special verdict interrogatory. Sanchez-Castillo now appeals.

(3) We review the decision to give a particular jury instruction or special verdict interrogatory for abuse of discretion.[1] While trial courts have discretion

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[1] *Carter v. State*, 873 A.2d 1086, 1088 (Del. 2005); *Booker v. State ex rel. Sec'y of Dep't of Transp.*, 642 A.2d 836, 1994 WL 99967, at *2 (Del. Mar. 21, 1994) (ORDER).

with respect to the specific formulation of jury instructions and special verdict interrogatories, the Superior Court must give a correct statement of the law.[2]

(4)   Several sections of Delaware's Residential Landlord-Tenant Code inform a landlord's duty to repair defects in rented premises. 25 *Del. C.* § 5505(a) explains that "Any defective condition of the premises which comes to the tenant's attention, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported in writing by the tenant to the landlord as soon as is practicable." 25 *Del. C.* § 5505(c) qualifies this reporting requirement in cases where the landlord has actual notice of the defect—"The provisions of this section shall not apply where the landlord has actual notice of the defective condition." Finally, 25 *Del. C.* § 5114 defines the circumstances under which a person has notice of a fact.[3] To succeed on a negligence claim, a tenant must prove that the landlord had a duty to repair, the contours of which are defined by these provisions, considered together. Without actual or constructive notice of a patent defect, a landlord has no duty to repair that patent defect. Sanchez-Castillo argues

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[2] *Banther v. State*, 884 A.2d 487, 492–93 (Del. 2005).

[3] 25 *Del. C.* § 5114 Notice; contractual notice between the parties.

> A person has notice of a fact if:
> (1) The person has actual knowledge of it;
> (2) The person has received a notice pursuant to the provisions of this Code; or
> (3) From all the facts and circumstances known at the time in question such person has reason to know that it exists.

that a landlord has a duty to perform a reasonable inspection of the rental property for patent defects, but Delaware's Residential Landlord-Tenant Code imposes no such duty. Indeed, if a landlord had such a duty, Section 5505(a), which imposes a duty on the tenant to report a patent defect, would be superfluous.

(5) In this case, the judge instructed the jury that Sanchez-Castillo needed to prove that Chirico had actual or constructive notice of the defective condition.[4] Then, in the first special verdict interrogatory, the judge asked the jury to determine whether Chirico had actual or constructive notice.[5] If the jury answered "yes" to this interrogatory, then it would proceed to address questions of Chirico's negligence, proximate cause, comparative negligence, and damages.[6] Since only actual or constructive notice of a defect can give rise to a landlord's duty to repair the defect, and a tenant's negligence action fails if he cannot establish that the landlord had a duty to repair, the jury instruction and special verdict interrogatory the judge gave the jury in this case were proper statements of the law. Therefore,

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[4] Appendix to Op. Br. at A131 ("Sanchez-Castillo must establish . . . [t]hat Giuseppe Chirico was given notice by [Sanchez-Castillo]. . . of a defective flooring condition . . . or from all the facts and circumstances known by [Chirico] at the time in question he had reason to know that the defective flooring condition existed.").

[5] Appendix to Op. Br. at 152 ("Do you find that [Chirico] had either actual or constructive notice of a defective condition in the flooring of [Sanchez-Castillo's] apartment that required repair? . . . If your answer is "NO," call the bailiff. You have reached a verdict for [Chirico].").

[6] Appendix to Op. Br. at A153–54

the judge did not err when he gave the instruction or issued the special verdict interrogatory.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice