



STATE OF DELAWARE
JUSTICE OF THE PEACE COURT NO. 13
1010 CONCORD AVENUE
CONCORD PROFESSIONAL CENTER
WILMINGTON, DELAWARE 19802

TELEPHONE: (302) 577-2550

SYSTEM ID: @2706924
ZEWEN CHEN
55 WORRAL DR
NEWARK, DE 19711

VS.

Civil Action No.: JP13-15-001336

SYSTEM ID: @2724343
IRRAHEEM OWENS
1074 OLD FORGE ROAD
NEW CASTLE, DE 19720

Appearances:

Appellant-Defendant Irraheem Owens appeared pro se
Appellee-Plaintiff Zewen Chen appeared represented by Kevin S. Mann, Esq.

Before: Lee, D.C.M.; Ufberg, J.; and, Roberts, J.

Appeal: May 29, 2015
Decided: June 29, 2015

NOTICE OF JUDGMENT

Procedural Background

The matter presently before the Panel is an Appeal of an Order entered April 24, 2015 in a summary possession action brought by Plaintiff Zewen Chen against Defendant Irraheem Owens. Trial by jury was held and a judgment was awarded to Plaintiff Chen and against Defendant Owens for possession of the rental unit, rent and late fees from August 1, 2014 through April 30, 2015 of \$\$9,450.00, per diem rent beginning May 1, 2015 of \$35.00 until possession, Court Costs of \$51.50 and 5.75 Post-Judgment Interest per annum. On the counterclaim, judgment was awarded to Plaintiff Chen and against Defendant Owens. On May 1, 2015, Defendant/Appellant (Irraheem Owens) filed a timely appeal of the jury's verdict. Deputy Chief Magistrate Lee, Judge Ufberg and Judge Roberts constituted the Panel on appeal. This is the Panel's decision.

Legal Analysis

Appeals in Landlord/Tenant Summary Possession petitions in Justice of the Peace Court are controlled by 25 Del. C. §5717. The specific requirements for appeals from Jury Trials are set forth in 25 Del. C. §5717 (c) which provides, in pertinent part:

VIEW YOUR CASE ONLINE: <http://courtnconnect.courts.delaware.gov>

...(c) Jury Trials. With regard to jury trials, a party aggrieved by the judgment rendered in such proceeding may request, in writing, within 5 days after judgment, a review by an appellate court comprised of 3 justices of the peace other than the justice of the peace who presided at the jury trial... This review shall be on the record and the party seeking the review must designate with particularity the points of law which the party appealing feels were erroneously applied at the trial court level...25 Del. C. §5717(c).

Thus, it is clear that such appeals shall be reviewed on the record and new facts or issues may not be introduced at the time of the appeal hearing. Accordingly the appeal to the three-judge panel is limited to correcting errors of law and to review the factual findings of the jury and determine if they are sufficiently supported by the record and are the product of an orderly and logical deductive process. However, as set forth clearly above, the Appellant bears the burden of specifically designating any such errors of law or misapplication of the facts.

In the matter presently before the panel, Appellant alleges that the following errors of law occurred at the time of the Jury trial, thus the panel is limited to a review of the issues as they have been presented as follows:

1. "The jury did not consider" the following sections of the Landlord-Code: §§5308; 5307; 5901; 5305; and 5516;
2. The Court erroneously instructed the jury to consider 25 Del. C. §5702, which Appellant asserts not apply to the contract at issue based upon a clause 17 within the contract which states "If the Landlord determines that the Tenant is in default of this Agreement, Landlord may not terminate Tenant's right to use and occupy the Premises."
3. The Jury demonstrated bias and was disruptive during the proceedings.

Review of Jury Consideration of Cited Provisions of Landlord-Tenant Code

The Appellant asserts that Jury "failed to consider" the following provisions of the Landlord-Tenant code: §§5308; 5307; 5901; 5305; and 5516.

It is unclear whether the Appellant is asserting that the Court failed to give a jury instruction directing the Jury to consider the various issues, or whether the Appellant is asserting that the Jury was given the proper instructions but failed to properly apply the facts entered into evidence to the law.

25 Del. C. §§5305, 5307 and 5308

24 Del. C. §§5305, 5307 and 5308 are the pertinent laws relating to a landlord's obligation to maintain a safe, sanitary and healthful residence for each of their tenants. The Appellant asserts that the Jury "failed to consider" these three provisions when making their decision. As stated above, it is unclear whether the Appellant is asserting that the Court failed to give jury instructions directing the jury to consider these provisions or whether the Appellant is conceding the instructions were given, but that the jury failed to properly apply the facts entered into evidence to the law.

A review of the record clearly demonstrates that jury instructions relating to the three provisions were given. Prior to the instructions being given, Appellant was given a full and fair opportunity to review the instructions outside the presence of the jury and made no objections

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

regarding the form or content of the instructions. Not only did the trial court judge verbally instruct the jury regarding the pertinent portions of each provision, the jury was provided with a complete un-redacted copy of each provision for their reference. Thus, to the extent that Appellant asserts that the trial court failed to charge the jury with the applicable law or instructed the jury erroneously, the Panel finds that the trial court judge committed no legal error.

To the extent that Appellant asks us to reverse the jury's application of the facts to the law based upon her theory that that the evidence supported her claims under 24 Del. C. §§5305, 5307 and 5308, the Panel is guided by long standing Delaware law which states that a jury's finding of facts may not be disturbed if there is "**any competent evidence** upon which the verdict could be legally based." See, Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co., 866 A.2d 1, 24 (Del. 2005). [Emphasis added].

A review of the records demonstrates that Appellant presented very limited admissible evidence to support her claims relating to rent abatement. She supported her claims primarily with letters that she, herself had written and her own verbal testimony.

The two witnesses from the Department of License and Inspection who testified on Appellant's behalf had very little to no first-hand knowledge regarding the alleged heating issue, other than each seeing a sticker that someone had placed on the heater. Neither of the witnesses had been pre-qualified during the course of the proceeding as a heating expert. Furthermore, one of the witnesses noted that on the day she conducted her inspection the residence was showing an internal temperature in the high 60 degree range. The second witness presented no testimony regarding the actual temperature of residence on the date of his inspection.

In regard to the infestation of vermin or bugs, they each testified to a very limited presence of some sort of bugs which were located in a few traps and a very small amount of some substance which Appellant claimed was a rodent dropping. Again, neither of the witnesses had been pre-qualified to give testimony as experts in the field of extermination and each appeared to voice their opinion based upon what they had simply been told by Appellant.

Thus, although Appellant asserts that the residence had extensive and hazardous infestation and the heater was not properly functioning, she failed to present any expert testimony to substantiate her claim. It is well-settled Delaware law that, if a claim requires proof of facts that are "not within the common knowledge of laymen," those facts must be presented through competent expert testimony. Campbell v. DiSabitino, 947 A.2d 1116, 1118 (Del. 2008).

In contrast, competent evidence was presented to the jury from which they could have reasonably drawn the conclusion that there was a negligible level of minor infestation within the residence. The two inspectors testified that they saw a few bugs in a few traps throughout the house. The inspectors each testified to seeing one small indication of a substance that Appellant, herself, identified as rodent droppings.

25 Del. C. §5307 governs minor maintenance issues or issues involving the sanitary condition of a residence, such as those posed by minor infestations and contains the following key phrase: "A tenant who is otherwise delinquent in the payment of rent **may not take advantage of the remedies provided in this section.**" 25 Del. C. §5307(c).[Emphasis added]. As Appellant was several months behind in rent at the time of the inspections in March and April 2015, the jury could most certainly make a legally supported finding that Appellant was not entitled to any relief.

In addition, the jury could have certainly come to a conclusion that an orange sticker placed on

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

heating unit was insufficient evidence to establish that the heater was actually broken. The conclusion is further supported by the fact that the first inspector noted that during the March inspection that the residence was actually heated to a temperature in the high 60 degree range. The second inspector presented no testimony at all regarding the actual temperature within the residence. Thus, the jury was presented with competent evidence which could substantiate a finding that the landlord had, in fact, actually provided heat within the residence and had not, consequently violated her obligation to provide essential services under the provisions of 25 Del. C. §§5307 and 5305.

Thus, although the Appellant may not personally agree with the findings of the jury relating to the issues, a review of the record in total demonstrates that the findings of the jury were supported by competent evidence and were the product of an orderly and logical deductive process.

Having applied the appropriate review standards to the facts and evidence of record, the Panel discerns no error of law in the trial court's instructions relating to the jury charges or any legal insufficiency of evidence to support the jury verdict, with respect to consideration of 25 Del. C. §§5305, 5307 and 5308.

25 Del. C. §5901

24 Del. C. §5901 applies only to those circumstances in which a tenant files a petition for the establishment of a receivership. The matter before the Court was presented as an action for summary possession as well as a counterclaim relating to various claims relating to the condition of the premises; at no point was a petition for receivership presented to the Court. Consequently the Panel finds that the failure of the trial judge to include a jury instruction relating to 25 Del. C. §5901 does not constitute judicial error as the issue of receivership was not before the Court.

25 Del.C. § 5516

25 Del. C. §5516 sets forth the law regarding the prohibition of retaliatory acts. In regard to the claim of retaliation, the Panel notes that a review of the full record indicates that the issue was not raised by Appellant in the counterclaim, during the pre-trial conference, during opening statements or during closing arguments. In addition, Appellant failed to submit a jury instruction relating to the issue in accordance with the Pre-Trial Order of April 22, 2015 and made no oral request for such a jury instruction when given the opportunity to do so at the time of trial. Appellant's argument that such an instruction should have been given or the alternative argument that the jury should have considered this issue, made at the time of appeal represents an improper attempt for Appellant to add new legal claims relating to the matter at the time of appeal.

It well-settled under Delaware law that, with very limited exceptions not implicated in the instant matter, only questions fairly presented to the trial court may be presented for appellate review. *See, Beebe Med. Ctr., Inc. v. Bailey*, 913 A.2d 543, 555 (Del. 2006), as amended (Nov. 15, 2006). The Panel finds that Appellant was provided with a full and fair opportunity throughout the course of the entire litigation to present a retaliation claim, yet failed to do so. To allow her to insert this additional claim, at the time of appeal would result in substantial prejudice to Appellee and result in undue delay of the final resolution of this matter. Consequently the Panel finds that the failure of the Trial Judge to include a jury instruction relating to this issue did not constitute any judicial error.

25 Del. C. §5702

The Appellant asserts that the Court erroneously instructed the jury to consider 25 Del. C. §5702. The crux of her argument is that the provision does not apply to the contract at issue based

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

upon a clause within the contract which states: "If the Landlord determines that the Tenant is in default of this Agreement, Landlord may not terminate Tenant's right to use and occupy the Premises."

As provided, in 25 Del. C. §5101(a), the Landlord-Tenant Code regulates and determines all legal rights, remedies and obligations of the parties to a rental agreement or a rental unit.

25 Del. C. §5702 provides as follows, in pertinent part:

§5702. Grounds for summary proceeding.

Unless otherwise agreed in a written agreement, an action for summary possession may be maintained under this chapter because:

...(2) Tenant has wrongfully failed to pay the agreed rent...25 Del. C. §5507(2)

Appellant asserts that provision 17 of the lease should be interpreted to preclude Appellee from being permitted to bring a summary proceeding for possession against her.

Provision 17 of the lease provides as follows, in pertinent part:

17. DEFAULT BY TENANT. If Landlord determines that the Tenant is in default of this Agreement, Landlord may not terminate Tenant's right to use and to occupy the Premises...

The key phrase in controversy is the language providing that "If Landlord determines that the Tenant is in default of this Agreement, Landlord may not terminate Tenant's right to use and to occupy the Premises." Appellant argues that this phrase means that the Appellee is forever precluded from bringing any action for summary possession or ever evicting Appellant from the property regardless of whether she substantially violates any provisions of the contract. If this argument is taken to its logical conclusion it would mean that Appellee would be required to provide free housing to Appellant forever, regardless of whether Appellant ever paid any rent or not. Appellee, in contrast, argues that this provision merely restates Delaware law which prohibits a Landlord from exercising "self-help" and dispossessing tenants without a formal Order of the Court.

Contract terms themselves will be controlling when they establish the parties' common meaning so that a reasonable person in the position of either party would have no expectations inconsistent with the contract language. When the provisions in controversy are fairly susceptible of different interpretations or may have two or more different meanings, there is ambiguity. Then the interpreting court must look beyond the language of the contract to ascertain the parties' intentions. *See, Eagle Indus., Inc. v. DeVilbiss Health Care, Inc.*, 702 A.2d 1228 (Del. 1997).

In this case, a reasonable third person reading the contract in total could not possibly come to the conclusion that Appellee, in entering into the contract, agreed to grant Appellant the right to live for free for all time, with no right to legal recourse should the Appellant breach the agreement. Furthermore the lease itself specifically states within paragraph 44, "This Lease shall be construed in accordance with the laws of the State of Delaware."

In a perfect world, contracts would always reflect plainly and accurately the compromises and allocation of risk that the parties intend. The reality is that the contractual language defining rights and obligations of the parties is sometimes ambiguous. It is a court's duty to preserve to the extent feasible the expectations that form the basis of a contractual relationship. When, as in the instant case, the meaning and application of contract terms are uncertain, a court fulfills this duty by considering the reasonable expectations of the parties.

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

Having applied the appropriate review standards to the facts and evidence of record, the Panel discerns no error of law in the trial court's instructions in regard to the to the jury charges relating to 25 Del. C. §5702.

Review of the Claim of Jury Bias

Under Delaware law, the right to a trial before a fair and impartial jury is considered to be a basic requirement of due process. In order to ensure that a jury is comprised of unbiased members, a trial court asks *voir dire* questions to elicit information so as to allow a judge to determine a prospective jurors' bias or prejudice. *See, DeShields v. State*, Del.Supr., 534 A.2d 630, 634 (1987). The goal is to secure for the parties an impartial jury that will be able to decide the case on the basis of the evidence presented at trial and follow the court's instructions on the law. *Id.* The standard for excluding a juror for cause, generally, is "whether the juror's views would prevent or substantially impair the performance of his duties as a juror in accordance with his instructions and his oath." *Id.*

A review of the record demonstrates that at the commencement of the proceedings the parties were provided the opportunity to observe the initial *voir dire* of the prospective jurors and to offer any *voir dire* questions which they deemed appropriate. Neither of the parties chose to supplement the *voir dire* questions presented to the jurors. During the course of the *voir dire* and prior to the actual commencement of trial, one of the jurors specifically identified herself as a property owner who engaged in the practice of renting out the property. Appellant was given the opportunity to question the prospective juror and chose, instead, to ask for clarification from the Court. After considering this juror, Appellant specifically stated that she had no objection to this juror. Other than this limited exchange, Appellant did not voice any concerns, questions or objections or seek to strike any of the jurors.

One of the predominant functions of the trial judge is to determine whether a juror is biased. *See, Wainwright v. Witt*, 469 U.S. at 429, 105 S.Ct. at 854-55. The basis for this assessment is not easily determined from the record on appeal. *Id.* It is for this reason that appellate tribunals accord deference to the trial court's findings. *See, DeShields at 636.* The record reflects that the trial judge in this instance asked extensive and pertinent *voir dire* questions, allowed the Appellant the proper opportunity to submit or object to *voir dire* questions as well as raise any issues relating to the jurors both before and during the proceedings.

In addition a review of the record, itself reflects no instance of juror disruption of the proceedings and no juror instances of bias. Furthermore, the record reflects that during the entire course of the proceedings, Appellant made no objections nor in any fashion voiced any concerns regarding any issues involving the jurors.

Consequently, The Appellant cannot meet her burden in establishing: that the Court committed any error relating to the jury; that her due process rights were impacted due to juror bias; or that that the jurors were disruptive or impacted the presentation of evidence or the proceedings in any fashion.

Conclusion

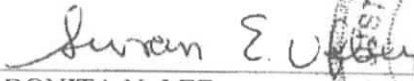
After a careful review of the pleadings filed, the evidence submitted, and the trial court proceedings, and having considered the oral arguments of the parties on May 30, 2015, we conclude the Order of the Court issued April 24, 2015 should be affirmed.

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

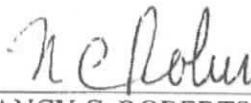
The record supports the factual findings of the jury and its conclusions are the product of an orderly and logical deductive process. In regard to the legal issues presented on appeal, we find no error of law or procedure by the trial court. To the extent that the issues involved on appeal involve matters of judicial discretion, we find no abuse of discretion by the trial court.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court dated April 24, 2015, and the same hereby is **AFFIRMED**.

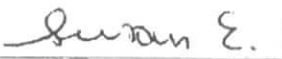
IT IS SO ORDERED this 29th day of June, 2015



(for) BONITA N. LEE
Deputy Chief Magistrate



NANCY C. ROBERTS
Justice of the Peace



SUSAN E. UFBERG
Justice of the Peace

