

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

FRED S. SILVERMAN  
JUDGE

NEW CASTLE COUNTY COURTHOUSE  
500 North King Street, Suite 10400  
Wilmington, DE 19801-3733  
Telephone (302) 255-0669

March 27, 2014

**(E-FILED)**

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RE: *Nakira Darden v. New Castle Motors, Inc.*,  
C.A. No. N12C-01-219 FSS

*Upon Defendant's Motion for New Trial and Motion for Relief from Judgment -*  
***DENIED***

Dear Counsel:

Defendant lost at a personal injury trial. Before and now, Defendant asserts judicial estoppel. Defendant claims Plaintiff failed to list her personal injury claim on her bankruptcy schedules. Thus, Defendant claims immunity here, even if, as the jury found, its negligence caused serious injury. The court previously rejected the estoppel argument. Alternatively, Defendant argues the verdict should be vacated pursuant to Superior Court Civil Rule 60(b), due to misleading precipitation records and testimony, and counsel's improper introduction of a damage value in his closing argument. The alternative arguments were also previously rejected.

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“Because of the significant interest in preserving the finality of judgments, Rule 60(b) motions are not to be taken lightly or easily granted. A proper standard must strike a balance between the interest in bringing litigation to an end and the countervailing concern that justice is carried out.”<sup>1</sup> Defendant does not specify which Rule 60 subsection it asserts. Under Rule 60(b)(3) seeking relief on the basis of fraud or misconduct, the moving party must present proof of “bad faith” and demonstrate “a fair likelihood of success on the merits” if relief is granted.<sup>2</sup> While the judicial estoppel argument touches on fraud, the judgment clearly was not the product of fraud or bad faith. The issue was openly litigated. Under Rule 60(b)(6), which allows for “any other reason justifying relief,” the party must first demonstrate “extraordinary circumstances.”<sup>3</sup>

Defendant filed a motion for summary judgment asserting judicial estoppel on July 31, 2013. The motion was denied October 3, 2013, and reargument was denied November 15, 2013. Judicial estoppel is a discretionary equitable remedy meant to protect the integrity of the judicial process.<sup>4</sup> Several factors inform the court’s decision whether to apply the doctrine, including whether the party’s later position was “clearly inconsistent,” whether the court was persuaded by the earlier position, and whether the inconsistency imposes an unfair burden on the opposing party.<sup>5</sup> Judicial estoppel “is intended to protect the courts rather than the litigants.”<sup>6</sup>

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<sup>1</sup> *Wilson v. Montague*, 19 A.3d 302 (Del. 2011) citing *MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625, 633-34 (Del. 2001).

<sup>2</sup> *Matter of \$2,053.00 in U.S. Currency*, 676 A.2d 908 (Del. 1996) (Table).

<sup>3</sup> *Daniels v. Bayhealth Med. Ctr., Inc.*, 2003 WL 22048214 (Del. Super. 2003).

<sup>4</sup> *New Hampshire v. Maine*, 532 U.S. 742, 749-750 (2001).

<sup>5</sup> *Id.* at 750-751.

<sup>6</sup> *Fleck v. KDI Sylvan Pools, Inc.*, 981 F.2d 107, 121-22 (3d Cir.1992).

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Judicial estoppel is inappropriate here for several reasons. The court observes Defendant has not made a record from which the court can hold Plaintiff had a duty to declare the incident. Even if she had a duty, Defendant similarly has not made a record of the extent, if any, the omission influenced the bankruptcy court. Further, this sort of omission does not go to the heart of judicial estoppel – fraud before the court. The evidence does not suggest Plaintiff sought to deliberately conceal or unfairly benefit from her claim. Perhaps most importantly, Plaintiff’s approach to her bankruptcy poses no unfair burden on Defendant, nor does the court need protection from Plaintiff’s conduct. To the contrary, giving Defendant a bye confers a windfall on Defendant, it punishes Plaintiff, and it may punish Plaintiff’s creditors, who may have recourse if Plaintiff shorted them. Accordingly, judicial estoppel will not bar Plaintiff’s claim.

Defendant’s other concerns were addressed at trial. Despite not being able to introduce the more specific hourly weather records, Defendant called a witness who unequivocally testified that it snowed on the day before the incident rather than that day. Further, as Plaintiff points out, evidence that it stopped snowing the day before the incident supports Plaintiff’s negligence claim. Anyway, the court made a record at trial.

Finally, Plaintiff’s counsel’s implying a dollar amount during closing argument was squarely handled at trial. The court immediately reprimanded Plaintiff’s counsel and instructed the jury that such a suggestion is prohibited.<sup>7</sup> The court does not agree that counsel’s misstep explains the damages award.

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<sup>7</sup> “The lawyers are prohibited from suggesting any number as to what the damages ought to be, and you have to ignore any suggestion in any form as to that.”

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For the foregoing reasons, Defendant's Motion for Reargument and Motion for Relief from Judgment is **DENIED**.

**IT IS SO ORDERED.**

Very Truly Yours,

/s/ Fred S. Silverman

FSS:khs

oc: Prothonotary (Civil)