

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

TRACY D. CRISCO)
Plaintiff,)
) C.A. No. 05C-05-079 MJB
v.)
)
FRANK MANDARANO and)
JO-ANN MANDARANO,)
)
Defendants.)

Submitted: March 30, 2006

Decided: June 8, 2006

Upon Motion for Summary Judgment of
Defendants Frank Mandarano and Jo-Ann Mandarano

DENIED.

OPINION AND ORDER

Robert C. McDonald, Esquire, Silverman, McDonald & Friedman,
Wilmington, Delaware, Attorney for Plaintiff Tracy D. Crisco.

George H. Seitz, III, Esquire, Kevin A. Guerke, Esquire, Seitz, Van Ogtrop
& Green, P.A. Wilmington, Delaware, Attorneys for Defendants Frank
Mandarano and Jo-Ann Mandarano.

BRADY, J.

Procedural History

The instant action was filed by Plaintiff Tracy D. Crisco (“Ms. Crisco”) on May 6, 2005. This Motion for Summary Judgment was filed by Defendants Frank Mandarano and Jo-Ann Mandarano (“Mandaranos”) on March 3, 2006. A hearing was held on March 30, 2006 addressing the positions of each party. This is the Court’s decision on the Motion.

Standard of Review

The standard for granting summary judgment is high.¹ Summary judgment may be granted where the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.² “In determining whether there is a genuine issue of material fact, the evidence must be viewed in a light most favorable to the non-moving party.”³ When taking all of the facts in a light most favorable to the non-moving party, if there remains a genuine issue of material fact requiring trial, summary judgment may not be granted.⁴ “Nor will summary judgment be granted if, upon an examination of all the facts, it seems desirable to inquire thoroughly into them in order to clarify the application of the law to the circumstances.”⁵

¹ *Mumford & Miller Concrete, Inc. v. Burns*, 682 A.2d 627 (Del. 1996).

² Super.Ct.Civ.R. 56(c).

³ *Muggleworth v. Fierro*, 877 A.2d 81, 83-84 (Del. Super. Ct. 2005).

⁴ *Gutridge v. Iffland*, 889 A.2d 283 (Del. 2005).

⁵ *Ebersole v. Lowengrub*, 180 A.2d 467, 470 (Del. 1962).

Facts and Contentions of the Parties

The instant dispute arises from a three-year commercial lease entered into between the Mandaranos and Ms. Crisco on April 15, 2002 beginning May 1, 2002 and ending on April 30, 2005. Ms. Crisco leased the premises from the Mandaranos for the purpose of operating a motorcycle repair and parts business.

On February 17, 2003 the property in which the leased premises was located, including all of Ms. Crisco's business property, was destroyed by fire. On May 6, 2005, Ms. Crisco filed a complaint against the Mandaranos alleging breach of the three-year commercial lease agreement. Specifically, Ms. Crisco seeks damages for losses to her property, property of others, loss of use of her business, and loss of income and profits. On March 3, 2006 the Mandaranos filed a Motion for Summary Judgment on the basis that the lease relieves them of liability for the precise type of recovery Ms. Crisco seeks in the instant case.

The Mandaranos argue paragraph 15 of the lease relieves them of liability for the fire damage Ms. Crisco seeks to recover in this action. Paragraph 15 of the lease reads:

INSURANCE: The Tenant is aware of the special insurance responsibilities of being a Tenant. The Owner's insurance DOES NOT cover Tenant's personal property for the loss from fire, theft, burglary, additional living expenses (in case of fire, etc.) personal liability or medical payments for injury to personals on the premises. Tenant shall make no claim against Landlord or Landlord's insurance company for any loss of whatsoever nature or kind, including but not limited to loss of use of the premises or loss of profits from business interruption arising out of fire or other casualty, regardless of the cause of such fire or other casualty. Tenant shall indemnify Landlord and Owner of the premises against

all liability arising during the Lease Agreement term from injury to person or customers, employees, assignees, or subleases. As greater assurance of Tenant's obligation to save harmless Landlord from any liability arising from the demised premises during the term of this Lease Agreement, Tenant shall supply Landlord with a copy of Tenant's liability insurance, which insurance must be in sufficient sums of coverage to satisfy Landlord's reasonable demands for such coverage.

Ms. Crisco alleges in the complaint the fire was caused by the heating or electric system. Based on this assertion, she argues paragraph 13 of the lease prohibits the Mandaranos from relieving themselves of liability for damages that result from their nonperformance of an express duty in the lease. Paragraph 13 of the lease reads:

13. CONDITION: This property is rented in "AS IS" condition at the time this Lease Agreement is executed, and no repairs, redecoration, cleaning, etc., not specifically acknowledged in writing by Landlord are contemplated. Landlord shall be responsible for all items of major repair, redecoration and maintenance, (including, but not limited to, roof, plumbing, electric and heating systems, etc.) not caused by Tenant abuse or neglect as covered in Paragraph 5 herein. Tenant is precluded by this Lease Agreement from ordering any materials, repairs, redecoration, or services of any kind to the property unless Tenant assumes full responsibility of the payment for same.

Conclusion

The Court has done extensive research and thoroughly reviewed the record in this case. This motion is made very early in the process, and no party has yet determined, with certainty, the cause of the fire. That fact, most significantly, but other factors as well, may affect the result in this matter. A review of multiple cases on point lead the Court to conclude either party could prevail depending on

how the facts develop. Therefore, it seems desirable to inquire more thoroughly into the cause of the fire in order to clarify the application of the law to the circumstances,⁶ and summary judgment at this time is inappropriate.

For the reasons stated herein, the Motion for Summary Judgment of Defendants Frank Mandarano and Jo-Ann Mandarano is hereby **DENIED**, without prejudice to renew it after discovery has concluded.

IT IS SO ORDERED.

/s/
M. Jane Brady
Superior Court Judge

⁶ *Ebersole v. Lowengrub*, 180 A.2d at 470.