

2. At the time of the fire, Teklai had a rental agreement (the “Rental Agreement”) with Admirals Club. Paragraph 8 of the Rental Agreement provided:

8. NO LIABILITY FOR LOSS OR DAMAGE TO TENANT’S PERSON OR PROPERTY; INDEMNITY OF LANDLORD – Tenant agrees to be solely responsible for any and all loss or damage to Tenant’s person or property or to the property of any other person, or property which may be situated in the rental unit during the term of this rental agreement or any renewal or extension thereof, including (but not limited to) any loss by water, fire, or theft in and about the rental unit and storage areas (if any), negligence of Landlord, it’s [sic] servants, agents and employees. Tenant further agrees to procure and maintain adequate content and liability insurance to afford protection to himself against the risks herein assumed. In addition, Tenant agrees to indemnify and save Landlord harmless from any and all loss occasioned by Tenant’s breach of any of the covenants, terms and conditions of this rental agreement, or caused by Tenant’s family, invites, guest, visitors, agents or employees.¹

3. Paragraph 17 of the Rental Agreement further provided:

17. TENANT/HOMEOWNER INSURANCE – Tenant shall obtain and maintain, for the entire term of the rental agreement and any subsequent extensions of renewals thereof, a Tenant/Homeowner insurance policy with sufficient coverage to provide adequate protection against loss of Tenant’s personal property and personal injury claims which may be brought by guests, invites, visitors, servants, agents, or employees of Tenant.²

¹ Docket 25, Ex. A (Rental Agreement).

² *Id.*

4. An additional form addressing the need for renters insurance was included with the Rental Agreement. This notice stated:

Although every effort is made to provide adequate maintenance to building, grounds, and apartment units, unforeseen events may occur from time to time and cause damage for which we cannot be held responsible.

Your attention is directed to paragraphs 8 and 17 of this Rental Agreement. By your signature(s) below, you hereby acknowledge that you have read and fully understand your obligation to procure adequate personal property and liability insurance for the entire term of Rental Agreement including any subsequent renewal period(s).³

5. Although Teklai signed the Rental Agreement and the renters insurance form, she never procured renters insurance.

6. Admirals Club has now moved to exclude any evidence relating to damages. Admirals Club contends that any damages awarded to Teklai would revert to Admirals Club for her failure to obtain insurance in breach of the written contract. Admirals Club has offered no case or statutory law in support of this position.

7. In response, Teklai contends that 25 *Del. C.* § 5301(a) (3) renders paragraphs 8 and 17 void as against Delaware public policy. Teklai further asserts that Admirals Club's attempt to enforce the void paragraphs entitles her to payment of three months back rent pursuant to 25 *Del. C.* §

³ *Id.*

5301(b). Teklai also argues Admirals Club never notified her that she had violated the Rental Agreement as it was required to do under 25 *Del. C.* § 5513. Finally, Teklai maintains that the Court should reject Admirals Club’s motion because it is contrary to the collateral source rule.

8. Section 5301(a)(3) of Title 25 of the Delaware Code prohibits a landlord from requiring a tenant, in a rental agreement, to exculpate or limit its liability for a violation of the Residential Landlord-Tenant Code (the “Code”) or to require a tenant to indemnify the landlord for any such liability or its related costs.⁴ If a provision violates Section 5301(a), it is unenforceable.⁵ Furthermore, the statute provides that if a landlord attempts to enforce a provision that he knows violates Section 5301(a), the tenant is entitled to bring an action to recover three months rent and the costs of the suit, excluding attorneys’ fees.⁶

9. Since paragraph 8 of the Rental Agreement explicitly limits Admirals Club’s liability for any loss by fire, water, theft, or negligence and requires Teklai to indemnify it in the event that any covenants are breached,⁷

⁴ 25 *Del. C.* § 5301(a)(3).

⁵ *Id.* § 5301(b).

⁶ *Id.*

⁷ Docket 25, Ex. A.

both provisions are in direct violation of 25 *Del. C.* § 5301(a)(3).⁸ Paragraph 8 is therefore unenforceable.⁹

10. Accordingly, Admirals Club may be liable for any negligence for failure to maintain its electrical facilities in good working order under 25 *Del. C.* § 5305(a). In order to maintain a negligence claim, a plaintiff must establish damages.¹⁰ Since Admirals Club cannot prevent Teklai from establishing a required element of her negligence claim, the Court will not preclude Teklai from offering evidence of damages.

11. Without question, the most compelling basis on which to deny Defendant's motion is that the collateral source rule expressly allows damages to be proven, even where a party has insurance. The collateral

⁸ 25 *Del. C.* § 5301(a)(3). Notably, the Code requires a landlord to maintain all landlord electrical facilities in good working order throughout the entire tenancy. *See* 25 *Del. C.* § 5305(a)(5). Teklai would therefore have a remedy under the Code if she could establish that Admirals Club breached this statutory duty.

⁹ Admirals Club's attempt to enforce paragraph 8 against Teklai also enables her to pursue a separate action to recover three months back rent if she chooses. *Id.* § 5301(b). Should Teklai wish to pursue such an action pursuant to 25 *Del. C.* § 5301(b), she will still have to establish that Admirals Club knew that enforcement of paragraph 8 violated Section 5301(a). *See id.* § 5301(b) ("If a landlord attempts to enforce provisions of a rental agreement *known by the landlord to be prohibited* by subsection (a) of this section the tenant may bring an action to recover an amount equal to 3 months rent, together with costs of suit but excluding attorneys' fees.") (emphasis added). The Court notes, however, that it is not ruling on the merits of any such action in this motion.

¹⁰ *See, e.g., Campbell v. Disabatino*, ___ A.2d ___, 2008 WL 1810085, at *1(Del. Apr. 23, 2008) ("To prevail in a claim for negligence, a plaintiff must establish that: 1) the defendant owed the plaintiff a duty of care; 2) the defendant breached that duty; 3) the plaintiff was injured; and 4) the defendant's breach was the proximate cause of the plaintiff's injury.") (citation omitted).

source rule provides that a tortfeasor has no right to mitigate damages because of payments or compensation that an injured person has received from an independent source.¹¹ Because a tortfeasor has no right to any monies received by the plaintiff from sources unconnected to the defendant, he has no right to benefit from the collateral payments.¹² Moreover, the purpose of the rule is to protect the innocent victim:

The collateral source rule is designed to strike a balance between two competing principles of tort law: (1) a plaintiff is entitled to compensation sufficient to make him whole, but no more; and (2) a defendant is liable for all damages that proximately result from his wrong. A plaintiff who receives a double recovery for a single tort enjoys a windfall; a defendant who escapes, in whole or in part, liability for his wrong enjoys a windfall. Because the law must sanction one windfall and deny the other, it favors the victim of the wrong rather than the wrongdoer. . . . Thus, the tortfeasor is required to bear the cost for the full value of his or her negligent conduct even if it results in a windfall for the innocent plaintiff.¹³

12. Applying this rationale to the case at bar, Admirals Club, as the alleged tortfeasor, may not receive the benefit of Teklai's decision to forego obtaining renters insurance to exclude evidence of damages in violation of the collateral source rule. If Teklai can establish at trial that Admirals Club was negligent, she is entitled to compensation to make her whole, even if

¹¹ *Yarrington v. Thornburg*, 205 A.2d 1, 2 (Del. 1964).

¹² *Id.*

¹³ *Mitchell v. Haldar*, 883 A.2d 32, 38 (Del. 2005) (citations omitted).

that results in a windfall to her.¹⁴ As a result, the absence of renters insurance cannot be a basis on which to preclude evidence of damages.

13. For all the foregoing reasons, Defendant's Motion *in Limine* is hereby **DENIED**.

IT IS SO ORDERED.

Peggy L. Ableman, Judge

Original to Prothonotary

cc: Gary S. Nitsche, Esq.
Kimberly Meany, Esq.

¹⁴ *Id.*