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

DARNELL HYNSON, Plaintiff, v. DAVEAR WHITTLE, BURNBRAE MAINTENANCE ASSOCIATION, a Delaware Corporation, BURNBRAE CONDOMINIUM ASSOCIATION, a Delaware Corporation and BRENDA H. KORBAN, Defendants.	)	C.A. No. N11C-11-142 EMD TRIAL BY JURY OF TWELVE DEMANDED

Submitted: October 17, 2013
Decided: December 24, 2013

Upon Defendants' Motions for Summary Judgment
GRANTED

Roger D. Landon, Esquire, Murphy & Landon, Wilmington, Delaware, *Attorney for Plaintiff*.

William Cattie, III, Esquire, Rawle & Henderson, LLP, Wilmington, Delaware, *Attorney for Defendant Burnbrae Maintenance Association*.

Natalie M. Ippolito, Esquire, Wetzel & Associates, P.A., Wilmington, Delaware, *Attorney for Defendant Brenda H. Korban*.

DAVIS, J.

INTRODUCTION

This is a negligence action brought by Plaintiff Darnell Hynson. Mr. Hynson alleges that Defendants Brenda H. Korban and Burnbrae Maintenance Association ("BMA") are liable to Mr. Hynson for injuries he sustained when he was shot in the parking lot of the Burnbrae

Condominium Complex (the "Complex").[1] Both Ms. Korban and BMA have moved for summary judgment, arguing that they were under no duty to protect Mr. Hynson from third party criminal activity. For the reasons set forth below, the Defendants' motions for summary Judgment are **GRANTED**.

FACTUAL AND PROCEDURAL BACKGROUND

Procedural Background

On November 15, 2011, Mr. Hynson filed suit against Ms. Korban as well as BMA, alleging that they negligently failed to provide adequate security so as to prevent criminal activity on the premises. Ms. Korban answered Mr. Hynson's complaint. Ms. Korban also filed a cross-claim against BMA on February 2, 2012. On April 4, 2012, BMA answered Mr. Hynson's complaint and Ms. Korban's cross-claim. Both Ms. Korban and BMA deny they are liable for the injuries caused to Mr. Hynson on March 15, 2011. Ms. Korban thereafter amended her cross-claim and BMA filed an amended answer to that cross-claim on May 29, 2013.

On or about March 19, 2013, BMA moved for summary judgment on the grounds that no duty existed to provide security to protect Mr. Hynson as a guest without payment. Subsequently Defendant Brenda Korban joined BMA in its motion for summary judgment. On July 3, 2013, Mr. Hynson responded to the motions for summary judgment of Ms. Korban and BMA.

This Court held a hearing on the motions for summary judgment on September 13, 2013. On October 4, 2013, after the hearing, the Court requested additional briefing on the issue of control of the common area where the March 15, 2011 incident took place. The parties filed

[1] BMA and Ms. Korban are the remaining defendants in this civil action. Mr. Hynson obtained a default judgment against Davear Whittle. D.I. No. 31. Mr. Hynson voluntarily dismissed Burnbrae Condominium Association because that association was a defunct entity. D.I. No. 27.

their supplemental briefing on or about October 17, 2013. The Court then took the matter under advisement.

Factual Background

This case arises out of a shooting that occurred in the parking lot of the Complex. Although there is disagreement as to the duties owed and the applicable legal standard that should be applied, Mr. Hynson, Ms. Korban and BMA – for the most part – rely on the same facts in support of their respective positions.

The Complex is a series of condominiums. BMA is the maintenance association for the Complex. Other than leasing of units by condominium owners, there is no commercial activity at the Complex – *i.e.*, no units are used as commercial businesses or offices.

BMA is the holder of, and in complete control of the common areas at the Complex. The condominium unit owners collectively delegate the operation, care, upkeep and maintenance areas to BMA. To facilitate this, the condominium unit owners pay a common expense assessment to BMA. Shawn L. Harrison Enterprises, Inc. is the property manager for the Complex.

Ms. Korban owns one of the condominiums, Unit 221B, at the Complex. Ms. Korban rents Unit 221B to Delorna Marks. Approximately, forty percent (40%) of the condominium units at the Complex are rented by their owners.

BMA is not a landlord. The Court is unaware of any facts that support the conclusion that BMA has entered into any leases with respect to any units at the Complex. In addition, the parties have not presented anything to this Court that demonstrate that BMA receives a benefit, economic or otherwise, from the fact that individual condominium unit owners sometimes lease their units to third parties.

On March 15, 2011, Mr. Hynson and his friend, Kenyotta Brown were at the complex visiting Ms. Marks. Mr. Hynson and Ms. Brown left to get dinner. Upon returning, Mr. Hynson alleges he saw someone about to be robbed by Defendant Davear Whittle. Mr. Hynson attempted to intervene and a struggle ensued. During the struggle, Mr. Whittle purportedly shot Mr. Hynson multiple times. Mr. Whittle was tried for this alleged shooting and acquitted on April 10, 2012.

For purposes of summary judgment, the parties agree that there was some notice of criminal activity in the common area at the Complex prior to March 15, 2011.

PARTIES' CONTENTIONS

BMA's Motion

BMA moves for summary judgment, contending that pursuant to the Delaware Residential Guest Statute, 25 *Del. C.* § 1501, Mr. Hynson was a guest without payment as to the condominium association. BMA argues that Mr. Hynson's designation as such with respect to BMA bars his claims against BMA. BMA further claims that the only duty it owed to Mr. Hynson was to refrain from willful and wanton conduct towards Mr. Hynson. BMA asserts that there are no facts that support an argument that BMA acted in a willful or wanton way with respect to Mr. Hynson.

Ms. Korban's Motion

Ms. Korban moves for summary judgment on the grounds that no duty existed to provide security to protect Mr. Hynson as a guest without payment under 25 *Del. C.* § 1501. Ms. Korban argues that even if a duty exists, it is BMA, instead of herself, who should be responsible for undertaking that duty. Ms. Korban also argues that she had no "actual" control of the common areas at the Complex and, absent such control, Delaware law does not impose a duty on her as

the landlord/landowner to Mr. Hynson, a purported third-party business invitee, for injuries suffered at the Complex.

Mr. Hynson's Response

Mr. Hynson argues that the guest premises statute does not apply because that statute only applies to private residential premises rather than premises that are used for commercial or business purposes. Mr. Hynson argues that because 40% of the condominium units were rented by approximately eight owners, the Complex is used for business purposes. Therefore, Mr. Hynson argues that the guest statute does not apply to Ms. Korban or BMA because a substantial number of the units at the Complex are used for the business purposes of leasing by the condominium owners.

Mr. Hynson also argues that because he was a social guest of Ms. Korban's tenant, his presence on the property bestowed a benefit of value on Ms. Korban. Mr. Hynson contends this makes him a business invitee rather than a guest without payment with respect to Ms. Korban.

Mr. Hynson additionally argues that there remains a genuine issue of material fact as to whether or not Ms. Korban retained actual control of the premises.

STANDARD OF REVIEW

The Court may grant a motion for summary judgment under Superior Court Civil Rule 56 where the movant can show from the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits, that no material issues of fact exist so that the movant is entitled judgment as a matter of law.[2] In considering a motion for summary judgment, the Court views the evidence in the light most favorable to the non-moving party.[3] The Court

[2] Super. Ct. Civ. R. 56(c); *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).
[3] *United Vanguard Fund, Inc. v. TakeCare, Inc.*, 693 A.2d 1076, 1079 (Del. 1997).

should deny summary judgment where, "a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint."[4]

DISCUSSION

The Court's first step in deciding this matter is determining the relative duties each party owed the other. To do that, the Court must determine the status of each party and his or her relationship with the other parties under the facts presented by the particular case.[5]

"A landowner's duty toward a Plaintiff in a negligence action is a matter of law for the Court to decide."[6] The duty of a landowner to protect guests from dangerous conditions on the land which they possess is defined by the status of the entrant onto the land as to the landowner.[7] Under Delaware's guest statute:

> No person who enters onto private residential or farm premises owned or occupied by another person, either as a guest without payment or as a trespasser, shall have a cause of action against the owner or occupier of such premises for any injuries or damages sustained by such person while on the premises unless such accident was intentional on the part of the owner or occupier or was caused by the willful or wanton disregard of the rights of others.[8]

Under both Delaware's Guest Premises Statute and Delaware common law the term "guest without payment" is synonymous with "licensee" status.[9]

"[T]he Delaware common law rule is that property owners/possessors must refrain from willful and wanton conduct toward trespassers and licensees alike."[10] Therefore, whether or not

---

[4] *Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).
[5] *See, e.g., Koons v. Sea Colony, Inc.*, CIV.A. 95C-08-001, 1997 WL 524085 (Del. Super. 1997); *Johnson v. Westminister Presbyterian Church*, C.A. No. 92C-07-251 (Del. Super. Aug. 25, 1993).
[6] *Argoe v. Commerce Square Apartments Ltd. P'ship*, 745 A.2d 251, 254 (Del. Super. 1999).
[7] *See, e.g.*, *Simpson v. Colonial Parking, Inc.*, 36 A.3d 333 (Del. 2012); *Volkswagen of Am., Inc. v. Costello*, 880 A.2d 230 (Del. 2005); *Argoe v. Commerce Square Apartments Ltd. P'ship*, 745 A.2d 251 (Del. Super. 1999); *Hoksch v. Stratford Apartments, Inc.*, 283 A.2d 687 (Del. Super. 1971).
[8] 25 *Del. C.* § 1501.
[9] *Simpson v. Colonial Parking, Inc.*, 36 A.3d 333, 335 (Del. 2012)
[10] *Id.* at 336.

the Guest Premises Statute applies, if an entrant is a "guest without payment" or "licensee" a property owner or possessor is only under a duty to refrain from willful or wanton conduct.

1. Darnell Hynson Was a Business Invitee of Brenda Korban Because He Was a Social Guest of Ms. Korban's Tenant.

Under Delaware law, a landlord generally has a duty to exercise reasonable care in keeping premises safe for a social guest of her tenants. In *Simpson v. Colonial Parking*, the Delaware Supreme Court stated, "the Delaware common law rule is that property owners/possessors must refrain from willful and wanton conduct toward trespassers and licensees alike."[11] For business invitees, however, landowners have a duty to exercise reasonable care in keeping the premises safe.[12] The social guest of a tenant, who is leasing a residence, is a business invitee as to the landlord of that residence.[13] Therefore, a landlord generally has a duty to exercise reasonable care in keeping the premises safe for social guests of her tenants.

Because a benefit is conferred on a landlord from allowing her tenants to have social guests, a social guest of a tenant is a business invitee as to the landlord. In *Hoksch v. Stratford Apartments*, the Court refused to apply Delaware's guest premises statute, finding that a landlord was liable for the injuries to the social guest of a tenant, which occurred in the parking lot of an apartment building.[14] The Court stated that "payment is considered to have been made to the occupier if the presence of the guest, or business invitee as he may also be called, confers a benefit upon the occupier, whether the benefit be in the form of cash payment or otherwise."[15]

---

[11] *Id.*
[12] *Argoe*, 745 A.2d at 254.
[13] *Hoksch v. Stratford Apartments, Inc.*, 283 A.2d 687 (Del. Super. 1971).
[14] *Id.*
[15] *Id.* at 688.

The Court then found that a landlord "does indeed have a business interest in the ingress and egress of those whom its tenants would admit to the premises."[16] The Court reasoned "it would be difficult if not impossible for a landlord to lease an apartment with the stipulation that the lessee was prohibited from inviting any people whomsoever to that apartment, regardless of the purpose of the visit."[17] Therefore, a benefit is conferred on a landlord by allowing her tenant to have social guests such that the social guest is considered a business invitee as to the landlord.

Here, Mr. Hynson was a business invitee of Ms. Korban at the time his injury occurred. Mr. Hynson was in the parking lot of the Complex at the time when Mr. Hynson claims he was injured. Mr. Hynson alleges he was returning to Ms. Marks' place of residence, Unit 221B of the Complex, after getting dinner. Mr. Hynson was on a social visit to Ms. Marks. At that time, Ms. Marks was leasing that condominium unit from Ms. Korban.

Under *Hoksch*, a landlord receives a benefit from social guests of her tenants, such that the social guest is considered a business invitee as to the landlord. Mr. Hynson alleges he was a social guest of Ms. Marks. Ms. Korban rents Unit 221B to Ms. Marks and, therefore, is Ms. Marks' landlord. Viewing the facts in the light most favorable to Mr. Hynson, Mr. Hynson was a business invitee of Ms. Korban – that is Ms. Korban is the landlord; Ms. Marks is the tenant; and, Mr. Hynson is the social guest of Ms. Marks.

2. Although Darnell Hynson Was a Business Invitee, No Duty Can Be Imposed on Ms. Korban Because There Was a Lack of "Actual Control" of the Leased Premises.

Even if a party is considered a business invitee of a landlord, no duty can be imposed on that landlord unless there is "actual control" of the leased premises.[18] "Actual control, in this

[16] *Id.* at 689.
[17] *Id.*
[18] *See e.g, Volkswagen of Am., Inc. v. Costello*, 880 A.2d 230 (Del. 2005); *Argoe v. Commerce Square Apartments Ltd. P'ship*, 745 A.2d 251 (Del. Super. 1999); *Craig v. A.A.R. Realty Corp.*, 576 A.2d 688 (Del. Super. 1989) *aff'd*, 571 A.2d 786 (Del. 1989).

context, refers to 'actual management of the leased premises.'"[19] "Generally, a landowner who has neither possession nor control of the leased premises is not liable for injuries to third persons."[20] Therefore, even if the social guest of a tenant is considered a business invitee of a landlord, no duty can be imposed on the landlord absent "actual control."

Here, Ms. Korban was neither in control or possession of the leased premises at issue. The alleged injury occurred in the parking lot of the Complex. The facts here show that BMA and not Ms. Korban had "actual" control of the Complex's parking lot. The parking lot in the Complex was considered a "common element" owned in equal shares to all owners.

By agreement, BMA was responsible for the operation, management and maintenance of those common areas, including the parking lot. There is no indication in the record that Ms. Korban was afforded any managerial control of the parking lot. Likewise, there is no indication that Ms. Korban retained any form of possession of the unit she leased to Delorna Marks. As Ms. Korban had neither possession nor actual control of the premises, she did not owe Mr. Hynson a duty and cannot be held liable for Mr. Hynson's injuries that occurred in the Complex's parking lot. Therefore, as no genuine issue of any material fact remains, Defendant Brenda Korban's Motion for Summary Judgment is hereby **GRANTED**.

3. Defendant BMA Receives No Benefit From Allowing Unit Owners to Have Social Guests; Therefore, Darnell Hynson Was Not a Business Invitee, but Rather a "Guest Without Payment" or "Licensee" as to BMA.

As stated above, property owners owe a duty of ordinary care as to business invitees. With respect to trespassers, licensees and/or guests without payment, property owners are only under a duty to refrain from willful or wanton conduct.[21] Condominium associations generally

[19] *Argoe*, 745 A.2d at 255 (quoting *Craig*, 576 A.2d at 696).
[20] *Volkswagen*, 880 A.2d at 223.
[21] *Simpson*, 36 A.3d at 336; *Hoksch*, 283 A.2d 687.

do not receive a benefit from allowing individual unit owners or their tenants to have guests.[22] The social guest of a tenant of a condominium unit is not a business invitee of the condominium association.[23]

Ms. Korban does act as a landlord with respect to Ms. Marks; however, the factual record does not demonstrate that BMA received any benefit from having Ms. Korban lease Unit 221B to Ms. Marks. On the factual record here, BMA is a condominium association, and not a landlord nor is it an entity which receives any additional benefits from the fact that its condominium owners reside in or rent out the units. Therefore, Mr. Hynson is either a "guest without payment" or a "licensee" as to BMA.

In *Koons v. Sea Colony*, a plaintiff sought to recover damages for injuries she suffered when she tripped and fell in a parking garage at a condominium complex.[24] The *Sea Colony* Court, differentiating this case from *Hoksch*, reasoned that the unit owners were "not attempting to attract social guests of themselves and the co-owners to the premises in order to receive an economic or business benefit for themselves."[25] The *Sea Colony* Court thus held that the plaintiff was a guest without payment as to the other unit owners and the condominium association.[26]

In this case, much like the Court stated in *Koons*, BMA does not receive an economic or business benefit from allowing unit owners/occupiers to have social guests. Despite 40% of the units at the Complex being rented to tenants, BMA receives no benefit from allowing unit owners and renters to have social guests. BMA is a condominium association and is therefore made up of the aggregate of all unit owners at the Complex.

---

[22] *See Koons v. Sea Colony, Inc.*, CIV.A. 95C-08-001, 1997 WL 524085 (Del. Super. 1997).
[23] *See Id.*
[24] *Id.* at 1.
[25] *Id*. at 5.
[26] *Id.*

Although a unit owner may receive a benefit by allowing her tenant to have a social guest, that owner does not receive a benefit from allowing other unit owners to do the same. Moreover, there are no facts provided by the parties that show that BMA received some additional benefit from condominium owners who leased their units or from the tenants that leased those same units. Therefore BMA received no benefit from allowing Mr. Hynson to be on the premises as a social guest.

Because BMA received no benefit through allowing Mr. Hynson on the premises, Mr. Hynson was a "guest without payment," or "licensee," as to BMA. Further, because Mr. Hynson was a guest without payment, BMA's only duty was to refrain from willful or wanton conduct towards Mr. Hynson. As there have been no allegations made against BMA of willful or wanton conduct, Defendant BMA's Motion for Summary Judgment is hereby **GRANTED**.

CONCLUSION

For the reasons stated above, no genuine issue of material fact remains as to Mr. Hynson's status as a "licensee" or "guest without payment" of Defendant Burnbrae Maintenance Association. Likewise, there remains no genuine issue of material fact as to Defendant Brenda Korban's lack of actual control of the leased premises. Therefore, Defendants' Motions for Summary Judgment are hereby **GRANTED**.

IT IS SO ORDERED.

/s/ Eric M. Davis
Eric M. Davis
Judge, Superior Court