IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

COURT NO. 13

SALTY DOG DIVE CENTER, LLC	§	
Plaintiff Below,	§	
Appellee	§	
	§	C.A. No. JP13-24-011909
VS	§	
	§	
MARSHALL PROPERTY SERVICES, LLC,	§	
MARSHALL LANDSCAPING & LAWN SERVICE, LLC	§	
and SHAWN MARSHALL	§	
Defendants Below,	§	
Appellants	§	

Submitted: June 13, 2025
Decided: July 21, 2025

APPEARANCES:

Plaintiff/Appellee, SALTY DOG DIVE CENTER, LLC, by Donald L. Gouge, Jr., Esquire

Defendants/Appellants, MARSHALL PROPERTY SERVICES, LLC, MARSHALL LANDSCAPING & LAWN SERVICE, LLC AND SHAWN MARSHALL, by Edward J. Fornias, III, Esquire

PANEL:

Sean McCormick, Deputy Chief Magistrate

Christopher Portante, Justice of the Peace

Peter Burcat, Justice of the Peace

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COURT NO. 13

CIVIL ACTION NO: JP13-24-011909

SALTY DOG DIVE CENTER, LLC

VS

MARSHALL PROPERTY SERVICES, LLC, MARSHALL LANDSCAPING & LAWN SERVICE, LLC AND SHAWN MARSHALL

ORDER ON *TRIAL DE NOVO*

The Panel has entered an Order in the following form:

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Procedural and Factual Background

On June 13, 2025, Plaintiff/Appellee SALTY DOG DIVE CENTER, LLC, by and through its counsel, Donald L. Gouge, Jr., Esquire, and Defendants/Appellants MARSHALL PROPERTY SERVICES, LLC, MARSHALL LANDSCAPING & LAWN SERVICE, LLC and SHAWN MARSHALL, by and through their counsel, Edward J. Fornias, III, appeared via *Zoom* for a *Trial de Novo* ("TDN"). Each of the Parties made an opening statement. Mr. Gouge called Defendant Shawn Marshall as Plaintiff/Appellee's first witness. Mr. Marshall testified he owned the property located at 1730 Newport Pike, Wilmington, Delaware, and started using the property in April 2024 for a landscape business. Mr. Marshall stated he stored stone and pavers on the back parking lot of the property. Mr. Marshall further testified the entire property was approximately three-quarters of an acre, but he only used approximately one-eighth of an acre for storage purposes. Upon inquiry from Mr. Gouge, Mr. Marshall stated his business did not block Plaintiff's access to the property, nor to an in-ground swimming pool on the property, nor Plaintiff's access to a storage locker. Mr. Marshall further stated his business did not impact Plaintiff's customers' access to Plaintiff's business. Mr. Marshall agreed with Mr. Gouge that Mr. Marshall "would love to have Plaintiff off the property," but he specifically had not told Plaintiff to get off the property. Mr. Marshall agreed Plaintiff had a month-to-month lease agreement that would allow Plaintiff to use the building and swimming pool located on the property. Mr. Marshall testified he had been advised by County officials that landscape pavers could not be stored on grass areas and had to be located on a hard surface. Mr. Gouge had a document marked as "P-1," and identified as a Commercial Lease. P-1 was moved into evidence without objection from Mr. Fornias. Mr. Gouge had a document marked as "P-2," and identified as a letter dated July 1, 2023, referencing a lease extension. P-2 was moved into evidence without objection from Mr. Fornias. Mr. Marshall agreed

Plaintiff had paid rent to Mr. Marshall since April 2024. Mr. Gouge had a document marked as "P-3," and identified as a letter dated September 7, 2023 referencing a rent increase. P-3 was moved into evidence without objection from Mr. Fornias. Mr. Gouge had documents marked as "P-4, P-5, and P-8" and identified as photographs. All were moved into evidence without objection from Mr. Fornias. Mr. Gouge had a document marked as "P-6," and identified as a letter dated February 13, 2024. P-6 was not moved into evidence. Mr. Gouge had a document marked as "P-7," and identified as a letter dated April 13, 2024. P-7 was moved into evidence without objection from Mr. Fornias. Mr. Marshall disagreed that he had sent text messages telling Plaintiff to get off the property. Mr. Marshall concluded his testimony by stating he last spoke with Plaintiff approximately one (1) year ago. On cross-examination Mr. Marshall testified he started looking at the property at issue approximately 2-6 months before he completed the purchase of the property. Mr. Marshall confirmed he had previously seen the property a number of times before he completed the purchase of the property. Mr. Marshall stated he was aware Plaintiff had a moving company and stored moving truck trailers on the back parking lot. He further stated there was currently a trailer still parked on the lot, but trucks had been removed. Mr. Marshall further confirmed the lease agreement allowed Plaintiff to use the building located on the property. Mr. Marshall was asked if he had ever seen an exhibit that was referenced in the lease agreement as "Exhibit A," to which he responded he had not seen the exhibit. Mr. Marshall testified Plaintiff has a sufficient number of parking spaces located at the front of the building. Mr. Marshall concluded his testimony by stating he took title to the property subject to the existing lease with Plaintiff. Mr. Gouge had no re-direct questions for Mr. Marshall.

Mr. Gouge called Scott Hemphill as Plaintiff/Appellee's second witness. Mr. Hemphill testified he worked as a senior instructor for Plaintiff's business, and he considered himself as an "unofficial partner" with the owner of Plaintiff's business. Mr. Hemphill stated he had been associated with Plaintiff at its current location since 2002. It was Mr. Hemphill's understanding that Plaintiff had use of the entire property, and since 2002, Plaintiff had utilized the driveway through a fence line for the neighboring residential property. A swimming pool located on the property was used for scuba dive training. Mr. Hemphill testified since 2024, Defendants had been moving equipment and supplies in the area around the swimming pool which left no room for Plaintiff's customers to park their vehicles. At best, there were only a few parking spots available. Mr. Hemphill disagreed there were any parking spots located in front of the building on Newport Gap Pike, and the only parking was on the side of the building. Mr. Hemphill estimated Defendants were using 75% of the available space on the property. Mr. Hemphill was aware Plaintiff's customers had complained they could not access the property, which has resulted in fewer customers for Plaintiff. Mr. Hemphill testified he spoke with Mr. Marshall sometime towards the end of 2023, and Mr. Marshall stated the previous owner had told Mr. Marshall he could store material at the property. Mr. Hemphill stated dirt and debris from Defendants' stored materials rendered the swimming pool unusable. Plaintiff had to rent time on an hourly and per lane basis at an indoor pool at *Delaware Fitness* located near Route 9. Mr. Hemphill agreed with Mr. Gouge that it was a terrible inconvenience to Plaintiff to not be able to use the pool located on the property at issue, and attempts to use the pool had been discontinued because of the on-going issues. Mr. Hemphill further acknowledged there was a trailer parked on site that was used to store Plaintiff's equipment. But he stated, use of the trailer has been an issue because of Defendants' equipment and vehicles blocking access to the trailer. The trailer had to be moved to parking spaces to allow access to the trailer. On cross-examination, Mr. Hemphill agreed he was involved with other businesses with the owner of Plaintiff's business. Mr. Hemphill acknowledged previously there had been 2 or 3 tractor-trailers parked on the property, but had since been removed, and had not been blocking parking. Mr. Hemphill stated currently there was a "large amount" of landscaping equipment and supplies in the parking area. Mr. Hemphill believed Plaintiff was entitled to use the entire property. He concluded his cross-examination

testimony by stating the amount of materials stored by Defendants changed daily. Mr. Gouge had no re-direct questions for Mr. Hemphill.

Mr. Gouge called Alexander Ponchak as Plaintiff/Appellee's third witness. Mr. Ponchak testified he had been affiliated with Plaintiff since 2000, and he purchased the business in 2015. Mr. Gouge had a document marked as "P-9" and identified as a parcel view. P-9 was admitted into evidence without objection. Mr. Ponchak stated he has consistently maintained the property since he purchased Salty Dog, and believed his rental agreement included use of the entire property. Since purchasing the business, he had expanded the parking lot and had contracts for snow removal and grass cutting. Mr. Ponchak stated Defendants' use of the lot has caused disruptions to Plaintiff's business because there was no place to park. Mr. Ponchak was aware the swimming pool had been in place since 2002, and Plaintiff was able to use the pool every weekend through 2024. During "peak" times, Plaintiff's customers and instructors would need to use 12-15 parking spots, but since Defendants started to use the property, there have been an insufficient amount of parking spots. Mr. Ponchak stated Defendants have made it difficult to use the pool, and therefore Plaintiff has had to rent an alternate swimming pool facility at a cost of $15 per hour per lane, and typically Plaintiff would need to use four lanes. But due to availability issues, currently Plaintiff can use the rental lanes only a couple of times per month. Mr. Gouge had some photographs marked as "P-9" (should have been "P-10"). It should be noted P-9 (P-10) was not moved into evidence. Mr. Ponchak testified P-9 (P-10) were photographs of Plaintiff's truck blocked by Defendants' vehicles, which resulted in Plaintiff's customers having problems accessing parking spaces. When asked about Plaintiff parking tractor-trailers on the lot, Mr. Ponchak testified the trucks belonged to his son and cousin, but they were parked far in the back on the property. At most, there would have been only two tractor-trailers parked for at most, one week. Two additional photographs as part of P-9 (P-10) were shown to Mr. Ponchak. Mr. Ponchak stated the photographs were of Defendants' employees parking on the lot and blocking the neighbor's lot. Mr. Gouge had a document marked as "P-10," but in actuality it should have been marked as "P-11." P-10 (P-11) was identified as "WSFS" statements for the period of July 2024 through October 2024. P-10 (P-11) was admitted into evidence without objection. Mr. Ponchak testified he had issues accessing a storage trailer due to Defendants' materials blocking access to the storage trailer. Mr. Ponchak was asked to look at a photograph with the words "Scuba Parking Here." He stated he had not placed those words on the lot. Mr. Ponchak acknowledged a lease for the property was renewed in 2023 and it ran through October 31, 2025, with rent being paid to Mr. Marshall. Mr. Ponchak stated he spoke by telephone with Mr. Marshall in early 2024 and they spoke about issues regarding the property, with Mr. Marshall stating he wanted Plaintiff "fire-trucking off the property." (Avoiding the use of the F-bomb during his testimony). Mr. Ponchak further stated he had received text messages from Mr. Marshall reiterating he wanted Plaintiff off the property. Mr. Ponchak testified he had personally observed Defendants' employees giving Plaintiff's employees and customers a "hard time." Mr. Ponchak concluded his testimony by stating due to Defendants' actions, Plaintiff's business had suffered and was down five figures on a year-to-year basis. On cross-examination Mr. Ponchak testified there had been economic issues over the past couple of years. He agreed with Mr. Fronius' statement that the lease agreement he has for the property does not mention parking or a swimming pool, and he does not have a copy of "Exhibit A" as referenced in the lease. Mr. Ponchak stated the current lease in Plaintiff's possession was similar to prior leases with the former owner, but the former owner had told Mr. Ponchak he had use of the entire lot. During the week, the available parking spaces were dependent on when and where Defendants were loading and unloading materials, but usually there were anywhere from zero to three parking spaces available. Mr. Ponchak stated he did not own any trucks, but agreed he was employed by a moving company. When asked about financial implications, Mr. Ponchak testified pool rental costs had amounted to somewhere between $ 1,000.00 and $ 5,000.00. Mr. Ponchak concluded by stating although he had not discussed it with Mr. Marshall, it

was almost impossible to keep the swimming pool clean. Mr. Gouge had no re-direct questions for Mr. Ponchak. Mr. Gouge had no further witnesses and advised the Panel Plaintiff/Appellee rested.

Defendants/Appellants recalled Shawn Marshall as Defendants/Appellants' first witness. Mr. Marshall began his testimony by stating Mr. Ponchak had lied. Mr. Marshall stated his employees were in and out of the lot in 10–20 minutes, and that would be before or after Plaintiff's employees and customers would be at the property. Mr. Marshall stated there was no agreement for Plaintiff to be able to use the swimming pool, and materials were not "dumped," nor caused there to be dirt and debris. Mr. Fronius had no further questions for Mr. Marshall. Mr. Gouge had no cross-examination questions for Mr. Marshall. Mr. Fronius had no further witnesses and advised the Panel Defendants/Appellants rested. Mr. Gouge had no rebuttal witnesses.

Both counsel presented closing arguments. Mr. Gouge argued the case came down to the lease agreement, although no one had a copy of "Exhibit A" as referenced in the lease agreement. Mr. Gouge stated the Panel should not narrowly read the lease agreement as contended by Defendants/Appellants. He stated Defendants/Appellants were pushing Plaintiff/Appellee out and denying them the use of the property including limiting access to the property. Mr. Gouge concluded by requesting Defendants/Appellants be ordered to remove their equipment from the lot. Mr. Fronius argued the Panel had to look at the lease agreement and what the agreement specifically stated. He contended it did not matter what the prior owner had allowed, as the lease agreement would control and would define what the tenant would get under the lease. Mr. Fronius stated possession was not the remedy in this case as ouster alone did not give a right to possession. He concluded by reminding the Panel Plaintiff/Appellant had not submitted evidence of a financial loss, and repeated possession was not the remedy. On rebuttal, Mr. Gouge repeated Plaintiff/Appellee was entitled to full possession of the property and damages could be determined at a later hearing.

Findings

The *Landlord-Tenant Code* regulates and sets forth the legal rights, remedies and obligations of all the parties to a rental agreement within the State of Delaware. See 25 *Del.C.* §5101, *et seq.*. However, 25 *Del.C.* §5101(b) specifically excludes from the *Landlord-Tenant Code* rental agreements for a commercial unit:

> *Any rental agreement for a commercial rental unit is excluded from this Code. All legal rights, remedies and obligations under any agreement for the rental of any commercial rental unit shall be governed by general contract principles; and only Chapter 57 of Title 25 and Part IV of Title 25 shall have any application to commercial rental agreements.*

Therefore, the Panel is limited to using contract analysis when reviewing the agreement between the Parties. The contract controls. There is no dispute Plaintiff/Appellee SALTY DOG DIVE CENTER, LLC and Defendants/Appellants MARSHALL PROPERTY SERVICES, LLC, MARSHALL LANDSCAPING & LAWN SERVICE, LLC AND SHAWN MARSHALL have a commercial lease agreement in place between the Parties. Unfortunately, a crucial document identified in the lease as "Exhibit A" is not in the possession of any of the Parties. It is unknown what is included in Exhibit A and what rights any of the Parties may have to use the property, and possession of any and/or all of the property at issue. This severely hampers the Panel's review of the rights and responsibilities of the Parties herein.

Plaintiff/Appellee is asking this Panel to issue an Order ousting Defendants/Appellants from the property they acquired in 2024. If this Panel agrees with Plaintiff/Appellee that Defendants/Appellants

have caused harm to Salty Dog's business, Plaintiff/Appellee has reserved their right to have a subsequent hearing for a determination of damages. Mr. Gouge has argued this Panel should not narrowly look at the lease agreement, but the Panel should make a finding that Plaintiff/Appellee should have sole and exclusive use of the property owned by Defendants/Appellants, and used by Plaintiff/Appellee. Mr. Fornias has argued this Panel must narrowly look at the lease agreement to determine specifically what the tenant can and cannot do with the property. Mr. Fornias further argued the "lease clearly defines what the tenant gets." As previously stated, a critical part of the lease agreement, "Exhibit A," has not been produced by any Party to this action. Without "Exhibit A" we cannot know what specifically is included as to usage of any or all of the property. Mr. Marshall purchased the property with full knowledge there was an on-going scuba diving business operating on the property, and there was an open and obvious swimming pool located on a commercial property. There has been no contention of a mistaken belief by Defendants/Appellants that the property was a residential property with a swimming pool in the back yard. The swimming pool was installed for the use of a scuba diving training center.

Without consideration of the amount of a financial loss, if any, by Plaintiff/Appellee, the only real issue before the Panel is did Plaintiff/Appellee prove by a preponderance of the evidence that Landlord/Defendants/Appellants MARSHALL PROPERTY SERVICES, LLC, MARSHALL LANDSCAPING & LAWN SERVICE, LLC and SHAWN MARSHALL interferes with Plaintiff/Appellee SALTY DOG DIVE CENTER, LLC's use of the business property and interferes with Plaintiff/Appellee's quiet enjoyment of their rented property. As noted, the burden is on Plaintiff/Appellee. "Preponderance of the Evidence is a standard of proof that is met when a party's evidence indicates that the fact 'is more likely than not' what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not. 9 *Del. Admin. Code* 303-5.0. It is apparent Defendants/Appellants have a negative relationship with their inherited tenant. Mr. Marshall confirmed in his testimony that he would love them off his property. Mr. Ponchak testified he spoke by telephone with Mr. Marshall and Mr. Marshall stated he wanted Salty Dog "fire-trucking off the property." (Avoiding the use of the F-bomb during his testimony). Mr. Ponchak further stated he had received text messages from Mr. Marshall reiterating he wanted Plaintiff off the property. Mr. Ponchak testified he had personally observed Defendants' employees giving Plaintiff's employees and customers a "hard time." Again, the testimony from both sides regarding a desire by Landlord/Defendants/Appellants to end the Tenant/Plaintiff/Appellee's use of the rental property is undisputed. But that alone does not raise this case to the level of tortious interference with the use of the rental property nor a denial of the quiet enjoyment of the property.

Mr. Gouge sought to prove the actions of Defendants/Appellants caused the harm claimed by Plaintiff/Appellee. In addition to testimony, Mr. Gouge had Exhibits P-1 through P-5 introduced into evidence. Mr. Fornias did not object to the introduction of those exhibits. P-6 was not introduced into evidence. Exhibits P-7 through P-9 were moved into evidence without objection. There was testimony from Mr. Ponchak regarding Exhibit P-10 (mistakenly identified as a second P-9), photographs, but P-10 was not moved into evidence. P-11 (mistakenly identified as a second P-10), bank statements from WSFS, were moved into evidence without objection. Perhaps it was a strategic move on the part of Mr. Fornias not objecting to the introduction of certain exhibits, as Mr. Gouge was not required to lay a foundation for each of the exhibits. In particular, lacking was any testimony regarding the date and time the photographs were taken. The photographs that were introduced into evidence are black and white and not entirely clear. Mr. Marshall testified his employees would have numerous vehicles loading and unloading materials on the property, but those activities were limited in time, and would occur either before or after Salty Dog's employees and customers needed to park their vehicles. Without testimony to confirm the dates and times depicted in the photographs, this Panel is unable to confirm or deny Mr. Marshall's contentions. The photographs themselves for the most part were grainy and not clearly definable. There were no photographs of the swimming pool showing dirt and debris in the pool. The was no evidence submitted regarding the water quality in the pool at any time.

While it is apparent there are on-going disputes between the Parties, for purposes of the Complaint before this Court, the Panel finds Plaintiff/Appellee has not met its burden of proving their case by a preponderance of the evidence.

Judgment

Based upon the foregoing, the Panel enters herewith JUDGMENT FOR DEFENDANTS/APPELLANTS. The trial court's Judgment is vacated.

IT IS SO ORDERED 21st day of July, 2025

/s/ Sean McCormick (SEAL)
Deputy Chief Magistrate
On Behalf of Three Judge Panel

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).