IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

K.K. a Minor by MARTE KING, Parent and Next Friend, and MARTE KING, Individually,	)	
Plaintiff,	)	C.A. No. N26C-08-289 FJJ
v.	)	
Pabian Ventures, LLC, Pabian Property Management, LLC, Pabian Properties, LLC Edward Pabian, Dunning Properties, LLC, Michael C. Dunning and Maureen A. Dunning,	)	
Defendants.	)	

Submitted: November 9, 2026
Decided: November 12, 2026

OPINION AND ORDER
On Defendants' Motion to Dismiss Plaintiffs' Complaint

Marte King, Somers Point, NJ*, Pro-Se Plaintiff.*

Lisa C. McLaughlin, Esquire, Wilmington, Delaware, *Attorney for Defendants Dunning Properties, LLC, Michael C. Dunning and Maureen C. Dunning.*

Shae Chasanov, Esquire, Wilmington, Delaware, *Attorneys for Defendants Pabian Property Management, Pabian Ventures, Pabian Property, LLC, and Edward Pabin.*

Jones, J.

Plaintiffs are the former occupants of Unit 1407-B at 1407 Saint Elizabeth Street, Wilmington Delaware (" the property"). Plaintiffs have alleged that they were exposed to mold at the property. They have filed a complaint sounding in negligence, fraudulent concealment, intentional misrepresentation, consumer fraud and breach of contract. Plaintiffs have sued two separate sets of Defendants. The first set consists of Dunning Properties, LLC, Maureen A. Dunning, and Michael C. Dunning (collectively the "Dunning Defendants"). The second set of Defendants are Pabian Ventures, LLC, Pabian Property Management, LLC, Pabian Properties, LLC and Edward Pabian (collectively the "Pabian Defendants"). Both sets of Defendants have filed a motion to dismiss. This is the Court's decision on the motion to dismiss.

FACTS

The following facts are taken from the Complaint and Answers filed.

In 2018 Isaiah Baggs entered into a lease agreement for the property with the Dunning Defendants. The sole tenant who signed the lease was Isaiah Baggs. The lease agreement provided that the maximum number of tenants was one and that the "Tenant shall not assign the lease".

The property was sold by the Dunning Defendants to the Pabian Defendants on April 1, 2022.

Before the Plaintiffs began residing at the property Baggs reported mold issues. On May 1, 2024, Baggs vacated the rental unit, but not before receiving $1,650 in compensation from Pabian, following mold complaints Baggs raised at the end of his tenancy. In exchange for this consideration, Baggs agreed to release any claims he otherwise had against Pabian for wrongdoing related to mold, and specifically agreed to take "no further legal action or compensation" against Pabian. This release indicates that upon signing the release Baggs no longer had access to the rental unit.

Plaintiffs occupied the property during 2023 through April 11, 2024, with their infant daughter K.K. who was born on September 9, 2023. On March 24, 2024, a rain event occurred which resulted in leaking into the unit and that subsequent testing revealed mold in the property. As a result of their occupancy of the property Plaintiffs allege they were exposed to mold which caused personal injuries to Marte King and K.K. Plaintiffs vacated the property on April 11, 2024, due to the mold.

PROCEDURAL HISTORY

On November 13, 2025, Plaintiffs filed suit against the same Defendants in the Court of Chancery.[1] The complaint sought equitable relief, alleged fraudulent concealment, sought to pierce the corporate veil, to establish a constructive trust

[1] *King v. Pabian Ventures, LLC*, C.A. No. 2025-1316 LM.

and sought an emergency order for preservation of evidence. The underlying basis for the complaint was Plaintiffs' allegations that they were injured from exposure to mold in the property. Both sets of Defendants moved for dismissal in the Court of Chancery. The Court dismissed the claims against the Dunning Defendants based on the statute of limitations and that the fraudulent concealment claim failed to state a claim. The Court granted the Plaintiffs' leave to amend their complaint as to the Pabian Defendants. An amended complaint was filed. The Pabian Defendants moved to dismiss that complaint for a number of reasons including the reasons advanced in the instant motion to dismiss and Plaintiffs opposed. The decision in the Court of Chancery remains pending.

STANDARD OF REVIEW

When reviewing a Motion to Dismiss under Superior Court Rule 12(b)(6), the Court (1) accepts all well-plead factual allegations as true, (2) accepts even vague allegations as well-plead if they give the opposing party notice of the claim, (3) draws all reasonable inferences in favor of the non-moving party, and (4) only dismisses a case where the Plaintiff would not be entitled to recover under any reasonably conceivable set of circumstances.[2] "Dismissal is warranted where the plaintiff has failed to plead facts supporting an element of the claim, or that under

[2] *ET Aggregator, LLC v. PFJE Asset Co Holdings LLC*, 2023 WL 8535181, at *6 (Del. Super. Dec. 8, 2023).

no reasonable interpretation of the facts alleged could the complaint state a claim for which relief might be granted."[3]

ANALYSIS

Plaintiffs' complaint contains six counts for relief: (1) Negligence, Premises Liability, and Gross Negligence, (2) Fraudulent Concealment and Intentional Misrepresentation, (3) Delaware Consumer Fraud Act, (4) Breach of Rental Agreement and Statutory Landlord Duties, (5) Breach of Quiet Enjoyment and Constructive-Eviction Theory of Leasehold Damages, and (6) Punitive Damages.

THE DUNNING DEFENDANTS

The Dunning Defendants sold the property to the Pabian Defendants on April 1, 2022. The Plaintiffs and Dunning Defendants were strangers to each other until the Dunning Defendants were sued in the Court of Chancery action.

In order to state a claim based on negligence, gross negligence or premises liability a Defendant must owe a legal duty to the Plaintiffs at the relevant time. The Dunning Defendants sold the property to the Pabian Defendants on April 1, 2022. Any claim based on negligence, gross negligence or premises liability requires that the Dunning Defendants owed a duty to the Plaintiffs at a relevant time. If the Defendants owed a duty to the Plaintiffs that duty arose from the Plaintiffs' occupancy of the property. The Dunning Defendants did not own the

[3] *Hedenberg v. Raber*, 2004 WL 2191164, at *1 (Del. Super. Aug. 20, 2004).

property during the Plaintiffs' occupancy of the premises nor during any relevant time they were contemplating living at the property. On this record the Dunning Defendants are entitled to summary judgment as to Count 1 of the Complaint.

The claims based on fraudulent concealment and the Consumer Fraud Act require proof of an affirmative act directly toward the Plaintiff.[4] No such affirmative act has been alleged in the instant complaint. On this basis the Dunning Defendants are entitled to summary judgment on Counts 2 and 3.

A breach of contract action action requires that there actually be a contract between the parties. Absent a lease agreement Plaintiffs' count for breach of contract fails. The complaint does not allege a lease agreement between the Dunning Defendants and the Plaintiffs. As such the Dunning Defendants are entitled to summary judgment as to Count 4 of the complaint.

If a claim for breach of the quiet enjoyment of a lease and for constructive eviction exists, there has to be a landlord-tenant relationship between the parties. A landlord-tenant relationship between Plaintiffs and Dunning Defendants was not pled in the complaint (probably because it did not exist). The Dunning Defendants are entitled to summary judgment as to Count 4 and 5 of the Complaint.

[4] *Renovaro Inc. Gumrukcu*, 2025 WL 3134533, at *8-9 (Del. Ch. Nov. 7, 2025); *Bromwich v. Hanby*, 2010 WL 8250796, at *6-7 (Del. Super. Jul. 1, 2010).

A claim for punitive damages is not an independent cause of action and depends on the existence of a separate claim to obtain punitive damages. As the Dunning Defendants are entitled to summary judgment on the other claims asserted, the punitive damage claim fails as a matter of law. Dunning Defendants are entitled to summary judgment on the punitive damage claim and all other claims against them. There is no just reason for delay in entering final judgment as to the Dunning Defendants. Therefore, pursuant to Superior Court Rule 54(b), final judgment is entered as to the Dunning Defendants.

THE PABIAN DEFENDANTS

The Pabian Defendants have moved to dismiss the Plaintiffs' claims for a number of reasons. Initially it appears clear Edward Pabian (individually) and Pabian Property Management, LLC had no interaction with the Plaintiffs in the events surrounding Plaintiffs' occupation of the property. On this basis the claims against them are dismissed.

Next, the Pabian Defendants move to dismiss the personal injury claims based on the statute of limitations. The statute of limitations for a personal injury claim is two years.[5] Plaintiffs allege that they occupied the rental until sometime in 2023 and moved out in April 2024 due to the mold. The complaint in this case was filed on August 26, 2026, well beyond the two year limitations period.

[5] 10 *Del.C.* §8119.

Plaintiffs invoke the inherently unknowable injury and fraudulent concealment tolling doctrines in response to the Pabian Defendants' statute of limitations defense. Plaintiffs also invoke 10 *Del. C*. §1902 as well.

The inherently unknowable tolling doctrine is not applicable when "facts exist sufficient to put a person of ordinary intelligence and prudence on inquiry which, if pursued, would lead to the discovery of such facts."[6] Plaintiffs have pled that "[p]laintiffs observed manifestations of water, moisture, skin injury, and other conditions during occupancy . . . ."[7] On this record the inherently unknowable tolling doctrine does not apply.

The result is similar for the Plaintiffs' argument that the fraudulent concealment doctrine tolls the statute of limitations. In order to toll a statute based on fraudulent concealment the defendant must have actual knowledge of the alleged wrong and the defendant must have taken an affirmative act to conceal it.[8] "A defendant's 'mere silence is insufficient to establish fraudulent concealment'" as a basis for tolling.[9] Delaware law requires that the defendant have "done some affirmative act or acts involving 'actual artifice' which prevents a plaintiff from discovering the facts giving rise to his or her cause of action, 'or some

[6] *Saunders v. Lightwave Logistics, Inc.,* 2023 WL 4851630, at *2 (Del. Super. Jul. 28, 2023) (quoting *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 860 A.2d 312, 319 (Del. 2004)).
[7] ¶ 26.
[8] *LGM Holdings, LLC v. Schurder*, 340 A.3d 1134, 1146-47 (Del. 2025).
[9] *Id.* at 1148 (quoting *AssuredPartners of Virginia, LLC v. Sheehan*, 2020 WL 2789706, at *17 (Del. Super. May 29, 2020)).

misrepresentation which is intended to put the plaintiff off the trail of inquiry.'"[10] In the instant case Plaintiffs have not alleged specific or particular facts supporting an allegation that the Pabian Defendants took an affirmative act towards them. As such the tolling doctrine of fraudulent concealment has not been properly pled.

Plaintiffs invoke 10 *Del. C.* §1902. Section 1902 provides that:

> No civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter, either in the original proceeding or on appeal. Such proceeding may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, within 60 days after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer, discharges all costs accrued in the first court, and makes the usual deposit for costs in the second court. All or part of the papers filed, or copies thereof, and a transcript of the entries, in the court where the proceeding was originally instituted shall be delivered in accordance with the rules or special orders of such court, by the prothonotary, clerk, or register of that court to the prothonotary, clerk or register of the court to which the proceeding is transferred. The latter court shall thereupon entertain such applications in the proceeding as conform to law and to the rules and practice of such court, and may by rule or special order provide for amendments in pleadings and for all other matters concerning the course of procedure for hearing and determining the cause as justice may require. For the purpose of laches or of any statute of limitations, the time of bringing the proceeding shall be deemed to be the time when it was brought in the first court. This section shall be liberally construed to permit and facilitate transfers of

[10] *Ocimum Biosolutions (India) Ltd., Tr. of Ocimum Biosolutions, Inc. v. LG Chemical Ltd.,* 2022 WL 3354708, at *8 (D. Del. Jul. 31, 2022).

> proceedings between the courts of this State in the interests of justice.

The Delaware Supreme Court has made it clear that Section 1902 is to be liberally construed.[11] Plaintiffs' case remains pending in the Court of Chancery where a motion to dismiss awaits ruling by the Court of Chancery. While the Court of Chancery case does not seek money damages and does not sound in negligence, the basis of the Complaint is Plaintiffs' alleged exposure to mold and alleged resultant injury. Given the procedural posture of the Court of Chancery action, this Court cannot make a decision on the applicability of Section 1902 at this point. This decision is deferred until the Court of Chancery action is finally determined and a more complete record is developed in this case.

The Pabian Defendants also move to dismiss the claims that are predicated upon an alleged assignment of the lease from Baggs to King. In support of this claim, the Pabian Defendants rely on materials outside of the Complaint, namely the assignment. Arguments are being made that require this Court to make factual determinations about the assignment.

A motion to dismiss will be DENIED where the Court determines that the factual record is lacking and requires that it be more fully developed.[12] I find that the factual record is not complete enough for me to decide the issues surrounding

[11] *Family Court of Delaware v. Giles*, 384 A.2d 623, 624 (Del. 1978).
[12] *Universal Capital Management, Inc. v. Micco World, Inc.*, 2012 WL 1413598, at *5 (Del. Super. Feb. 1, 2012); *State v. Taye* 54 A.3d 1116, 1121 (Del. Super. 2009).

the assignment. I am denying the motion based on the assignment at this point without prejudice for the Pabian Defendants to raise this issue at the summary judgment stage after a more fully developed record has been established.

The Pabian Defendants have made additional arguments in support of their Motion to Dismiss. Each of these arguments requires the Court to look beyond the pleadings. Therefore, as to those additional arguments, the Court DENIES the motion without prejudice. Defendants may incorporate any of these arguments into a Motion for Summary Judgment.

For the above reasons the Dunning Defendants' Motion to Dismiss Plaintiffs' Complaint is GRANTED and final judgment is entered as to these claims as to the Dunning Defendants. The claims against Edward Pabian individually and Pabian Property Management, LLC are dismissed. As to the remaining Pabian Defendants the motion is DENIED without prejudice.

IT IS SO ORDERED.

/s/ Francis J. Jones, Jr.
Francis J. Jones, Jr., Judge

cc: *Counsel via File & ServeXpress*