IN THE SUPREME COURT OF THE STATE OF DELAWARE

DARNELL HYNSON, Plaintiff Below, Appellant, v. BURNBRAE MAINTENANCE ASSOCIATION, Defendant Below, Appellee.	)	No. 117,2014

APPELLANT'S REPLY BRIEF

ROGER D. LANDON, I.D. No. 2460
KELLEY M. HUFF, I.D. No. 5192
MURPHY & LANDON
1011 Centre Road, Suite 210
Wilmington, DE 19805
302.472.8100
Attorneys for Plaintiff

Date: August 7, 2014

TABLE OF CONTENTS

REPLY ARGUMENT 1

A. Whether the Burnbrae Condominium Complex is a Residential Or Commercial Premises is Immaterial 1

B. The Benefit to the BMA is Self-Evident and Not Speculative 2

CONCLUSION 3

TABLE OF AUTHORITIES

Hoksch v. Stratford Apartments, 283 A.2d 687 (Del. Super. 1987).....2

REPLY ARGUMENT

A. Whether the Burnbrae Condominium Complex is a Residential or Commercial Premises is Immaterial

In its Answering Brief, the defendant conflates two distinct issues: first, whether the Burnbrae Condominiums is a residential or commercial premises and second, whether the Plaintiff was a guest without payment or a business invitee as to the Burnbrae Maintenance Association ("BMA"). The first issue – whether the condominium complex is a residential or commercial premises – is immaterial. Although the issue was initially raised below as a ground to show that the Guest Premises Statute does not apply in this case, the Trial Court found in its December 24, 2013 Opinion that the determinative issue is the Plaintiff's legal status as to the BMA and not the applicability of the Guest Premises Statue. Ex. A to Pl. Op. Br. at 7. Plaintiff agrees with and does not challenge that part of the Trial Court's decision.

To be sure, the duty owed to a business invitee – to keep the premises in a reasonably safe condition - is the same whether the Guest Premises Statute applies or not. Similarly, the duty owed to a guest without payment (or licensee) – to refrain from wilful and wanton conduct – is also the same regardless of the Statute's application. Therefore, the majority of the defendant's Answering Brief focused on whether the approximately 60% rental rate changes the condominium complex from a residential to a commercial property is a non-issue.

B. The Benefit to the BMA is Self-Evident and Not Speculative

Defendant's argument that the Plaintiff can only offer speculation that his presence at the Burnbrae Condominiums bestowed a benefit to the BMA is flawed for several reasons.

First, the defendant misconstrues the burden of proof. As the moving party on summary judgment, the defendant bears the burden of proving that the BMA did not benefit from the Plaintiff's presence on the premises. A626-627 at 11:8-18; 16:11-17:8. The defendant has not put forth any evidence in the form of affidavit, deposition testimony or otherwise to meet its burden of proof.

Second, in its Opening Brief and on the record below, Plaintiff pointed to undisputed record evidence that approximately 60% of the units are rented and demonstrated, with reliance on *Hoksch v. Stratford Apartments,* the self-evident nature of the benefit bestowed upon the BMA from that fact. To briefly reiterate, approximately 60% of Burnbrae owners are landlords who are directly deriving a benefit from renting their units and having social guests of their tenants on the premises. The other 40% of unit owners are benefitting from their co-owners' rentals because units are being occupied and monthly dues are being paid on time. This in turn reduces vacancies and foreclosure rates, sustains property values and makes Burnbrae an all-around safer and more attractive place to live and invest in.

The defendant's argument that the benefit goes to the original developer lacks merit. Burnbrae was first incorporated in 1988. Brenda Korban testified that she purchased her unit for investment purposes in 1995. A801-802 at 4:24-10. There is no evidence that the original developer benefitted from Ms. Korban and other investors like her purchasing units years after the complex was built. The community as a whole, however, clearly benefits from attracting investors like Ms. Korban. And, even assuming the original developer did derive a benefit, there is no evidence that the benefit must be mutually exclusive.

Finally, the article submitted by the Plaintiff in its motion for regarument does not represent the sole basis for the argument that a benefit exists. The article was meant only to emphasize the benefits that a condominium association receives from allowing rentals. The same argument was previously advanced by the plaintiff in response to Defendant's summary judgment motion and is supported by the decision in *Hoksch*. A176-177 at 24:1625:3.

CONCLUSION

Because the BMA benefits from allowing unit owners to lease their units and having social guests of their tenants on the premises, the Plaintiff's status is that of a business invitee. Therefore, the Trial Court's decision granting summary judgment to the defendant should be reversed.

MURPHY & LANDON

/s/ Kelley M. Huff
ROGER D. LANDON, I.D. No. 2460
KELLEY M. HUFF, I.D. No. 5192
1011 Centre Rd.
Suite 210
Wilmington, DE 19805
302.472.8100
Attorneys for Plaintiff