



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

THE ESTATE OF CHARLES G.	:	
LAMB, by and through its	:	C.A. No: 07C-12-037 (RBY)
Executrix, BETTE W. LAMB and	:	
BETTE W. LAMB,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ZKT, L.L.C., a Delaware Limited	:	
Liability Company,	:	
	:	
Defendant.	:	

ORDER

Summary

The factual pattern regarding this case is described in the Court’s decision on a different topic related to this same matter dated March 30, 2009.

Defendant ZKT has moved for partial summary judgment regarding Plaintiff’s claim based upon negligence *per se*. Initially, negligence *per se* requires the plaintiff to establish three elements.

Those elements are: first, that the statute was enacted for the safety of others, including plaintiff;¹ second, that there is a causal connection between the statutory violation and the injury;² and third, that plaintiff must show that defendant violated

¹ *Norfleet v. Mid-Atlantic Realty Co., Inc.*, 2001 WL 282882, at *3 (Del. Super.).

² *See NVF Co. v. Garrett Snuff Mills, Inc.*, 2002 WL 130536, at *2 (Del. Super.).

the statute and the statute's standard of care.³ Essentially, a claim of negligence *per se* allows the presumption that the duty and breach elements of negligence are satisfied.⁴

Here, the critical issue is Plaintiff's failure to establish a causal connection between a statutory violation and Mr. Lamb's fall. Plaintiff cites the 2005 IMPC violations issued to defendant by the Town of Smyrna to permit a claim negligence *per se*. Defendant challenges this assertion on the grounds that Plaintiff cannot show the appropriate causal connection between the 2005 violations and the 2006 accident. Plaintiff does not show any cited violations occurring in 2006 that concern the accident.

Delaware courts have been reluctant to apply negligence *per se* in situations involving statutes or regulations requiring the judgment of an enforcing authority when that authority has not issued a citation of the violation. Negligence *per se* was explained by the Superior Court in *Norfleet*.⁵ The Court in *Norfleet* granted summary judgment as to the plaintiff's claims in negligence *per se*.⁶ The Court stated that negligence *per se* requires a violation of a statute or regulation.⁷ Such regulation, however, must carry with it the force of law.⁸ The *Norfleet* Court held that laws which were enforced by discretionary acts of the enforcing authority do not support claims

³ *Id.*

⁴ *Norfleet*, 2001 WL 282882, at *3, (internal citations omitted).

⁵ *Norfleet*, 2001 WL 282882, at *3.

⁶ *Id.* at *5.

⁷ *Id.* at *5.

⁸ *See Id.* at *4.

for negligence *per se*, absent an actual violation or citation.⁹ The Court was hesitant to substitute its judgment for that of the official in charge of enforcing such a law.¹⁰

For laws to be susceptible to negligence *per se*, the enforcement of such law must suffice on its own accord.¹¹ The IMPC, however, requires the inspection and judgment of an inspector, who interprets the IMPC, and then makes determinations concerning whether it is violated. There is no evidence to support a showing that the violations in 2005 were associated with Mr. Lamb's fall. Nor is there any showing that ZKT was violating the IMPC in 2006. Hence, any IMPC violations are insufficient to carry a negligence *per se* claim. The Court should not impose its discretion where the judgment of an inspector is proper. Doing so would place the Court in the position of the executive. Without an actual violation of the IMPC, such supposed violations as the Plaintiff presents cannot be the only grounds for a negligence *per se* claim.

While the IMPC requires the premises to be kept in a proper state of repair, and maintained free from hazardous conditions, as well as kept clear of debris, rubbish, etc.,¹² no evidence is presented, concerning actual violations of the IMPC by ZKT at the time of Mr. Lamb's fall or at locations potentially involved with the fall. Without evidence of an actual citation for violating the IMPC, Plaintiff fails to establish the causal connection between the IMPC violation and the injury. As such, it is

⁹ *Id.* at *5.

¹⁰ *Id.*

¹¹ *Id.* at *4.

¹² International Property Maintenance Code §§ 302.3, 307.1. This International Property Maintenance Code was enacted by the Town of Smyrna through Article X, § 18-301 of the Town International Property Maintenance Code for the Town of Smyrna.

inappropriate to permit negligence *per se* claims to continue. ZKT's motion is **GRANTED**. This decision does not address any questions of use of the IMPC to establish a standard of care for showing ordinary negligence. This addresses only the point that ZKT is not liable for negligence *per se*.

ADDITIONAL MATTERS

Both parties originally filed, but did not argue, motions on other matters. Following the various decisions rendered herein or previously, some or all of the other matters may have become moot. To the extent that any further issues need to be determined, the parties are open to submit or re-submit further motions.

SO ORDERED this 29th day of May, 2009..

/s/ Robert B. Young
J.

RBV/sal