

MICHAEL D. LANDIS,	:	IN THE COURT OF COMMON PLEAS OF
Plaintiff	:	LYCOMING COUNTY, PENNSYLVANIA
	:	JURY TRIAL DEMANDED
vs.	:	NO. 99-01,098
	:	
ROBERT J. STEPPE, JR., and	:	CIVIL ACTION
LEROY L. & JOAN M. WALTERS,	:	
his wife, and ALBERTA M.	:	
STEPPE-BOYD,	:	
Defendants	:	

Date: July 5, 2000

OPINION and ORDER

The matter presently before the Court concerns the Preliminary Objections in the nature of a demurrer of Defendant Alberta M. Steppe-Boyd to the Second Amended Complaint filed by Plaintiff Michael D. Landis.

Mr. Landis' claim arises from a dog bite incident that occurred April 10, 1998. According to the Second Amended Complaint, filed February 10, 2000, which references the Amended Complaint, filed November 3, 1999, Mr. Landis was at the residence of Defendant Robert J. Steppe, Jr., premises owned by Defendants Leroy L. and Joan M. Walters, which were being sold to Ms. Steppe-Boyd, Mr. Steppe's mother. The Complaint further avers that Mr. Boyd, in a drunken state, ordered his dog (a Rottweiler) to attack Mr. Landis. The dog bit Mr. Landis behind his right knee, causing permanent nerve and tendon damage resulting in permanent, partial disability.

Mr. Landis claims that Ms. Steppe-Boyd is liable to him because she held an "equitable interest" in the property. Mr. Landis continues that "a contract purchase of property who does not yet have legal title is responsible to keep the property in good repair and safe for business invitees, at least where that purchaser has been permitted by the title owner to takes steps that a title owner ordinarily takes (such as repairs or remodeling). Plaintiff's Brief pp. 1-2 (emphasis in original).

Ms. Steppe-Boyd objects to the claim on the grounds that, even if she had an “equitable interest” in the subject property, she had no legally cognizable duty to Mr. Landis, and in the absence of any duty, there was no breach for which she can be held liable. Preliminary Objections paragraphs 6, 8, and 9.

In support of his liability claim, Mr. Landis relies (*inter alia*) upon the case of *Welz v. Wong*, 605 A.2d 368 (Pa.Super. 1992). The Court believes this reliance is misplaced, as the issue before the Court was whether the *sellers* of a commercial property, not the buyer, were liable to the plaintiff when she was injured on the premises due to an allegedly defective and unsafe condition. The Court framed the issue before it as “whether a landowner who sells land through a land sale contract, articles of agreement or some other form of installment contract and who retains title pending performance of the contract, should be treated differently, for liability purposes, from a vendor who sells the land and delivers a deed.” *Welz* at 370. The Court declined to hold the sellers liable under the circumstances because the retained interest of the sellers under the contract was too remote.

Granted, in its discussion the *Welz* Court did state:

Further, it is not as if there is no responsible party under this interpretation. The contract purchaser of the property would undoubtedly be charged with the same obligations generally charged to a vendee or owner of real estate. It is this vendee who along with acquiring the property acquires the responsibility to keep the property in good repair and safe for business invitees.

Id. at 372-373. However, the facts of that case are clearly distinguishable from the instant case. Most significantly, the vendee in *Welz* was the party who was clearly in full possession and control of the premises. The vendor, who was neither in such possession nor control, was deemed to have no duty for third persons using the premises. Here, Ms. Steppe-Boyd had not entered into possession or control of the property, nor had she “acquired” the property, nor was she operating it as a business open to the public.

Mr. Landis also relies upon the case of *Fisher v. United States*, 299 F.Supp. 1 (E.D.Pa. 1969), wherein the Court found that under Pennsylvania law, the United States as owners of a dam site had sufficient control over safety practices to be held liable for a contractor’s failure to take proper safety precautions which

resulted in injuries to a subcontractor's employee at the site. This determination was based upon the fact that the United States owned the property upon which the dam was being constructed, had a resident engineer on the premises with the authority to require safety regulations, maintained a presence of government inspectors present, and required or authorized certain principals to insure that the subcontractors performed their work in compliance with specifications. The Court concluded that plaintiff was a business invitee on the United States' property, and that under §§318 and 343 of the Restatement of Torts (Second), the government had a sufficient possessory interest and corresponding duty under which to impose liability for plaintiff's injuries.

However, not only is that case distinguishable from the instant case in that plaintiff could demonstrate some actual ownership and possessory interest by the government, but the case itself was reversed by the Court of Appeals in *Fisher v. United States*, 441 F.2d 1288 (3d Cir. 1971). Notwithstanding the extent of the government's possessory interest as demonstrated by plaintiff, the appellate Court determined there was no basis for finding the United States liable to plaintiff. The Court stated that the control exercised by the government was to insure compliance with the contract, and not to control the contractor's activities. *Id.* at 1292.

Here, Mr. Landis has failed to aver sufficient facts to determine that Ms. Steppe-Boyd was an owner of the property, nor that she exercised control or possession over the property sufficient to impose a duty upon her to protect the Plaintiff.

The Court is mindful that the procedural posture of the matter is that of a demurrer, and averments in a complaint must be taken as true, except to the extent that they constitute conclusions of law. *Shick v. Shirey*, 716 A.2d 1231, 1233 (Pa. 1998). Assuming, *arguendo*, that Mr. Landis' claim of Ms. Steppe-Boyd's "equitable interest" in the property is sufficient to impose liability, it would be under the theory that a landlord out of possession was liable to the Plaintiff. Under even this theory, the claim of Plaintiff must fail under the applicable case authority in Pennsylvania.

We find the instant case is governed by the case of *Palermo v. Nails*, 483 A.2d 871 (Pa.Super.

1984), rather than the cases argued to this Court by the parties. In *Palermo*, a seven-year-old boy was attacked and bitten by a dog whose owner was leasing the premises where the attack occurred. The boy's father sued, in his behalf, the dog owner and also the estate of the landlord, since deceased. The Superior Court determined that a landlord out of possession may be held liable for injuries by animals owned and maintained by a tenant when the landlord has (1) knowledge of the presence of the dangerous animal and (2) the right to control or remove the animal by retaking possession of the premises. *Id.* at 873. Instantly, even if we were to accept that Ms. Steppe-Boyd had sufficient "equitable interest" in the premises to be deemed a landlord out of possession, there is absolutely no indication, presented either by the Second Amended Complaint or during argument in opposition to the Preliminary Objections, that she would have been able to exercise any right to control or remove Mr. Steppe's dog by retaking possession of the premises. *See also Gallick v. Barto*, 828 F.Supp. 1168 (M.D. Pa. 1993); *Dick v. Detwiler*, 7 D.&C. 4th 629 (C.P Blair County). There is nothing in the record to demonstrate she could control Mr. Steppe or his dog, notwithstanding the fact that she is related to him. She had not yet purchased the property, and was not a signatory to any lease agreement that might exist.

Accordingly, the following Order is entered:

ORDER

The Preliminary Objections of Defendant Alberta M. Steppe-Boyd are HEREBY SUSTAINED.

The Complaint as to this Defendant is dismissed and her name shall be removed from the caption.

BY THE COURT:

William S. Kieser, Judge