

VERMONT SUPERIOR COURT  
Chittenden Unit  
175 Main Street, PO Box 187  
Burlington VT 05402  
802-863-3467  
www.vermontjudiciary.org



CIVIL DIVISION  
Case No. 22-CV-03976

**Mansfield Heliflight, Inc. v. Beta Technologies, Inc. et al**

**ENTRY REGARDING MOTION**

Title: Motion for Summary Judgment on Mansfield Heliflight's Trespass Claim  
(Motion: 29)  
Filer: Ritchie E. Berger  
Filed Date: July 20, 2023

Defendant Beta Technologies Inc. moves for summary judgment on the trespass claim against it, arguing that Mansfield impliedly consented to Beta's use of the now-disputed outdoor areas. Implied consent can be a defense to a trespass claim:

Even when the person concerned does not in fact agree to the conduct of the other, his words or acts or even his inaction may manifest a consent that will justify the other in acting in reliance upon them. This is true when the words or acts or silence and inaction, would be understood by a reasonable person as intended to indicate consent and they are in fact so understood by the other. This conduct is not merely evidence that consent in fact exists, to be weighed against a denial. It is a manifestation of apparent consent, which justifies the other in acting on the assumption that consent is given and is as effective to prevent liability in tort as if there were consent in fact.

Harris v. Carbonneau, 165 Vt. 433, 437 (1996) (quoting Restatement (Second) of Torts § 892 cmt. c (1979)). Beta asserts that Mansfield knew as of January of 2022 that the city was considering leasing Beta the disputed space, knew as of July 2022 that the City Council had approved a lease with Beta that included the now-disputed area, and failed to object at any time until this suit was filed on November 10, 2022. Instead, Mansfield vacated the area now at issue during the month of August. Beta argues that Mansfield

impliedly consented to Beta's use because it stood by silently and took no action to object.

Mansfield presents evidence that it had told Beta back in April and December of 2021, and January of 2022, that it wanted to keep the now-disputed area, and objected to Beta taking it over. Chase Declaration ¶¶ 5-6, 11, 15-18. Mansfield also points out that it continued to use the space until September 1, 2022, and that it filed this lawsuit within six weeks of vacating the space. *Id.* ¶ 26.

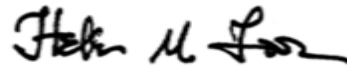
The key undisputed fact here, however, is that Beta vacated the now-disputed space in August of 2022. Whatever opposition it had stated before that was no longer relevant when it effectively conceded the issue by leaving. "There is no recovery for trespass . . . where the possessor has consented to the conduct." *Harris*, 165 Vt. at 437. It does not matter whether Mansfield truly consented. It is enough "when the words or acts or silence and inaction, would be understood by a reasonable person as intended to indicate consent and they are in fact so understood by the other." *Id.* (quoting Restatement, § 892 cmt. c). Here, the City asked Mansfield to move its equipment from the now-disputed area because the area had been leased to another tenant, and Mansfield did so. *See* SMF 12-18, Exs. J-M. Mansfield offers no evidence that it asserted that it was doing so under protest. Any reasonable person would have understood that Mansfield consented to Beta's use of the space at that point. In fact, within two months, Beta had taken occupancy of a portion of the now-disputed area and had begun excavating the remaining portion. SMF 22. Mansfield concedes that it never sent anything in writing challenging that use of the area. SMF 24. Nor does it offer any evidence that it objected orally. Its conduct after July of 2022 constituted implied

consent and “is as effective to prevent liability in tort as if there were consent in fact.”  
Harris, 165 Vt. at 437 (quoting Restatement § 892 cmt. c).

Order

The motion is granted.

Electronically signed on November 1, 2023 pursuant to V.R.E.F. 9(d).



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Helen M. Toor  
Superior Court Judge