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CIVIL RECOURSE IN FIRE LOSSES

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Civil recourse seems somewhat unrelated to arson investigation and fire prevention, but the problem of obtaining compliance with fire regulations can represent another approach to these problems. A few cases and situations will definitely show that the cost of compliance is far less than noncompliance.

Analysis of numerous cases of violations of fire prevention regulations shows that the majority of violations can be traced to one of three causes—either carelessness, ignorance, or cost of compliance. You see, time after time, inspection after inspection, accumulation of oily rags, unused paint near heaters, under stairways, in closets—all the result of carelessness. You run into ignorance by people who just do not know what the regulations require that they do, and who will attempt, wholeheartedly, to cooperate with you, but each one of those persons must be contacted individually, and each case assessed particularly, all of which consumes a great deal of time—a lot more than we have—and the only answer is better education in fire prevention.

Your are all familiar with forms of education and ways of education of the public that have been attempted to combat carelessness and ignorance. It is my thought to touch on these two subjects, and, more particularly, to talk about those persons who balk at complying with the law because of the cost of compliance.

FIRE ESCAPES

On a hot, dry October afternoon, 23 year old Lorraine Dotson, an assistant saw filer, was working on the third floor of the Louisiana Lumber Company's saw mill at Standard, Louisiana (Ouachita Parish). Shortly before 6:00 o'clock a fire started between the first and second floors in the lower boxed part of the shaft in which the bandsaw was being operated. The mill proper, where the timber was sawed, was on the second floor of this building. The enclosed pulleys, around which the saw was carried, were suspended one between the second and the third floors, and the other between the first and second floors, where the fire began.

There was heavy dark smoke, which arose through the open shaft to the third floor and spread so quickly that the hose and other apparatus could not be effectively used. Dotson was then in the filing room on the third floor and cut off from his only means of escape which was a stairway inside the building. He burned to death.

At this time Act 171 of 1914 provided in Section 1 that every building in the State

of Louisiana having more than two stories, and every building in which persons are usually employed above the second story, shall have one or more fire escapes on the outside of the said building unless there are adequate provisions on the inside.

Sections II and III provided for the approval of the Fire Marshal.

Section IV provided:

> "That the owner or owners of any of the buildings mentioned in the foregoing provisions of this Act, who shall wilfully fail or refuse to provide with the provisions of this Act... shall be guilty of a misdemeanor and in case of fire occurring in any of the said buildings in the absence of fire escapes, as provided for in this Act, the owner or owners, aforesaid, shall be liable for damages, in case of death or personal injury, as the result of fire or panic in any of the said buildings."

Here we have a situation where the law clearly required adequate means of escape and yet Dotson is dead.

The lumber company said that the law did not require them to erect a fire escape without some notice from the Fire Marshal, or Labor Commissioner—that is, that the law was not self-operative.

The court made short shrift of this argument by stating:

> "The duty to erect such fire escapes is mandatory except where such fire escapes are not necessary. We don't understand the Act to say, or to mean that the duty to erect fire escapes only arises or comes into existence after notice by the State Labor Commissioner, or the Fire Marshal has been served upon the owner of the building, though it may be that, before the owner may be criminally prosecuted such notice should be served upon him. We are, therefore, clearly of the opinion that the duty to erect fire escapes is imposed upon the owners of such buildings by the law itself... the non-performance of that duty then becomes negligence."[1]

The court awarded damages in the amount of $15,000, although this case arose almost 40 years ago. You can imagine what the damages would be presently—considering the purchasing power of the dollar now as compared to 40 years ago.

In this case the lumber company was operating a mill in the usual and customary manner, using appliances as were general throughout the trade and exercising ordinary care and prudence in operating the mill, but the court said the proximate cause of Dotson's death was the negligence of the company in not providing him with the means of saving himself. It was immaterial whether Dotson could reach the fire escapes had they been there. The determining factor was that they were not there.

Let's forget for a moment the incalculable value of human life and just consider what it cost the lumber company not to have a fire escape. Anyone who weighs the cost of one fire escape against the amount of liability which may be attached to them for not having a fire escape, should it be required, or such other safety device as may be required, will find the scales heavily balanced in favor of compliance.

Opening of Doors

A regulation which has caused considerable objection to its enforcement is one requiring that doors open in the line of travel in certain occupancies. Let us now turn

[1] 144 La. 78.

our attention to the criminal responsibility and liability as well as the civil liability or recourse in this connection.

This is what happened in Los Angeles, California, a few years ago. Three people were burned to death; two others were horribly burned and disfigured for life. In describing their injuries the Supreme Court of California stated that one of these "who was once a pretty girl is now a hideous caricature of her former self. Plastic surgeons have been unable to replace her eyelids and there is a possibility that her eyesight will be permanently impaired. The other girl's hands and arms were so badly burned that they are now useless and she is thus permanently disabled."

The survivors of this tragedy can explain in their own words far better than any cold court language, the result of failure to meet fire regulations.

The fire occurred in a workroom on the second floor of the building. The tenant of the building was engaged in the manufacture of dice from celluloid. Cellulose tetranitrate is blended with camphor to produce celluloid which is a highly inflammable material. When celluloid burns it burns rapidly, and as it burns it emits the gases of nitrogen, carbon, and hydrogen, and various combinations of these gases, all of which are hot and toxic in that they burn the mucous membrane.

The second floor of the building was divided into two rooms, the "showroom" and the "workroom". Between these two rooms were double doors which opened *into* the workroom rather than *outward* from it. Against one of these doors, on the workroom side, the tenant had placed a heavy table on which was placed a cash register, thus effectively blocking one half of this exit, which on the day of the fire was the only way out of the room.

The City ordinance required that the door open outward, that is, open only in the direction of the exit. The City ordinance also required two separate exits. At the time the tenant leased the premises there were two separate exits, but prior to the fire the second exit had been blocked by the tenant.

Further, the ordinance required a sprinkler system for this type of occupancy; that is, the use being made of the premises.

In addition, the ordinance required a "certificate of occupancy" to be obtained before a building is occupied, and a "change of occupancy certificate" in the event that the use being made of the premises is changed. This provision is so that inspectors may determine if the building complies with all laws regulating the type of use proposed. It is obvious that some uses, such as the manufacture of celluloid dice, present more hazards than other uses and are therefore more strictly regulated. When the use of these particular premises was changed from "stores and offices" to the manufacture of dice from celluloid, no "change of occupancy certificate" was obtained. Indeed, if one had been applied for it is probable that this tragedy would never have occurred.

So we find that several provisions of this City ordinance were violated. A door opened into, instead of out of, a workroom; the second exit was blocked off, there was no sprinkler system which was required when the premises were used for hazardous purposes such as here involved; and no "change of occupancy" certificate had been obtained. Possibly there may have been other violations, but these illustrate the general situation.

Many people would think that these are minor infractions of technicalities. We have all heard, time and time again: "What difference does it make which way the door opens?", or, when we find the required exit blocked we are often told: "Nobody ever uses it so we just put that table there", or "We can't afford a sprinkler system, and anyway we've been here twenty years and never had a fire." You have all heard: "Well, what if there's a fire—it's not your loss," or "I've got a lease on this and I don't see that it's any of your business." These arguments, and many more, are repeated many times every day when city officials attempt to obtain compliance with such laws.

But is there a reason for such laws?

What about the "technical" requirement that a door open outward instead of inward? Testimony of persons who were burned at the fire vividly shows the reason for that provision. (Finnegan v. Royal Realty Co. (1950), 35 Cal. 2d 409, at pp. 416–419). Here are excerpts from the actual testimony:

"Q. And was the door leading from the workroom to the showroom and the one we have been talking about, here, open or closed at the time the fire occurred?

A. It was closed, sir.

Q. Where abouts in these premises did you get these burns to your hands?

A. I got the worst part of my burns right directly at the door... He (Reuter) was hollering for me to help him from the flames on him, and thereafter the girls and all started running in a panic and hollering, and I crawled over to the door. It was all a mass of flames there, and I got—when I got to the door, I felt this pressure of these people up on top of me, and I reached up and grabbed the knob in my hand, and it slid right on down as I pulled it again; but I grabbed around and pulled up again, and reached down, and when I finally got the door open Miss Merchut had her arms around my waist. I tried to throw her arms off me when I felt the dead weight, but could not. I finally got the door open. The first time I tried to open it outward. In the excitement and panic I forgot which way the door would open, but finally I got it open and got out and pulled Miss Merchut after me.

Q. All right. Let me ask you, which way did that door open?

A. It opened toward me. I had to pull it inward to get out.

Q. That is, it swung inward into the workroom?

A. That is correct, sir.

Q. Was it a two-way door? Did it also open out?

A. No, sir.

Q. I assume it goes without saying you were highly excited while you were there at the door?

A. Yes, sir, I was.

Q. And did you recall, when you got there, which way the door did open?

A. No, sir.

Q. You attempted to open it first which way?

A. I tried to push it from me, you know, to get out.... There was quite a bit of panic there at the door. I felt these people shove me from every which direction and pull me down.... I was concerned in trying to find the little knob there so I could get out myself. I knew—I was aware of Miss Merchut because she kept hollering "I am burning", and she had her hands around my waist, and I tried to tear them loose, and of course when I got out she still had her hands around my waist....

Q. By Mr. Stanbury (counsel for plaintiffs): Were you, yourself, doing anything at the door except trying to get out?

A. No, sir; that is all I was trying to do.

Q. And in attempting to get out, were you using your hands?

A. Yes, sir.

Q. What were you doing with your hands?

A. Part of the time I was using this one to protect my eyes, and the other one groping around for the little small knob.

Q. All right. Did you use your hand when you got hold of the knob?

A. Yes, sir, I pulled it in and got out.

Q. Now, was it hot around the door?

A. Yes, sir, it was all in flames.

Q. Were there flames around you at the time you got there?

A. Yes, sir.

Q. Did you get your hands burned?

A. Yes, sir. I got my hands all burned, and at the time I got out, why, my hands were bleeding, they were all cut, and the flesh was falling off them. My face was swollen, and I could feel a bursting and cracking sensation to my skin.

Q. Were there anything wrong with your hands before the fire?

A. No, sir.

Q. Have you any way of telling us how long you were at that door before you got out?

A. It seemed like an eternity to me when I was there at the door. . . .

This is from the testimony of the girl whose hands and arms were so badly burned that they are now useless.

The other girl, who was once a pretty girl, but, to use the words of the Supreme Court "is now a hideous caricature of her former self", testified in a similar way about the confusion and panic at the door and the struggle first to push it out then finally to open it in.

From this testimony it is obvious that if the door had opened outward, as required by law, these women would have been able to reach safety much sooner.

Testimony also showed that had the second exit been available the victims might have escaped uninjured. We know that a proper sprinkler system possibly would have prevented any substantial damage; certainly it would have minimized the chances of injury or death. And, as has been mentioned, if a "change of occupancy certificate" had been obtained, these corrections would have been made, and the tragedy probably averted entirely. So we see that there is a reason for each of these regulations.

Similarly, other comparable regulations are also based on sound and valid reasons.

But, returning to the question of criminal liability, here was a case in which there was failure to comply with various regulations, the violation of which constitutes a misdemeanor. Bearing in mind the general enforcement policy heretofore mentioned, do you think the tenant got off with only a nominal fine? If you do, you are very wrong! There is also a law in California which provides that the commission of a lawful act, which might produce death, in an unlawful manner, or without due care or circumspection, which results in the unlawful killing of a human being, is manslaughter; and manslaughter is punishable by imprisonment in the state penitentiary for not to exceed ten years.

Here was had a lawful act, the manufacture of dice, done in an unlawful manner because of violation of these ordinances. What happened to the tenant who was manufacturing the dice? He was indicted on three counts of manslaughter—one count for each death—and was convicted on all three counts! Clearly, the criminal liability for violation of fire regulations can be very severe.

Civil liability can likewise be extremely severe. Further, such liability may extend not only to the tenant but also to the landlord. The dice factory fire to which we have referred is a good example of this. In that case the corporation which owned the building was successfully sued by the women who had been burned. In holding the owner liable, the court stated (p. 423):

> "Statutes and ordinances prescribing the safety features of buildings impose a duty of compliance upon the property owner. Where such a statute or ordinance fails to designate the person charged with the duty of compliance, the initial responsibility is that of the owner."

In this particular case, one of the women obtained a judgment of $100,000, and the other a judgment of $65,000, plus costs, against the owner of the building. So we see that violation of fire regulations can be very costly to the owner as well as tragic to others.

The fact that the building was leased to another person did not exonerate the owner. The landlord cannot divest himself of this liability regardless of the terms of the lease. Under the law, the obligation of the owner is to the general public. He cannot escape this liability by a lease which makes it the duty of the tenant to comply with all laws. Such a provision in the lease only affects rights and obligations as between the landlord and the tenant. It might give the landlord the right to terminate the lease or even make the tenant liable to the landlord for any losses sustained, but it would not relieve the landlord of his responsibility to comply with laws applicable to him, nor would such a provision relieve the landlord of any liability resulting from a violation of such laws.

Owner's Liability

Another case in which a lawful act caused injury and the owner was held civilly liable was Stewart v. Palmisano, 31, So. (2) 27.

Dominick Palmisano owned property, a part of which was leased to Mrs. Stewart. In an effort to preserve and improve his property, Mr. Palmisano got a blow torch and started burning off the outside paint to provide a good surface to repaint. Unfortunately, the building caught fire and some of Mrs. Stewart's personal belongings were lost.

Mr. Palmisano's motives were the best and his description of the use of the blow torch was exactly correct, but the court said there was no other explanation for the fire so it must have been caused by the blow torch. The landlord had to make the loss good.

Tenants Liability to Other Tenants

So far, we have considered the rights of employees and of tenants against the owners. Let us consider for a moment the right one tenant has against another.

One of the landmark cases occurred a few years ago (57 Fed. (2) 852). A metallic vent had been installed from the hood over one of the ranges in a restaurant kitchen to an inflammable ventilating shaft which passed through floors and ceilings, and through parts of the building occupied by other tenants, as well as through walls and partitions of that portion occupied by the restaurant. This installation was in violation of the City ordinance of Seattle. The vent had been installed by a restaurant operated by a Nevada corporation which was later taken over by a Delaware corporation. Both restaurants were known as Pig 'N' Whistle. The latter corporation operated for about three years before the fire.

As a result of the fire, the equipment of the Scenic Photo Publishing Company was totally destroyed, and the photographer suffered a terrific loss. They sued the restaurant because the fire had started in the ventilating shaft and spread through the building. Actually, later investigation showed the fire had started over in the ventilating hood where grease had been allowed to accumulate, or in the metallic duct, and spread immediately through the highly flammable vent.

The restaurant sought to escape liability, claiming that it accepted the premises as they were at the time they went into possession, and during the three years of its operation it had not been notified by the Fire Marshal that the vent was illegal and violated the Seattle ordinance.

This suit was in the Federal Court, and the Circuit Court of Appeals affirmed a judgment against the restaurant, holding it liable because of its use of the grease duct contrary to the ordinance stating "These are positive, clear and unconditional requirements that imposed a duty upon the appellant (restaurant). It did not require any notice from the Fire Marshal that the grease duct it was constantly using in its kitchen did not meet the requirements of Section 550. Appellant being charged with knowledge of the ordinance, the only purpose or function that the notice from the Fire Marshal could perform would be to acquaint appellant, who was using the grease duct, that it was not in conformity to the requirements of Section 550."

In this instance a very substantial judgment was rendered against the restaurant in favor of the co-tenant photographer.

Responsibility to Neighbors

Some years ago, when the Ardis Office Building was being erected in the City of Shreveport, a frame house next door to the construction site caught on fire, and the owner sued the contractors who were erecting the building, to reimburse him for his loss. The owner alleged that a hoisting engine being used by the contractors did not have a spark arrestor as required by the City ordinance, and, as a consequence, hot coals and sparks fell on the shingled roof of the house and caught the fire.

The court found that the contractors knew that the house was old and could be easily ignited, yet they continued to operate the engine very near the house, although the smokestack was as high as the roof. Of course, they had to make good the loss. All for lack of a spark arrestor. (Prescott v. Central Contracting Co. 162 LA 885).

This is a pretty stiff penalty to pay for such a minor violation, but the law says that if there is a violation of a statute and such violation is the proximate cause of a loss, then the violator must pay for the damages (Taylor v. Texas and N.O.R. Co. 22 SO 2d 771).

Several years ago, in the City of New Orleans, boilers were not required to be inspected, and a cleaning and pressing shop on the corner of Dauphine and Ursuline Avenue had an old boiler which exploded. At the time of the explosion, a three year old child was walking on the sidewalk and a heavy board fence, around the establishment, was knocked down by the explosion and fell on the child, crushing him to death.

The court held that the operator of the cleaning and pressing establishment was liable civilly for the loss of the child's life, saying that the owner knew his boiler was old and in a weakened condition and that he continued to operate it at his own risk. (Drago v. Dorsey, 126 SO 724).

Conclusions

We have touched briefly on several high spots to give you an idea that when you are selling fire prevention and safety you are selling money in a man's pockets.

The cost of compliance is always less than the cost of restitution, and carelessness and ignorance are far more costly than careful, good housekeeping. When these few facts are brought to the people and they realize that you are not talking about technicalities and intangible details, but are trying to help them and save them money, you will find their cooperation much better.