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# Recent Developments: Rosenblatt v. Exxon: Previous Tenant of Commercial Property Not Liable to Subsequent Occupiers for Contamination of the Land

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*Rosenblatt v. Exxon:*

**PREVIOUS TENANT  
OF COMMERCIAL  
PROPERTY  
NOT LIABLE TO  
SUBSEQUENT  
OCCUPIERS FOR  
CONTAMINATION  
OF THE LAND.**

The Court of Appeals of Maryland precluded an occupier of commercial land from recovering damages from a prior occupier for alleged contamination of the property by toxic chemicals under strict liability, negligence, trespass, and nuisance causes of action. *Rosenblatt v. Exxon*, 335 Md. 58, 642 A.2d 180 (1994). In so ruling, the court insulated previous occupiers of land from liability for the damage they inflict to the land by severely limiting subsequent occupiers' methods of recovery.

Thomas Rosenblatt leased a parcel of real property with plans to open an automotive quick lubrication business on the premises. Prior to Rosenblatt's occupancy, the Exxon company had leased the land for thirty-four years for use as a gasoline station. Before building his business, Rosenblatt had an environmental test administered which detected extensive petroleum contamination in both the soil and groundwater. Accordingly, the Maryland Department of the Environment was notified. Upon conducting its own investigation the Department informed Exxon that it had violated Maryland law, at which time Exxon commenced a remediation of the property. As a result of the condition of the property, Rosenblatt lost financing for his business and was unable to commence construction.

Rosenblatt filed suit against Exxon in the Circuit Court for Prince George's

County, alleging counts of strict liability, negligence, trespass, and private nuisance. The complaint sought economic damages, including expenses resulting from the contamination and lost future profits. Exxon removed the suit to the United States District Court for the District of Maryland, which granted Exxon partial summary judgment on grounds not here at issue. The court remanded the remaining counts to the circuit court. The trial court granted Exxon's motion for summary judgment, stating that Maryland law did not provide protection to tenants of commercial property against previous tenants of the same land under the causes of action Rosenblatt set forth. Rosenblatt appealed to the court of special appeals, at which time the Court of Appeals of Maryland granted certiorari prior to review by the intermediate appellate court.

The court of appeals began its analysis by rejecting Rosenblatt's argument that the strict liability doctrine should be extended to claims of subsequent occupiers. Maryland adopted section 519 of the Restatement (Second) of Torts (1965), which requires that there be harm to a person or property of another resulting from an abnormally dangerous activity. *Rosenblatt*, 335 Md. 58, 69-70, 642 A.2d 180, 185. Since its adoption, however, the court has protected strict liability from judicial expansion. Specifically, the court has declined to extend the doctrine in situations

where the alleged tortfeasor was not the owner or occupier of land. *Id.* at 71, 642 A.2d at 186 (citing *Toy v. Atlantic Gulf & Pacific Co.*, 176 Md. 197, 213, 4 A.2d 757 (1939)). Similarly, the doctrine has been limited to apply only where the abnormal-ly dangerous activity "is carried on by a contemporaneous occupier of neighboring land." *Id.* at 72, 642 A.2d at 186 (citing *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 497 A.2d 1143 (1985)).

After reviewing these limitations, the court reasoned that requiring the plaintiff to be a neighboring landowner was an essential tenet of the doctrine which should remain intact. In so doing, the court noted extension of the doctrine would be inconsistent with the Restatement, which requires harm to property of another, where here the harm was to the owner's own land. *Rosenblatt*, 335 Md. at 75, 642 A.2d at 188. Furthermore, the court stated that a subsequent occupier of the same property is able to avoid harm completely by adequately inspecting the property prior to purchasing or leasing it. *Id.* at 74, 642 A.2d at 188. The court also noted that the common law rule of *caveat emptor* still applies in Maryland to the sale of commercial property. *Id.* at 75 n.7, 642 A.2d at 188 n.7.

Additionally, Rosenblatt's complaint claimed only economic losses. The principles of strict liability, in contrast, afford protection only to injuries to the person or property, "not to eco-

nomical losses resulting from failed business opportunities." *Id.* at 75, 642 A.2d at 188. Therefore, the court refused to expand the doctrine of strict liability to reach a claim for economic loss by a subsequent occupier of commercial property against a prior tenant.

Next, the court examined Rosenblatt's negligence claim against Exxon. In denying Rosenblatt's claim, the court noted that an occupier of land owes certain duties to both those who come onto the land, as well as occupants of neighboring land so as to avoid causing harm to the neighboring land. In contrast, however, an occupant of land owes no duty of care to avoid harm to his own land that may cause injury to a future occupant of the same land. *Id.* at 76-77, 642 A.2d at 189. The court explained that inherent in the concept of duty is the necessity that a relationship exist between the parties, out of which the duty arises. *Id.* at 77, 642 A.2d at 189. In determining that no relationship existed, the court reasoned that it was not foreseeable that "an act or failure to act by Exxon would result in harm to Rosenblatt." *Id.*

Furthermore, as Rosenblatt was aware that the property had previously been used as a gasoline station, he knew, or at least should have known, that petroleum contamination was possible. *Id.* at 78, 642 A.2d at 189. As such, Rosenblatt was in the position to have his lease be conditioned on a satisfactory completion of an environmental

survey of the property. Failure to reasonably inspect the land and/or require contractual terms shifting the burden of risk to Exxon did not, in the court's view, impose a duty upon Exxon to avoid injury to subsequent occupiers of land. *Id.* Thus, the court affirmed summary judgment on the negligence claim against Exxon.

In turning to the next claim, the court refused to extend the tort of trespass to circumstances where the intruding object entered the premises during the trespasser's occupancy. *Id.* Implicit in the definition of a continuing trespass is that "the affected land is land of another." *Id.* at 78, 642 A.2d at 190 (emphasis added). Accordingly, the contamination could not be considered a tortious placing because it did not occur while Rosenblatt was the occupant. This analysis, coupled with the lack of any authority to support Rosenblatt's contention, led the court to reject the argument that petroleum contamination constituted a continuing trespass for which a subsequent occupant could recover against a previous occupant.

Lastly, the Court of Appeals of Maryland rejected Rosenblatt's contention that the law provides an action in nuisance to a subsequent occupant of land against a previous occupant. Examining section 821 D of the Restatement (Second) of Torts (1965), which provides that a private nuisance is a "nontrespasory invasion of another's interest in the private

use and enjoyment of land," the court concluded that a private nuisance only occurs when a wrong is done to a neighboring owner, not a subsequent occupier of the same property. *Rosenblatt*, 335 Md. at 80, 642 A.2d at 190 (citing *Meadowbrook Swimming Club v. Albert*, 173 Md. 641, 645, 197 A.2d 146 (1938)). In addition, the court noted that other jurisdictions which have considered the issue have maintained the requirement that the land in question be that of a neighbor's. *Rosenblatt*,

335 Md. at 80, 642 A.2d at 190. As such, the court affirmed Exxon's summary judgment on the nuisance issue as well.

As a result of Thomas Rosenblatt being a neighbor in time with the Exxon company, rather than a neighbor in space, the law offered him no redress for the petroleum contamination of his property. In *Rosenblatt v. Exxon*, the Court of Appeals of Maryland denied an occupier of commercial land any recompense under strict liability, negligence, trespass, or

nuisance causes of actions. In so ruling, the court effectively absolves previous occupiers of land of liability for the damage they inflict to the land during their occupancy. Nonetheless, environmental catastrophes often go undetected for extended periods of time. *Rosenblatt* signifies the increasing probability over time that a subsequent occupier will bear the economic burden of another's neglect.

- Garret P. Glennon Jr.

