Michigan Law Review

Volume 49 | Issue 3

1951

NEGLIGENCE-LIABILITY OF LANDLORD FOR INJURIES TO PERSONS ON THE PREMISES

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NEGLIGENCE—LIABILITY OF LANDLORD FOR INJURIES TO PERSONS ON THE PREMISES—LEASE FOR PUBLIC USE—Plaintiff, an invitee, sued for injuries caused by the fall of plaster from the ceiling of a tavern operated by a tenant in a building owned by defendant. *Held*, the rule whereby a lessor of premises leased for a public use is liable to an invitee of his tenant is inapplicable. *Warner v. Fry*, (Mo. 1950) 228 S.W. (2d) 729.

The lease of realty to a tenant is regarded as equivalent to a sale of the premises for a term and the rule of *caveat emptor* applies to the lessee.[1] Therefore, the landlord has no liability either to the tenant or to others entering the land for injuries due to defects in existence at the time of the lease[2] except where dangerous conditions are concealed by the lessor, or there is a covenant to repair, or where the lessor still has some control of the premises, or where the lessor has warranted the condition of the premises, or where the premises are leased for a public use.[3] The last-mentioned exception is the only one involved in the principal case. This exception grew out of cases involving piers and wharves,[4] being at first based on a nuisance theory, although later writers agree that negligence is a sounder basis for liability.[5] Reasons more commonly given for the public use rule are that leases for public use are usually of such short duration that lessees cannot be expected to repair,[6] that the lessor is extending an invitation to the public and so must exercise due care,[7] that large numbers of the pub-

[1] TIFFANY, REAL PROPERTY §85 (1940); Harkrider, "Tort Liability of a Landlord," 26 MICH. L. REV. 260 and 383 (1928).

[2] PROSSER, TORTS §81 (1941).

[3] Harkrider, "Tort Liability of a Landlord," 26 MICH. L. REV. 260 and 383 (1928); Oxford v. Leathe, 165 Mass. 254, 43 N.E. 92 (1896).

[4] Swords v. Edgar, 59 N.Y. 28 (1874); Edwards v. New York & Harlem R.R., 98 N.Y. 245 (1885); Albert v. State, 66 Md. 325, 7 A. 697 (1887).

[5] 1 TIFFANY, LANDLORD AND TENANT §§96c, 102 (1912); Webel v. Yale University, 125 Conn. 515, 7 A. (2d) 215 (1939).

[6] Oxford v. Leathe, supra note 3.

[7] Fox v. Buffalo Park, 21 App. Div. 321, 47 N.Y.S. 788 (1897); Camp v. Wood, 76 N.Y. 92, 32 Am. Rep. 282 (1897).

lic cannot be warned of the danger and thus will be less alert to avoid danger,[8] and that lessees of defective premises are likely to be financially unable to make repairs.[9] A number of state statutes fixing liability reflect this last feeling.[10] While the principal case recognizes the exception, the court refuses to extend it to ordinary commercial establishments and also imposes the requirement that large numbers of the public be involved. There is authority for both of these contentions,[11] but there are also cases which impose liability on the landlord of a grocery store,[12] a doctor's office,[13] a small shop,[14] and a public garage.[15] It has, moreover, been said that no sound reason can be given for limiting the exception to cases where large numbers of the public are involved.[16] It would appear, however, that unless this limit were imposed, probability of danger being made the test instead, there would be no logical reason why liability could not be extended to landlords of dwelling houses, in which case the public use exception would become the general rule.[17] While the "large number" requirement is lacking in certainty, it has been declared to be a fairly practical one.[18] The principal case seems to follow the sounder view and to be consistent with long-established property and tort law.

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[8] 1 TIFFANY, LANDLORD AND TENANT §96c (1912).

[9] PROSSER, TORTS §81 (1941).

[10] Altz v. Leiberson, 233 N.Y. 16, 134 N.E. 703 (1922); Harkrider, "Tort Liability of a Landlord: II" 26 MICH. L. REV. 383 at 384 (1928); Zeininger v. Preble, 173 Wis. 243, 180 N.W. 844 (1921).

[11] L.R.A. 1916F, 1123; Harkrider, "Tort Liability of a Landlord," 26 MICH. L. REV. 260 and 383 (1928); 2 TORTS RESTATEMENT §359 (1934).

[12] Senner v. Danewolf, 139 Ore. 93, 6 P. (2d) 240 (1932).

[13] Gilligan v. Blakesley, 93 Colo. 370, 26 P. (2d) 808 (1933).

[14] Webel v. Yale University, supra note 5.

[15] Warner v. Lucey, 207 App. Div. 241, 201 N.Y.S. 658 (1923).

[16] Wilcox v. Hines, 100 Tenn. 538, 46 S.W. 297 (1898).

[17] Eldredge, "Landlord's Tort Liability for Disrepair," 84 UNIV. PA. L. REV. 467 (1936).

[18] La Freda v. Woodward, 125 N.J.L. 489, 15 A. (2d) 798 (1940).