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Torts - Landlord and Tenant - Duty to Remove Ice and Snow, Langhorne Road Apts., Inc. v. Bisson, 207 Va. 474 (1966)

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been reluctant to abandon the privity requirement. In addition, the holding in *Miller* v. *Preitz* will promote multiple litigation, in as much as the seller, who is held strictly liable, is forced to sue in order to recover his loss from the manufacturer. The liabilities of this strict interpretation of the Uniform Commercial Code 2-318 are patently obvious.[22]

John B. Gaidies

Torts—LANDLORD AND TENANT. Respondent Bisson, a tenant of Langhorne Road Apartments, slipped and injured himself on a snow and ice covered common walkway. Attempts had been made by the landlord to clear the walk throughout the day. On a motion for judgment by the tenant, a jury found him free of contributory negligence and the Corporation Court entered judgment on the verdict for the tenant. The cause was brought on error to the Supreme Court of Appeals of Virginia.[1] The Appellate Court in affirming the decision held that in the absence of a statute or agreement, it is the duty of the landlord to remove natural accumulations of ice and snow from common passageways.

Although this is a case of first impression in Virginia, the issue of whether snow and ice removal is included in the landlord's general duties has appeared in several jurisdictions. Three approaches have emerged:[2]

(1.) the Massachusetts rule which places no duty on the landlord to remove ice and snow;[3]
(2.) the Connecticut rule which imposes a duty to remove the accumulations;[4] and

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the seller's warranties, given to his buyer who resells, extend to other persons in the distributive chain."

22. For an interesting perspective of the 1966 session of the Pennsylvania Supreme Court see the dissent in Webb v. Zern, 422 Pa. 424, 220 A.2d 853 (1966). The dissenting justice opposed the court's adoption of RESTATEMENT 402-A as law in Pennsylvania. He maintained that this decision in conjunction with the many other decisions overruling the previous law passed down by the court in 1966, jeopardizes stare decisis.

1. Langhorne Road Apartments, Inc. v. Bisson, 207 Va. 474, 150 S.E. 2d 540 (1966).

2. These rules apply when the landlord has not by contract assumed the duty of removal, when he has not impliedly assumed the duty by past removals, and when the accumulation of snow and ice is natural and not artificial.

3. Woods v. Naumkeag Steam Cotton Co., 134 Mass. 357, 45 Am. Rep. 344 (1883); Boulton v. Dorrington, 302 Mass. 407, 19 N.E. 2d 731 (1939).

4. Reardon v. Shimelman, 102 Conn. 383, 128 A. 705, 39 A.L.R. 287 (1925).

(3.) a minority New York view which imposes the duty only when the ice is formed into ridges or hummocks.[5]

The Massachusetts rule is a reflection of the unusual landlord-tenant laws of that state which limit the landlord's duty to maintenance of the premises in as safe a condition as they were at the beginning of the tenancy.[6] The application of the rule has not been limited, however, to Massachusetts' Courts or to states which have a similar landlord-tenant framework. A number of jurisdictions[7] have adhered to the philosophy of *Oerter v. Zieglar*,[8] which held that the duty to use reasonable diligence to keep common areas in a safe condition extends only to general repairs and does not impose upon the landlord liability for injuries resulting from temporary obstructions arising from natural causes, such as ice and snow.[9]

The Connecticut view is that the obligation of the landlord to use reasonable care with respect to common areas includes the obligation to remove natural accumulations of ice and snow.[10] In *Grizzel v. Foxx*,[11] the Court could see no reason to differentiate between an accumulation of snow and ice and other types of defects relating to a common passageway.[12] The possibility that if the landlord does not clear the area no one will is the rationale of practicality underlying the Connecticut

5. Harkin v. Crumbie, 20 Misc. 568, 46 N.Y.S. 453 (Sup. Ct. 1897).

6. Smolesky v. Kotler, 270 Mass. 32, 169 N.E. 486 (1930); Rogers v. Dudley Realty Corporation, 301 Mass. 104, 16 N.E. 2d 244 (1938).

7. Indiana, Purcell v. English, 86 Ind. 34 (1883) (by implication); Maine, Rosenberg v. Chapman National Bank, 126 Me. 403, 139 A. 82, 58 A.L.R. 1405 (1927); Minnesota, Burke v. O'Neil, 192 Minn. 492, 257 N.W. 81 (1934); Missouri, Woodley v. Bush, 272 S.W. 2d 833 (Mo. Ct. App. 1954); Rhode Island, Pomfret v. Fletcher, 208 A. 2d 743 (R.I. Sup. Ct. 1965); Washington, Schedler v. Wagner, 37 Wash. 2d 612, 225 P. 2d 213 (1950); Wisconsin, Holcomb v. Szymczyk, 186 Wisc. 99, 202 N.W. 188 (1925).

8. 59 Wash. 421, 109 P. 1058 (1910).

9. This is the embodiment of the common law concept of the landlord's general duties. The caveat is found in Purcell v. English, *supra* note 7, at 43. "If any other rule is adopted, then the owner is charged with the duty of watching the steps leading to every part of his premises, and of keeping them free from all temporary obstructions; for let it once be granted that the landlord is liable for obstructions or defects not permanent and not growing out of the character of the structure, it will be impossible to draw the line, and he must be held accountable for all obstructions and defects, no matter how transient their character."

10. Reardon v. Shimelman, *supra* note 4; Robinson v. Belmont-Buckingham Holding Co., 94 Colo. 534, 31 P.2d 918 (1934); United Shoe Machinery Corporation v. Paine, 26 F. 2d 594 (1st Cir. 1928).

11. 48 Tenn. App. 462, 348 S.W. 2d 815 (1960).

12. 1 TIFFANY, LANDLORD AND TENANT 633 (1912). "To set apart this particular source of danger is to create a distinction without a sound difference."

approach.[13] By imposing the duty of removal, the courts have said that the landlord must use reasonable care, after notice, to clear the areas of any permanent or temporary danger,[14] but have not made him an insurer or a guarantor.[15]

A compromise position has been taken by several New York Courts in holding that the landlord is under no duty to remove natural accumulations unless ridges or mounds of unusual size are formed.[16]

In this case of first impression the Virginia Court adopted the Connecticut rule, holding that its adoption was a logical extension of the landlord's duties as recognized in the state.[17] Imposing the duty on the landlord was justified by restating the rationale underlying the Connecticut approach.[18]

13. Robinson v. Belmont-Buckingham Holding Co., *supra* note 10, at 920. ". . . but surely the defendant would not expect this necessary labor to devolve upon the tenants of a large apartment house. . . . To agree with defendant on this point of its liability would place thousands of city residents in jeopardy and would be inimical to modern urban life."

14. In addition to Connecticut the following jurisdictions follow the rule: Colorado, Robinson v. Belmont-Buckingham Holding Co., *supra* note 10; Delaware, Young v. Saroukos, 185 A.2d 274 (Del. Sup. Ct. 1962); Georgia, Fincher v. Fox, 107 Ga. App. 695, 131 S.E. 2d 651 (1963) (by implication); Illinois, Durkin v. Lewitz, 3 Ill. App. 2d 481, 123 N.E. 2d 151 (1954), *but see* Cronin v. Brownlie, 348 Ill. App. 448, 109 N.E. 2d 352 (1952); Maryland, Langley v. Lund, 234 Md. 402, 199 A.2d 620 (1964); New Jersey, Rooney v. Siletti, 96 N.J.L. 312, 115 A. 664 (1921); Ohio, Sidle v. Humphrey, 8 Ohio App. 2d 25, 220 N.E. 2d 678 (1966), Oswald v. Jeraj, 146 Ohio St. 676, 67 N.E. 2d 779 (1946), *but see* Turoff v. Richman, 76 Ohio App. 83, 61 N.E. 2d 486 (1944); Oregon, Massor v. Yates, 137 Or. 569, 3 P.2d 784 (1931); Pennsylvania, Goodman v. Corn Exchange National Bank and Trust Co., 331 Pa. 587, 200 A. 642 (1938); Tennessee, Grizzel v. Foxx, *supra* note 11; District of Columbia, Pessagno v. Euclid Inv. Co., Inc., 112 F. 2d 577 (D.C. Cir. 1940).

15. Pessagno v. Euclid Inv. Co., Inc., *supra* note 14. This serves to allay the apprehensions expressed by courts following the Massachusetts rule that the landlord would probably be held liable for all obstructions, and for the removal of snow and ice immediately upon its formation.

16. Harkin v. Crumbie, *supra* note 5; Dwyer v. Woollard, 205 App. Div. 546, 199 N.Y.S. 840 (1923). This approach has not gained wide acceptance, even in New York. Rankin v. Ittner Realty Co., 242 N.Y. 339, 151 N.E. 641 (1946) (where the Massachusetts rule was followed).

17. Landlord is under an implied duty to use ordinary care to keep common areas in a reasonably safe condition, and is liable for injuries when he breaches this duty. Wagman v. Boccheciampe, 206 Va. 412, 143 S.E.2d 907 (1965); Revell v. Deegan, 192 Va. 428, 65 S.E.2d 543, 26 A.L.R.2d 462 (1951).

18. Langhorne Road Apartments, Inc. v. Bisson, *supra* note 1, at 477, 150 S.E.2d at 542. "Knowing the vagaries of human nature, the courts naturally concluded that if the landlord did not keep such areas safe, no one would. . . . We believe the more realistic approach to the problem is to place the dangerous condition . . . upon the same basis as the other defects for which a landlord may be held liable . . ."

Langhorne Road Apartments, Inc. v. Bisson adds Virginia's authority to the recent trend of precedent free jurisdictions favoring the Connecticut view.[19] The complexities and problems of modern urban living, characterized by an increasing number of large apartment buildings, demand solutions which are not shackled by minute common law distinctions. The Connecticut rule is a modern solution to a modern problem and the trend establishing it as the majority rule should continue.

James K. Stewart

Workmen's Compensation—WHO IS AN "OTHER PARTY" WITHIN THE MEANING OF VIRGINIA CODE § 65.38?[1] A materialman contracted with a general contractor to "receive, unload, warehouse and haul to the job site all material" he would supply for the work.[2] The unloading at the job site would be directed by the general contractor. Defendant, Bosher, rented two trucks and drivers to the materialman for the deliveries. One of the drivers, unloading and spreading sand pursuant to the principal contractor's directions, injured plaintiff, Jamerson, an employee of that contractor. Plaintiff recovered workmen's compensation for the injury and then instituted this tort action against Bosher. From an order overruling his plea that the action was barred by the Virginia Workmen's Compensation Law, defendant appealed.[3]

19. Grizzel v. Foxx, *supra* note 11; Young v. Saroukos, *supra* note 14; Fincher v. Fox, *supra* note 14; Langley v. Lund, *supra* note 14; *contra*, Pomfret v. Fletcher, *supra* note 14.

1. VIRGINIA CODE § 65.38 (1950), which provides:

> The making of a lawful claim against an employer for compensation under this act for the injury or death of his employee shall operate as an assignment to the employer of any right to recover damages which the injured employee or his personal representative or other person may have against any *other party* for such injury or death, and such employer shall be subrogated to any such right and may enforce, in his own name or in the name of the injured employee or his personal representative, the legal liability of such other party. The amount of compensation paid by the employer or the amount of compensation to which the injured employee or his dependents are entitled shall not be admissible evidence in any action brought to recover damages. Any amount collected by the employer under the provisions of this section in excess of the amount paid by the employer or for which he is liable shall be held by the employer for the benefit of the injured employee or other person entitled thereto, less a proportionate share of such amounts as are paid by the employer for reasonable expenses and attorney's fees as provided in § 65-39.1. No compromise settlement shall be made by the empolyer in the exercise of such right of subrogation without the approval of the Industrial Commission and the injured employee or the personal representative or dependents of the deceased employee being first had and obtained. (Emphasis added.)

2. Bosher v. Jamerson, 207 Va. 539, 540, 151 S.E. 2d 375, 376 (1966).

3. *Ibid.*