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Landlord May be Responsible for Injuries Sustained on Leased Premises

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A landlord is generally not liable for injuries sustained by third parties on his property. The reasoning is simple: Liability is based upon possession and control, not just ownership, of the property.

In *Jones v. Levin*, the Superior Court of Pennsylvania held that a landlord can be held liable for injuries sustained on the property if the landlord either maintains some control over the property or if the property is intended for use by the general public.

Constance Jones was a salesperson at the Levin Furniture Store in suburban Pittsburgh. On a chilly December evening, Jones was walking back to her automobile, parked in an adjacent parking lot, when she fell on some ice that had accumulated in an uneven area of the property. The property on which she fell was owned by the Levin Estate and leased on a month-to-month basis to the family business, Sam Levin Inc. The stated purpose of the lease was to sell furniture and appliances to the general public through the Levin Furniture Store.

Jones and her husband filed a complaint against the administrator of the Levin Estate. In the complaint, they claimed that the administrator of the Levin Estate was negligent in allowing water runoff, snow and ice to build up in an uneven area of the property, which produced dangerous conditions.

The Levin Estate filed a motion for summary judgment and the trial court granted the motion after finding that the Levin Estate, as landlord, did not owe a duty to Jones.

On appeal, the Superior Court first decided which party controlled the property.

At first glance, it appeared that Sam Levin Inc., as tenant, was in control of the property. However, the Superior Court questioned whether a genuine landlord-tenant relationship existed between the parties.

Landlord-tenant relationships are not formed with a snap of the fingers. At the crux of any lease is the exchange of money, or some other type of consideration, for possession of the property. In the simplest sense, some sort of benefit must flow to the landlord in order for the landlord-tenant relationship to exist.

With that in mind, the Superior Court found genuine issues of material fact as to whether a landlord-tenant relationship actually existed between the Levin Estate and Sam Levin Inc. The Superior Court pointed out that, although the lease provided for the payment of rent from Sam Levin Inc. to the estate, the record was bare of any indication that the estate was actually receiving these rental payments.

The Superior Court next addressed the two exceptions to the general rule of nonliability of a landlord, which is out of possession of the property.

The first exception is known as the "reserved control" exception. Under this exception, a landlord may be liable when and if the landlord reserves control over a defective portion of the property or over a portion of the property that is necessary for the safe use of the property. This exception typically applies to "common areas," such as hallways in buildings leased to multiple tenants.

The Superior Court noted that the lease suggested that the Levin Estate retained some control over the property. The lease stated that Sam Levin Inc., as tenant, was responsible for repairs and maintenance but could not make any structural repairs without the consent of the Levin Estate. Therefore, the Superior Court concluded that genuine issues of material fact existed as to whether the Levin Estate continued to exercise control over the defective portions of the property.

The second exception the Superior Court discussed is known as the "public use" exception. According to Section 359 of the *Restatement (Second) of Torts*, a landlord may be liable to third parties if the property is used by the general public and the owner has failed to inspect or repair the dangerous conditions plaguing the property. The underlying rationale behind this exception is the landlord's duty to the public, which cannot be shifted to the tenant if the landlord has reason to believe the public will be admitted prior to a correction of any hazards on the property.

In Pennsylvania, the public use exception is traditionally applied to customers who are injured on the leased premises. Prior to *Jones*, no court had ever applied the exception to injured employees. The Superior Court cited several jurisdictions, which declined to impose liability on landlords for injuries suffered on their properties by employees or other third parties that were present for work related activities. However, the Superior Court decided to adopt the prevailing law in New York where landlords are liable for injuries to employees if the injuries occurred in an area that was intended for use by the general public.

In doing so, the Superior Court noted that the purpose of public use exception is to protect the public. The Superior Court found New York's broader interpretation to be favorable and necessary to provide a higher level of protection and did not find a distinction between injuries that occurred to an employee compared to injuries suffered by the general public if those injuries occurred in an area intended to be used by the general public. The Superior Court believed that "a dangerous condition of land open to the general public is no less dangerous because the party who happens to suffer injury . . . is an employee."

The Superior Court's ruling in *Jones* merely illustrates the importance of landlords being vigilant in inspecting and maintaining their properties. Landlords cannot and should not rely on their tenants to do so. Otherwise, the buck can, figuratively and literally, stop with the landlord. •

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