

June 6, 2008

Stone v Center Trust Retail Properties

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Premises liability; landlord's duty to inspect with judgment of possession

Center Trust owned a mall in which Gumboz Creole Cajun restaurant was a tenant. In August 2001, the restaurant defaulted on its rent. Center Trust filed an unlawful detainer action and took a default. On December 3, 2001, the court entered a partial judgment for possession and ten days later issued a writ of possession. By December 27, 2001, Center Trust was "restored to possession of the premises."

A week and a half later, plaintiff Sheila Stone attended a party at the restaurant which was still operating. While dancing on a temporary dance floor, Stone slipped on water on the floor and fell, fracturing her ankle. Witnesses described the carpet around the dance floor as "soaked."

The ankle fracture took three operations to repair. While recovering from surgery, Stone had to wear an awkward cast, and she fell, breaking her wrist. Two more operations were needed to repair that injury. Stone sued Center Trust and the restaurant owner. The owner never appeared. By agreement at trial, the court **bifurcated liability and damages**. The jury found the restaurant 65% at fault, Center Trust 19% responsible and plaintiff 16% comparatively at fault.

In the damages phase, the jury found Stone had suffered \$391,000 in economic damages and \$300,000 in non-economic damages. Reducing her economic damages by her comparative fault and limiting her non-economic damages from Center Trust to its percentage of responsibility, the court ordered Center Trust to pay Stone \$328,440 in economic damages and \$57,000 in non-economic damages. This appeal, by Center Trust, followed.

Center Trust owned the mall where the restaurant was a tenant. All landowners, including landlords, must use reasonable care to protect people who come onto their property. (**Civ. Code 1714**) **Because a landlord has relinquished possessory interest in the land, his or her duty of care to third parties injured on the land is attenuated as compared with the tenant in control. Before liability may be thrust on a landlord for a third party's injury due to a dangerous condition on the land, the plaintiff must show that the landlord had actual knowledge of the dangerous condition in question, plus the right and ability to cure the condition.** (*Mata v Mata* (2003) 105 Cal.App. 4th 1121).

The trial court instructed the jury that a landlord must act reasonably to correct defects it knew or should have known about. (*Christensen v Superior Court* (1991) 54 Cal. 3d 868, 885. The trial court did not mention any duty to inspect. The Second DCA concluded the trial court should have instructed such a duty existed during the eviction proceedings. It reasoned that Center Trust knew that defaulting tenants sometimes neglected property. The defendant also knew the restaurant was violating its lease by running an after hours dance club. Despite knowing of lease violations and the possible neglect of the property, Center Trust did not inspect the premises.

The Appellate Justices held that Center Trust's **duty to inspect attached upon entry of the judgment of possession in the unlawful detainer action and included reasonable inspections thereafter.** (*Blakanja v Irving* (1958) 49 Cal. 2d 647. **Upon entry of judgment, a tenant's incentive to maintain a property dissipates because continued maintenance likely benefits only the landlord. Entry of judgment provides a "bright line" for the parties to know where responsibility lies and aligns that responsibility with the parties' reordered incentives.** (*Mora v Baker Commodities, Inc.* (1989) 210 Cal. App. 3d 771.

The eviction proceedings reaffirmed that Center Trust **transformed** from a landlord disinterested in day to day operations to a landlord on the verge of recovering its property who could not ignore possible hazards on its holding. Center Trust's **status as a landlord with a judgment of possession changed its legal status, imposing the greater duties of an occupying landowner.**

The case is remanded for trial of the restaurant and Center Trust's liability only. The parties may present evidence whether a reasonable inspection upon entry of the judgment and any later inspections would have discovered the leak. After the jury determines Center Trust's responsibility for plaintiff's injuries, if any, the trial court shall re-calculate her damages using the first jury's determination of total damages.

In a dissent, Justice Egerton chastised the majority for creating "new law," stating, "The trial court cannot be faulted for failing to instruct the jury on law that did not exist when the trial court tried the case." The majority found a **duty** to inspect based on a **right** to inspect. The dissenting Justice would leave this responsibility to the California Legislature and affirm the judgment of the trial court.

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