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IN THIS ISSUE

A Vermont court rules that a commercial landlord which fully leases out the premises to a supermarket and retains no possession or control of the premises, and has no responsibility under the lease for maintenance or inspections of the premises, cannot be liable for a vendor's injury on the loading dock.

Vermont Court Rules That Commercial Landlord Cannot be Liable for Injury to Retail Tenant's Invitee Involving Tenant's Operations on Premises

ABOUT THE AUTHOR

Walter Judge represents businesses in the state and federal courts of Vermont, Massachusetts, and Maine in commercial matters (contract disputes, unfair competition, etc.), intellectual property litigation (enforcement of copyright, trademark, and trade secret rights) and in products liability and personal injury defense. He defends retail establishments, premises owners, trucking companies, institutions, and individuals against negligence and personal injury claims. In 2019 Walter obtained a $3.6 million jury verdict in federal court on behalf of an aviation company against a competitor. He is a member of IADC and other defense organizations. He can be reached at wjudge@drm.com.

ABOUT THE COMMITTEE

The Business Litigation Committee consists of members involved in business and commercial litigation including business torts, contract and other commercial disputes, e-commerce, antitrust issues, trade secrets and intellectual property, unfair competition and business defamation and disparagement. The Business Litigation Committee helps connect members involved in these areas around the world through networking and referral opportunities; developing and keeping current in the substantive, strategic and procedural aspects of business litigation; and affords members an international forum for sharing current developments and strategies with colleagues. Among the committee's planned activities are newsletters, publications, sponsorship of internal CLEs, and Webinars. Learn more about the Committee at www.iadclaw.org.

Kyle Miller
Vice Chair of Publications
Butler Snow LLP
Kyle.miller@butlersnow.com

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w: www.iadclaw.org p: 312.368.1494 f: 312.368.1854 e: mmaisel@iadclaw.org

In *Mowrey v. Eagle Rutland, LLC, et al.*, Vt. Super. Ct., Docket No. 284-5-18 Rdcv (Aug. 5, 2020), the court held that a non-possessory, arms-length commercial landlord that leased the premises to a supermarket could not be liable for a personal injury to a deliveryman on the loading dock, where the lease gave the tenant-supermarket exclusive control over and responsibility for the premises and the injury was related to the supermarket's operations and not to the landlord's mere ownership of the premises. This is a significant decision for commercial landlords, such as shopping plaza owners.

In 2002 the supermarket's predecessor-in-interest (another supermarket) leased the premises from the landlord's predecessor-in-interest. In 2013 the current landlord, Eagle Rutland, acquired the property and at that time both parties affirmed their adherence to the original lease. Like its predecessor-in-interest, Eagle Rutland had no ownership interest in the supermarket nor any role in its operations. It was an unrelated, arms-length landlord.

In 2017, the plaintiff, an employee of a dairy vendor who was delivering product to the supermarket, fell off of an elevated "dock lift" at the back of the premises and was injured. The dock lift is a platform that rises from the pavement level of the loading dock to the level of the cargo floor at the back of the delivery truck so that merchandise can be off-loaded. The plaintiff sued the landlord and the supermarket. As to the landlord, he contended that, as the owner of the premises, it was ultimately responsible for maintaining a safe premises even though it fully leased the premises to the supermarket.

The landlord moved for summary judgment, contending that it owed no duty to the plaintiff under the circumstances.

The lease not only gave the supermarket exclusive control over the premises, it also required the supermarket to maintain the premises, including the loading dock, and to indemnify the landlord for any liability claims arising out of the supermarket's operations on the premises. The only responsibility that the landlord reserved under the lease was to make structural repairs to limited areas of the building that were not involved in the case.

In deciding the landlord's motion to be dismissed from the case, the court analyzed (a) the terms of the lease and (b) longstanding Vermont law on the duties of tenants vs. landlords with respect to the safety of third parties on the premises. It cited a 1917 Vermont Supreme Court decision holding that as between a landlord and a tenant, where the tenant controls the premises, it is normally the tenant's duty to ensure that the premises are safe for those coming onto the property at the tenant's invitation. Thus, the key issue was: which party had control over the premises, and, in particular, the loading dock.

Given that the lease gave full control over and responsibility for the premises to the tenant-supermarket, it was the plaintiff's burden to come forward with evidence that, notwithstanding the terms of the lease, the landlord exercised some control or authority over the loading dock. The plaintiff had no such evidence because in fact the landlord exercised no such control or authority. Instead, the plaintiff argued that because under the lease the landlord retained the responsibility for making certain structural repairs to the building, it was therefore responsible for the safety of the loading dock and the dock lift. The court rejected this position as nothing more than the plaintiff's subjective interpretation of the terms of the lease (to which he was not a party). The court found that the lease was unambiguously clear that the tenant-supermarket controlled and was responsible for the premises, including the loading dock. Accordingly, the landlord owed no duty to ensure the safety of the premises as to a vendor of the supermarket and the court granted judgment for the landlord, dismissing the plaintiff's claims against it.

In summary, the issue here was whether a non-possessory commercial landlord owes a duty of safety to the tenant's visitors, merely by virtue of being the owner of the premises. The court held that a commercial landlord who fully leases out the premises, who retains no responsibility for maintaining the premises, and who exercises no control over the tenant's operations, owes no duty of safety to a visitor of the tenant. Accordingly, the deliveryman had no claim against the landlord.

This decision expresses an important principle for commercial landlords who own properties that are used and maintained exclusively by the tenants.

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