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MA – SJC RULES THAT WARRANTY OF HABITABILITY EXTENDS TO GUESTS

In 1992 the Garfields bought a three-story house in Lynn. They lived on the first floor and rented out the second floor, which included a porch, to Sherry Baker. The porch had a railing that Mr. Garfield repaired a loose section of in 1996. In 2000, Garfield informed Baker that he would be making more railing repairs, but he never did. In 2002, Baker decided to move out and enlisted the help of her friend, Charles Scott. Scott was leaning against the railing during the move when the railing gave way and he fell two stories to the ground, seriously injuring his shoulder.

Mr. Scott and his wife filed suit against the Garfields for negligence, breach of the implied warranty of habitability, and loss of consortium. The case proceeded to a jury trial at which the Scotts prevailed. The Garfields appealed. The main issue in the case was whether Scott, as the lawful guest of the tenant (Baker) could recover from the landlord (Garfield) under the implied warranty of habitability. The issue was

one of first impression in Massachusetts.

The SJC began its analysis by examining the duties that a landlord has with respect to his tenants. Most importantly he must ensure that the building complies with the State building and sanitary codes throughout the term of the lease. This is the implied warranty of habitability. The SJC had already decided in the 1980 case of Young v. Garwacki that, “a tenant’s guest may recover damages from a landlord for personal injuries caused by negligent maintenance of the premises rented to the tenant.” Therefore, logic dictated that a lawful guest may also recover for personal injuries caused by a breach of the implied warranty of habitability.

The SJC’s decision was also in keeping with the Restatement (Second) of Property (Landlord and Tenant) § 17.6, which provides that “a landlord is subject to liability for physical harm caused to the tenant and others upon the leased property...by a dangerous condition...in viola-

tion of an implied warranty of habitability.” Thus, the new law in Massachusetts provides that “a lawful visitor may recover damages for personal injuries caused by a breach of the implied warranty of habitability.”

This decision will particularly impact homeowners’ insurers. Whereas before landlords were only subject to liability for negligence and breaches of contract affecting their tenants, they must now worry about the tenants’ guests as well. Insurers may find themselves defending their insured landlords from more tenant suits in Massachusetts in the years to come. Scott v. Garfield, 454 Mass. 790 (2009).

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NY – HOUSE IS HAUNTED AS MATTER OF LAW; SELLER ORDERED TO RESCIND SALE

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A city-dwelling buyer traveled to the Village of Nyack to purchase a lovely riverfront Victorian home. After the parties had signed the purchase and sale agreement, but before the closing, the seller found out much to his chagrin that the house was haunted. The allegedly haunted house had been the subject of several local articles, including one in *Readers' Digest*, and was featured on a local "haunted house" walking tour. The owner, however, had never disclosed this to the buyer.

The buyer filed a complaint and sought to have the sale rescinded and his down pay-

ment returned, claiming that the house's ghostly presence would bring down the property value and impede the potential for resale. The Supreme Court dismissed the complaint on the basis that New York adheres to the doctrine of caveat emptor, meaning a seller has no duty to disclose any information to the buyer. The Appellate Division reinstated the complaint on an equitable basis.

First, the judge reasoned that the buyer, not being a "local," had no way of knowing or discovering that the house was haunted. "The most meticulous inspection and the search would not reveal the

presence of poltergeists at the premises." Furthermore, the seller had broadcast the house's paranormal activity to the public, and "she may be said to owe no less a duty to her contract vendee." The court held that enforcement of the sale would be "offensive to the court's sense of equity," and that the "nondisclosure constitutes a basis for rescission as a matter of equity." The judge also queried whether the house had indeed been left "vacant" in accordance with the contract. *Stambovsky v. Ackley*, 572 N.Y.S.2d 672 (N.Y. App. Div. 1991).

RI – POLICY NOT DETERMINATIVE AS TO WHO SHOULD SHOULDER \$11 MILLION CLEAN-UP COSTS

Picerne Construction hired PBG as a subcontractor to do demolition and grading work on a housing project site. Some time later when the project was under way, it was discovered that the site was in violation of state code. Specifically, an inspection revealed that there was prohibited debris buried on the site, which consisted of painted wood, concrete, metal piping, and "white goods" (a crushed refrigerator and compressor). Picerne paid \$11 million to clean up the debris and looked to its insurer, American International Specialty Lines Insurance Company (AISLIC) for indemnification. AISLIC re-

fused and litigation ensued.

Picerne moved for summary judgment, claiming that its insurance policy provided coverage for the clean up costs. AISLIC disagreed on two grounds. First, AISLIC claimed it was not given timely notice of the debris because Picerne knew all along that PBG was burying the debris on site. Second, AISLIC claimed that the debris was not a "contaminant" or "irritant" as defined by the policy.

The Court agreed with AISLIC and held that there was a triable issue of fact as to whether Picerne informed AISLIC of the debris dumping

as soon as it knew. More importantly, the Court held that at this juncture it was unclear whether the debris qualified as a covered "contaminant." "Without doubt, the determination of whether a substance is a pollutant is fact intensive... and there is no definitive authority on the question in Rhode Island." It could be that some materials were covered contaminants (the refrigerator) while other were not (tree limbs). Picerne's summary judgment motion was denied. *Picerne-Military Housing, LLC v. Am. Int'l Specialty Lines Ins. Co.*, 2009 WL 2826143 (D.R.I. 2009).

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