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An Exculpatory Clause in a Commercial Lease May Shield a Property Owner From Liability for Personal Injuries That Occur Because of Passive Negligence or Nonfeasance

Richard Garcia ("Garcia") owned an office furniture business. In 2009, he leased premises for his business. The original lease contained a clause that held the property owner not liable for personal injuries to Garcia, whether resulting from conditions on the premises or other sources.

Garcia inspected the property twice before he signed the original lease and continuously occupied the building from 2009 to 2017. The building had a staircase to a second floor room, which Garcia used a few times a month. At the top of the staircase, there was a door with a low beam at the top of the doorframe.

In 2012, the original owner sold the property to defendant Feit South Bay, LLC ("Feit"). Feit hired defendant D/AQ Corporation ("D/AQ") to manage the property. When the ownership changed, an employee of D/AQ, Doran Tajkef, met with Garcia to "look around" and advise Garcia that he would be acting as property manager. When Garcia met with Mr. Tajkef, there was no discussion of the staircase or the doorway at the top, and Mr. Tajkef did not go upstairs.

In April 2016, Garcia ascended the stairs and tried to open the door. However, the door handle was stuck. Garcia pushed harder on the door, which caused the door to open suddenly. Garcia was unable to avoid hitting his head on the beam at the top of the doorframe, and he fell backward down the stairs. Garcia filed suit against Feit and D/AQ, alleging causes of action for negligence and premises liability.

Feit and D/AQ sought summary judgment arguing that Garcia could not prove the element of duty because a property owner is not liable for injuries caused by alleged dangerous conditions of property when the property owner has no actual knowledge of that condition. Feit and D/AQ also argued that the exculpatory clause in Garcia's lease prevented Garcia from asserting the claim. The trial court granted the defendants' motion to enter judgment for them, and Garcia appealed.

On appeal, Garcia argued that the exculpatory clause was invalid and did not exempt Feit or D/AQ from their duty to, "reasonably inspect the premises." Thus, Garcia argued, a clause that purports to exempt a property owner from liability due to negligence is not valid when a tenant suffers an injury because of a dangerous condition.

Relying on the court's decision in *Fritellli Inc. v. 350 N. Canon Drive, LP* (2011) 202 Cal.App.4th 35, the Court of Appeal affirmed the trial court's ruling and concluded that "where the parties knowingly bargain for the protection at issue, the protection should be afforded." The Court of Appeal held the type of clause protecting the property owner is effective when the accident involves mere failure to perform a duty passive negligence. The staircase was not changed or modified during Garcia's lease. The Court of Appeal found that Mr. Tajkef's failure to complete an inspection was an example of failure to perform a duty or passive negligence. Garcia did not allege any intentional or willful action by the property owner or manager that led to his accident and injuries. The Court of Appeal concluded the clause properly insulated the property owner from negligence.

Garcia v. D/AQ Corporation (2020) 57 Cal.App.5th 902.

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