STATE OF MICHIGAN

COURT OF APPEALS

LEONARD K. KITCHEN,

Plaintiff,

and

FARM BUREAU MUTUAL INSURANCE COMPANY, Subrogee of Leonard K. Kitchen, and HAMILTON MUTUAL INSURANCE COMPANY,

Intervening Plaintiffs-Appellees,

and

HASTINGS MUTUAL INSURANCE COMPANY, Subrogee of Ronald and Susannah Sharp,

Intervening Plaintiff-Appellant,

v

SPORTSMAN'S RESTAURANT, INC., and ROBERT SCHEFER,

Defendants,

and

ARNOLD JACOBSON and CHI CHI JACOBSON,

Defendants/Cross-Plaintiffs-Appellees,

and

ACME VENTILATION CLEANING,

Defendant/Cross-Defendant-Appellee.

UNPUBLISHED
November 14, 1997

No. 191291
Washtenaw Circuit Court
LC No. 93-000759-NZ

LEONARD K. KITCHEN,

Plaintiff,

and

FARM BUREAU MUTUAL INSURANCE COMPANY,
Subrogee of Leonard K. Kitchen,

Intervening Plaintiff-Appellant,

and

HASTINGS MUTUAL INSURANCE COMPANY,
Subrogee of Ronald and Susannah Sharp, and
HAMILTON MUTUAL INSURANCE COMPANY,

Intervening Plaintiffs-Appellees,

v

SPORTSMAN'S RESTAURANT, INC., and
ROBERT SCHEFER,

Defendants,

and

ARNOLD JACOBSON, CHI CHI JACOBSON and
ACME VENTILATION CLEANING,

Defendants-Appellees.

No. 191301
Washtenaw Circuit Court
LC No. 93-000759-NZ

FEDERAL INSURANCE COMPANY and GREAT
LAKES BANCORP,

Plaintiffs-Appellants,

v

No. 191302
Washtenaw Circuit Court
LC No. 95-001863-NZ

SPORTSMAN'S RESTAURANT, INC., and
ROBERT SCHEFER,

Defendants,

and

ARNOLD JACOBSON, CHI CHI JACOBSON and
ACME VENTILATION CLEANING,

Defendants-Appellees.

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

These cases arise out of a fire that originated in defendant Sportsman's Restaurant, Inc., in downtown Dexter on August 13, 1993. Defendant Robert Schefer owns Sportsman's Restaurant, which is located in a building owned by defendants Arnold and Chi Chi Jacobson and insured by Hamilton Mutual Insurance Company. Defendant Acme Ventilation Cleaning cleaned the duct system of the stove in Sportsman's kitchen. The fire destroyed four buildings insured by plaintiffs Farm Bureau Mutual Insurance Company and Hastings Mutual Insurance Company and one building owned by plaintiff Great Lakes Bancorp and insured by Federal Insurance Company. The actions, which alleged that all defendants were liable for negligence and that the Jacobsons were liable for nuisance, were consolidated for trial. Before trial, several parties settled and some cross-claims were dismissed. Consequently, the only parties left at the time of trial were plaintiffs Great Lakes Bancorp, Farm Bureau, Hastings Mutual, Hamilton Mutual and Federal Insurance and defendants Arnold and Chi Chi Jacobson and Acme Ventilation.

After plaintiffs' case-in-chief, the trial court entered a directed verdict for the Jacobsons on plaintiffs' nuisance claim. After deliberations on the negligence claim, the jury returned a verdict of no cause of action against defendants. Plaintiffs moved to set aside the directed verdict and for a new trial on the nuisance claim and for judgment notwithstanding the verdict (JNOV) or a new trial on the negligence claim against the Jacobsons. The trial court denied these motions. Plaintiffs now appeal by right the trial court's denial of these motions.

First, we address the directed verdict on the nuisance claim.

> When evaluating a motion for directed verdict, a court must consider the evidence in the light most favorable to the nonmoving party, making all reasonable inferences in favor of the nonmoving party. Directed verdicts are appropriate only when no factual question exists upon which reasonable minds may differ. [*Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997); citations omitted.]

We review trial court decisions on motions for directed verdict de novo. *Meagher*, *supra* at 708.

> Liability for damage caused by a nuisance may be imposed where the defendant creates the nuisance, owns or controls the property from which the nuisance arose, or employed another that it knows is likely to create a nuisance. [*Citizens Ins Co v Bloomfield Twp*, 209 Mich App 484, 488; 532 NW2d 183 (1995).]

This Court has addressed this issue in the landlord-tenant context. In *McCurtis v Detroit Hilton*, 68 Mich App 253, 256; 242 NW2d 541 (1976), this Court stated that generally a premises leased to a tenant is considered the equivalent of a sale of the premises for the term of the lease. *Id*. Consequently, the tenant bears the responsibility to those on the premises and those outside the premises as the one in possession of the premises. *Id*. As a result, the landlord who gives up control, possession and use is not generally liable to those injured on the premises. *Id*. The Court then noted, however, that there is an exception to that rule and when a party can hold a landlord liable for nuisance:

> Generally where a premises is leased to a tenant, the lease is considered as equivalent to a sale of the premises for the lease term. . . As a result, a landlord who gives up control, possession and use of the land does not have a duty to maintain the premises in a reasonably safe condition and is not liable to persons injured on the premises. However, it has also been held that a landlord will be liable for the injuries incurred by another even though the landlord has given up complete control, possession and use of the premises where: (1) at the time the premises is transferred to the tenant a hidden dangerous condition exists, the landlord knows or should have known of the condition and fails to apprise the tenant of it, or (2) the premises is leased for a purpose involving public admission and the landlord fails to exercise reasonable care to inspect and repair the premises before possession is transferred.

See also 58 Am Jur 2d, Nuisances, §§ 121, 125.[1] Accordingly, the rule is that an owner/landlord is liable for nuisance on property leased to its tenant if the landlord, at the time of the lease, either knew or should have known of a dangerous condition on the premises or failed to exercise reasonable care to inspect and repair premises leased for a purpose involving public admission.

Here, the Jacobsons owned the property at issue and leased it for use as a restaurant -- a purpose involving a public admission. Accordingly, the Jacobsons' liability for the alleged nuisance turns on whether they knew or should have known of a dangerous condition on the premises or failed to exercise reasonable care to inspect and repair the premises. However, the trial court stated:

> There certainly is evidence from which the jury could find that there was a nuisance on this property. But I find no evidence from which a reasonable jury could find that these defendants created it.

The trial court thus applied the wrong legal standard. We accordingly vacate its order granting the Jacobsons' motion for directed verdict on this count and remand for determination whether they knew

or should have known of a dangerous condition on the premises or failed to exercise reasonable care to inspect and repair the premises.

Next, we address the motion for JNOV or new trial on the negligence count. An appellate court reviews a trial court's denial of a motion for JNOV by examining the testimony and all legitimate inferences that may be drawn therefrom in the light most favorable to the nonmoving

party; if reasonable minds could differ, the motion is properly denied. *Matras v Amoco Oil Co*, 424 Mich 675, 681-682; 385 NW2d 586 (1986). This Court reviews a trial court's ruling on a motion for new trial on the ground that it was against the great weight of the evidence for an abuse of discretion. *Bordeaux v Celotex Corp*, 203 Mich App 158, 170; 511 NW2d 899 (1993).

> The requisite elements of a negligence cause of action are that the defendant owed a legal duty to the plaintiff, that the defendant breached or violated the legal duty, that the plaintiff suffered damages, and that the breach was a proximate cause of the damages suffered. [*Schulz v Consumers Power Co*, 443 Mich 445, 449; 506 NW2d 175 (1993).]

Evidence was presented from which a reasonable jury could conclude that plaintiffs did not make out a negligence cause of action. Specifically, evidence was presented indicating that the fire extinguishing system in place activated during the fire; that a duct system that does not comply with the current NFPA code (and no evidence indicated whether Dexter had adopted this code), does not necessarily pose an undue risk; and that even if the NFPA code applied, changes may not have been required here because of a grandfather clause in the code. From this evidence a reasonable jury could find that defendants did not breach any duties by failing to make changes to the system. Further, the ductwork could not be examined because it was not found in the debris and plaintiffs' expert testified that the fire may have originated in the wall behind the stove and spread throughout the kitchen rather than spreading through the ductwork. From this evidence, a reasonable jury could have concluded that any faulty condition of the ductwork and/or fire extinguishing system was not the proximate cause of the fire. Accordingly, we conclude that the trial court did not err in denying plaintiffs' motion for JNOV nor did it abuse its discretion in denying plaintiffs' motion for a new trial.

For these reasons, we vacate the trial court's grant of directed verdict to the Jacobsons on the nuisance count and remand for determination of this issue in accordance with this opinion and we affirm its denial of plaintiffs' motions for JNOV and new trial on the negligence count.

/s/ Robert P. Young, Jr.
/s/ Stephen J. Markman
/s/ Michael R. Smolenski

[1] 58 Am Jur 2d, Nuisances, § 121 states that "the current rule appears to be that the owner of land is not responsible for a nuisance on his land merely because of his ownership." However, § 125 indicates that nuisance liability is not precluded by a landlord-tenant contractual relationship and that "as stated in the Restatement of Torts, 2d, the lessor's liability is generally based on his consent to or knowledge of the nuisance."