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Procedure—Liability of Independent Contractor to Landlord's Employee

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REAL PROPERTY

Liability of Independent Contractor to Landlord's Employee

In *Kelly v. Watson Elevator Co.*,[1] the employee of a landlord sued defendant elevator company for injuries sustained when she entered an elevator in the apartment building, alleging that it stopped three inches above the level of landing after repairs by the defendant's mechanic two days prior to the accident. The Court reinstated a judgment for the plaintiff, reversing the Appellate Division,[2] and held, dismissal of the complaint was error; insufficient evidence had been presented to raise a question of fact.

It is generally held that, as to injuries of third persons, an independent contractor is responsible for the negligence of his employees in the performance of the work contracted for,[3] regardless of the fact that the employer landlord may also be liable on the basis of a non-delegable duty found to exist under certain circumstances.[4] This liability extends to injuries to other contractors of their employees, or to employees of his principal, or to tenants of the employer landlord,[5] or to any other third person to whom he owes a duty to exercise due care. Frequent defenses to the action are allegations that the contractor lacked control over the operations,[6] or that the servant was acting outside of the scope of the employment,[7] in addition to the usual defenses applicable in any negligence action. Whether a plaintiff's status as a licensee may be put in issue by the defendant is to be determined on the particular fact in question.[8]

1. 309 N. Y. 49, 127 N. E. 2d 802 (1955).
2. 284 App. Div. 901, 134 N. Y. S. 2d 409 (2d Dep't 1954).
3. *Creed v. Hartman*, 29 N. Y. 591, 86 Am. Dec. 341 (1864); *Reilly v. Atlas Construction Co.*, 3 App. Div. 363, 38 N. Y. Supp. 485 (2d Dep't 1896).
4. A landlord retaining control as to the parts of the building in common use by the tenants is under a duty to exercise reasonable care in keeping them in a safe condition as to the tenants or their invitees, and he may not shift this duty by contract with a third party on the theory of a continuous invitation being exended. *Besner v. Central Trust Co.*, 230 N. Y. 357, 130 N. E. 577 (1921); *Sciolaro v. Asch*, 198 N. Y. 77, 91 N. E. 263 (1910); *Griffen v. Manice*, 166 N. Y. 188, 59 N. E. 925 (1901).
5. *Beinhocker v. Barnes Development Corp.*, 296 N. Y. 925, 73 N. E. 2d 41 (1947) (Independent contractor held liable for injuries sustained by tenant of employer landlord in fall down elevator shaft improperly inspected and repaired); *Ames v. Watson Elevator Co.*, 303 N. Y. 732, 103 N. E. 2d 345 (1951) (Liability imposed upon independent contractor for fall down elevator shaft resulting from improper maintenance of an interlocking safety device); *O'Neil v. National Oil Co.*, 231 Mass. 20, 120 N. E. 107 (1918) (Injury to servant); *Reilly v. Atlas Iron Construction Co.*, 3 App. Div. 363, 38 N. Y. Supp. 485 (2d Dep't 1896).
6. *Krauss v. Richard Carvel Co.*, 97 Misc. 646, 162 N. Y. Supp. 402 (1916).
7. *Kneeland v. Schmidt*, 78 Wis. 345, 47 N. W. 438 (1890).
8. The claimant was a mere licensee with respect to the place where he sustained the injury; *Wersham v. Dempster*, 148 Tenn. 267, 255 S. W. 52 (1923) (where a servant of a *former* tenant of the building entered the basement, and was struck by a falling brick in the course of remodeling); *Cole v. Willcutt & Sons Co.*, 218 Mass. 71, 105 N. E. 461 (1914).