



TAA SUPREME

The Texas Supreme Court rules in favor of an owner and a TAA lease provision.

IT'S RARE TO SEE the Texas Supreme Court ruling on a TAA lease provision. It takes a lot to get that far in our court system. First, there must be enough of a controversy for both parties to litigate the case. The losing party must also be willing to appeal both a trial court and an appellate court's decisions. Lastly, it's up to the Supreme Court to decide if the case warrants its consideration. By the time a case reaches the Supreme Court, the parties have spent a substantial amount of time, money and energy.

On May 13, 2016, the court rendered its opinion in a case entitled Philadelphia Indemnity Insurance Company v. White. In a close 5-4 decision, the court ruled that an owner (through its insurance carrier under a subrogation claim) was not barred from recovering damages from a resident under the TAA lease even though the resident was not negligent in causing the damage. The focus of the ruling was a TAA lease provision, which provides that the resident must pay for damage resulting from any cause not due to the owner's negligence or fault.

The Facts

Carmen White signed a TAA lease that provided, in part, as follows:

You [the resident] must promptly pay or reimburse us [the owner] for loss, damage, consequential damages... due to negligence;... other conduct by you or your invitees, guests or occupants; or any other cause not due to our [the owner's] negligence or fault.

This was in section 12 of the lease signed by White. The same language is in section 13.1 of the current version of the TAA lease.

Shortly after White moved into her apartment, she received a new washer and dryer as a gift from her parents. She experienced trouble installing the dryer, because the cord sparked and the circuit breaker tripped when she attempted to plug it in. At White's request,

an apartment employee connected the dryer with a cord supplied by White.

Within days of the dryer's installation, White's apartment and several adjoining units were severely damaged in a fire that originated in her apartment. White first detected the fire in the clothes dryer, which she was using to remove allergens from dry and unwashed items, including a duvet, sheets, a blanket, decorative pillows and a bed pillow. Though the fire started in the dryer, the source of ignition was unknown. The loss exceeded \$83,000.

The Suit

Philadelphia Indemnity Insurance Company paid the owner's insurance claim and demanded reimbursement from White. White failed to remit payment and Philadelphia Indemnity sued her for negligence and breach of contract for non-compliance with the reimbursement provision of the lease.

During trial, it was determined that there was no malfunction in the dryer, cords, power outlet or circuit breaker. Although there was a question over whether the items placed in the dryer were suitable for mechanical drying, the jury found the cause of the damage was not due to the negligence of White. However, the jury found that White violated the terms of the lease because White did not reimburse the owner for the damages to the unit, even though there was no evidence of the owner's negligence or fault.

Neither party asked the jury to determine the cause of the fire or whether it was attributable to any non-negligent conduct on White's part. The jury awarded \$93,498.00 in actual damages plus attorney's fees to the owner's insurance carrier.

A Court of Appeals held that the TAA lease provision was void as against public policy.

TAA lease provisions are not often a subject of a Supreme Court case. Lower courts will now use this case as precedent to determine enforceability issues in other leases and contracts. Since this case directly deals with the TAA lease, **there are many things we can learn from the case.**

The court declared the reimbursement provision void because it holds a resident liable for damages to the entire apartment complex for accidental losses, acts of God, criminal acts of another or any other act of someone or something unassociated with the resident or the owner.

The court stated that since the property code prohibits owners from waiving their duty to repair or remedy conditions in a unit except for conditions caused by the resident or an affiliated party, the lease provision was in conflict with the property code.

Supreme Court Analysis

The Supreme Court stated, as a general rule, parties in Texas can contract as they wish so long as the agreement reached does not violate the law or offend public policy. In the residential-leasing context, the legislature has limited the freedom of an owner and resident to contractually allocate responsibility for repairs materially affecting health and safety.

The Supreme Court recognized that the lease provision at issue expands a resident's responsibility beyond what would be a resident-caused damage. By negative reference, the provision assigns responsibility to the resident for all damage not caused by the owner's negligence or fault.

The Supreme Court seemed to focus its energy on determining whether the lease provision is enforceable to the extent that White could be held responsible for damages even though White was not negligent in causing

those damages. The Supreme Court focused on the property code provision, which states that an owner does not have a duty to repair or remedy a condition caused by the resident or someone affiliated with the resident. With regard to the reimbursement provision, broad notions of public policy ultimately reduce to whether enforcement of the reimbursement provision would require White to pay for damages that were not resident-caused.

The Supreme Court's Conclusion

The Supreme Court concluded that although the lease provision was susceptible to interpretation in violation of the property code, the provision was not void on public policy grounds because the provision was capable of being performed in accordance with the property code.

Owners have no obligation to repair conditions that are resident-caused and therefore are not restrained from contracting with residents for reimbursement of those repair costs. The Supreme Court noted that White failed to obtain a jury finding that she did not cause the damage at issue. The jury's failure to hold White negligent is not a substitute for a finding that White did not cause the damages.

The Supreme Court reversed the Court of Appeals judgment and rendered judgment that the lease provision is not unenforceable on public policy grounds. The case was remanded back to the trial court for consideration of White's remaining defenses to enforcement.

What We Can Learn

This was a close decision, however, the Supreme Court seemed to make it clear that there is a legal distinction between holding a resident responsible for negligently causing damages and causing damages without being negligent. In other words, a resident can be held responsible for damages under the TAA lease even if the resident was not negligent. If the resident or anyone affiliated with the resident caused the damage (perhaps by accident), both the lease provision and the property code would support an owner being able to recover from the resident.

The issue that the Supreme Court did not address is whether a resident could be held responsible under the lease if the resident was not negligent or otherwise caused the damage. In conclusion, the Supreme Court pointed out White failed to obtain a finding that she did not cause the damages at issue.

This suggests that if White did obtain a jury finding that she did not cause the damages, she may not have been responsible for the damages, even though she would not have shown that the damages were the result of the owner's negligence or fault.

Since the Supreme Court found that White was responsible even though White was not negligent, residents would be hard-pressed to claim that they should not be responsible for damages simply because they were not at fault. Claiming, "It was only an accident," would not be a proper defense to the lease language that the resident should be responsible.

TAA lease provisions are not often a subject of a Supreme Court case. Lower courts will now use this case as precedent to determine enforceability issues in other leases and contracts. Since this case directly deals with the TAA lease, there are many things we can learn from the case. However, as usual, the case is subject to interpretation by the lower courts and reconsideration by the Supreme Court if and when the Supreme Court is asked to rule on similar situations. As always, keep abreast of any further developments. 



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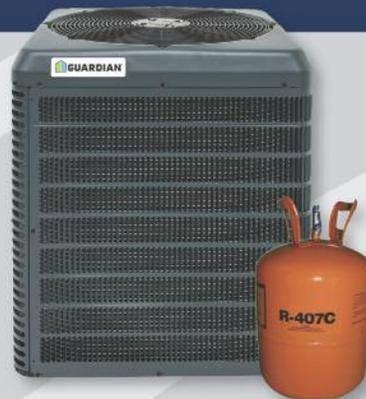
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