"Breaking Legal Developments in Fire Investigation."

Published by:
Peter A. Lynch, Esq.
of Cozen O'Connor
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EXECUTIVE SUMMARY: This weekly newsletter covers:

(1) Apartment Owner Liable for Injuries Tenant Sustained Trying to Escape Apartment during Fire Where Apartment Had No Working Smoke Alarms and Bars on Bedroom Windows

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(1) APARTMENT OWNER LIABLE FOR INJURIES TENANT SUSTAINED TRYING TO ESCAPE APARTMENT DURING FIRE WHERE APARTMENT HAD NO WORKING SMOKE ALARMS AND BARS ON BEDROOM WINDOWS

Brief Description

In Ton v. Salveron, 2007 WL 2111035, available at http://www.courtinfo.ca.gov/cgi-bin/npopinions.cgi, the California Court of Appeals found an apartment owner liable for injuries a tenant sustained trying to escape the apartment during a fire. The tenant asserted that the apartment had no working smoke alarms and had bars on the bedrooms that could not be opened from the inside. As a result, the tenant awoke to a fully engulfed fire in her kitchen, but was unable to escape through her bedroom window. The Court upheld the trial court's finding in favor of tenant for the apartment owner's negligence in maintaining an apartment building without operating smoke alarms and with bars on the bedroom windows that do not have a safety latch.

Detailed Facts and Ruling

Respondent Conchita Salveron rented an apartment in the City of Baldwin Park from appellant Cao Ton. Respondent Jocette Salveron, Conchita's adult daughter, also lived in the unit. In September 2003, when only Jocette was at home, there was a fire in the premises. Jocette subsequently sued Ton for personal injury, alleging that she was

injured when she jumped from the living room window to escape the fire. Ton cross-complained against both respondents for negligence, contending that Jocette's negligence caused the fire. Trial was to the court, resulting in a judgment in Jocette's favor in the amount of $55,995, and judgment for respondents on the cross-complaint. On this appeal Ton contends that neither judgment is supported by the evidence. We affirm, as we explain: For respondents, Jocette, Conchita, and former Los Angeles Fire Department arson investigator Albert Hernandez (who examined the premises after the fire, to the extent Ton allowed) testified that the apartment in which respondents lived had no smoke alarms, and that windows of Jocette's bedroom had bars which could not be opened from the inside. Hernandez testified that the bars were bolted to the window frame and also testified about fire codes, and the City of Baldwin Park's egress requirements for rental properties.

Concerning the fire and her injuries, Jocette testified that she was sleeping when the fire started. She awoke to a bedroom full of smoke, and when she opened the bedroom door she saw smoke in the living room and smoke and fire in the kitchen. She could not leave through the bedroom window because of the bars, and could not leave through the only door, because it was in the burning kitchen. She thus jumped from the living room window, which was about six feet off the ground. When she fell, she injured her knee. Jocette also testified concerning her injuries and treatment, and other damages. Dr. Kyle Landauer testified as to Jocette's injuries, need for surgery, and medical bills, and testified that her injuries were consistent with her explanation of the cause, jumping from a window to escape a fire. Respondents also called Ton and questioned him about the bars, smoke detectors, and similar matters.

On this evidence, the trial court found that the presence of the bolted security bars was both negligence and negligence per se, as a violation of building code and fire codes, and awarded damages for past and future medical bills, lost wages, and pain and suffering.

On this appeal, Ton makes several specific arguments in support of his general contention of insufficiency of the evidence. On the complaint, he quotes [FN3] Jocette's testimony that she did not seek medical treatment from firefighters at the scene and argues that her failure to complain of or seek treatment for smoke inhalation at that time

means that there was no smoke in the unit, so that she could have left through the front door without suffering any injury. Ton also contends that a photograph (which is not in our record) produced at trial showed the living room window and window screen intact. From this, Ton concludes that Jocette lied when she said that she escaped through that window.

FN3. In violation of California Rules of Court, rule 8.204, Ton has submitted an opening brief largely devoid of citations to the record.

On the cross-complaint, Ton points out that there is evidence that Jocette knew that the security bars on the bedroom window did not have a release mechanism. From this, he argues that she assumed the risk. He also argues that respondents were contributorily negligent in that they did not install an alarm system, even though they knew that the one in the unit did not work.

We are not persuaded. "Our task when reviewing the sufficiency of the evidence 'begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the [trier of fact].' (Crawford v. Southern Pacific Co. (1935) 3 Cal.2d 427, 429 emphasis added.) Substantial evidence in this regard is any evidence which is not 'unbelievable per se.' (Evje v.. City Title Ins. Co. (1953) 120 Cal.App.2d 488.) When two inferences can reasonably be drawn from the facts presented, this court is without power to substitute its deductions for those of the trial court. (Crawford v. Southern Pacific Co., supra, 3 Cal.2d at p. 429.)" (In re Marriage of Kahan (1985) 174 Cal.App.3d 63, 66.)

It is evident that the trial court believed Jocette's witnesses concerning window bars and smoke alarms. There was evidence to the contrary, but under the rule just cited, that is of no moment. It is also evident that the trial court believed Jocette's evidence about her escape from the fire and her injuries. That evidence is not unbelievable per se, and cannot be disturbed on appeal. The fact that Jocette did not seek treatment for smoke inhalation may mean that she did not suffer from smoke inhalation. It does not mean that there was no smoke, or no fire, or that she could have left through the door.

We say the same about the photograph of the window. The trial court, which saw the photograph, must be the judge of its import.

As to the argument concerning assumption of the risk, "Where an ordinance is a police regulation, made for the protection of human life, it is an obligation imposed upon the defendant by a salutary police regulation and the doctrine of assumption of the risk does not apply.... Public policy requires that duties imposed by statute be discharged and that those who are affected cannot suspend the operation of the law either by waiver or by express contract." (Finnegan v. Royal Realty Co. (1950) 35 Cal.2d 409, 430-431.) The facts at trial preclude the application of the doctrine of assumption of the risk.

Ton's contributory negligence argument would hold a tenant liable for failing to remedy the landlord's safety violations. He cites no authority for the proposition, and we do not believe that to be the law. At any rate, the lack of legal argument means that the point is waived. (Badie v. Bank of America (1998) 67 Cal.App.4th 779, 784-785.)

Disposition

The judgment is affirmed. Respondents to recover costs on appeal.

(some internal citations and irrelevant portions omitted)

Mr. Lynch can be reached at Cozen O'Connor, 501 West Broadway, Suite 1610, San Diego, California 92101, 800-782-3366 (voice), 619-234-7831 (fax), palynch@cozen.com (e-mail), <http://www.cozen.com>.

Please direct comments, suggestions, stories and other items to the author by e-mail at palynch@cozen.com.

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