NY CASE LAW SHORTS

Sep 22, 2011

Johnny D. Hall
Attorney at Law
1532 Main Street
Port Jefferson, NY 11778

PRACTICE AREAS

PERSONAL INJURY

REAL ESTATE

Out-of-Possession Landlord/Slip and Fall/Control: An employee was walking down a hallway and slipped and fell in a puddle of water that had accumulated on the floor from a leaking roof. The leak had a history and recurring repairs did not stop the leak until after this incident occurred. The employee brought an action (common law) against the landlord who asserted that it was an out-of-possession landlord and was therefore, not liable. The employee argued that the landlord was liable because language in the lease gave the landlord broad rights to enter the property. The Supreme Court, Queens County, denied landlord's motion to dismiss and the Second Dept. reversed. The Court pointed to circumstances that might favor a different finding ("There is a lot to recommend such a holding. For example, at least when the dangerous condition arises from a structural condition (see e.g. Worth Distribs. v Latham, 59 NY2d 231) or a design defect (see e.g. Guzman v Haven Plaza Hous. Dev. Fund Co., 69 NY2d 559), the landlord may have the greater incentive to ensure that the condition is remedied, in order to protect its investment. As well, in many instances, the landlord has greater resources than the tenant to deal with expensive repairs. Finally, at least as a lease nears the end of its term, the tenant, whose interest in paying for expensive repairs diminishes, may be less likely to address premises conditions, thereby endangering people on the leased portion of the premises (cf. Putnam v Stout, 38 NY2d at 617-618)." However, the Court emphasized that the Court of Appeals has reinforced an out-of-possession landlord's limited liability, refusing to impart liability based upon the landlord's control alone. Alnashmi v Certified Analytical Group, Inc., 2011 NY Slip Op 06465, Appellate Division, Second Department, September 13, 2011

New York Case Law Shorts by Johnny D. Hall. Questions or Comments? email: johnny@hallesq.com