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Casenotes: Landlord — Tenant — Tenant Has a Claim against Landlord for Breach of Quiet Enjoyment Leading to Constructive Eviction When Landlord Fails to Enforce a Provision in Another Tenant's Lease That Bars Excessive Noise. Bocchini v. Gorn Management Co., 69 Md. App. 1, 515 A.2d 1179 (1986)

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LANDLORD — TENANT — TENANT HAS A CLAIM AGAINST LANDLORD FOR BREACH OF QUIET ENJOYMENT LEADING TO CONSTRUCTIVE EVICTION WHEN LANDLORD FAILS TO ENFORCE A PROVISION IN ANOTHER TENANT'S LEASE THAT BARS EXCESSIVE NOISE. *Bocchini v. Gorn Management Co.*, 69 Md. App. 1, 515 A.2d 1179 (1986).

A tenant vacated an apartment prior to the expiration of the lease.[1] The landlord then brought suit for lost rent and other damages arising from the tenant's breach of the lease.[2] The tenant filed a counterclaim against the landlord, alleging *inter alia* breach of the covenant of quiet enjoyment and constructive eviction.[3] The tenant asserted that she vacated the apartment because of excessive noise made by another tenant.[4] The tenant further contended that the landlord failed to enforce a provision in the other tenant's lease that restricted excessive noise.[5]

The circuit court granted the landlord's motion to dismiss the breach of the covenant of quiet enjoyment and constructive eviction claims, and the tenant appealed.[6] The Court of Special Appeals of Maryland reversed the dismissal and held that a tenant has a claim against a landlord for breach of quiet enjoyment and constructive eviction when the landlord fails to enforce a provision in another tenant's lease that bars excessive noise.[7]

The law of landlord and tenant originated from English common law during a time when leaseholds were primarily for agricultural land.[8] A landlord-tenant agreement created an estate in land rather than a con-

1. Carol Ann Bocchini first rented the apartment in 1978. The upstairs apartment was rented to the Seaberrys in 1979. The problems began in 1983 after the Seaberrys separated and Mrs. Seaberry began to associate with Mr. McClean. Ms. Bocchini first attempted to communicate directly with Mrs. Seaberry, but when those efforts failed, she contacted Gorn Management in April of 1984. After several complaints from Ms. Bocchini, Gorn Management acknowledged the problem and promised to take action. Gorn Management's efforts to solve the problem in May and June failed. Ms. Bocchini complained again in June and July but was told by Gorn Management that they would take no further action. Gorn Management maintained their refusal to act after Ms. Bocchini's final complaint on August 1, 1984 concerning obscenities and threats from Mr. McClean. Exhausted from a lack of sleep and in fear, Ms. Bocchini and her daughter went to stay with friends. They permanently moved out of the apartment on August 8, 1984. Bocchini v. Gorn Management Co., 69 Md. App. 1, 4-5, 515 A.2d 1179, 1181 (1986).
2. *Id.* at 3, 515 A.2d at 1180.
3. *Id.* The counterclaim consisted of five counts: Breach of the covenant of quiet enjoyment and constructive eviction (Count I); negligence (Count II); deceit (Count III); nuisance (Count IV); breach of MD. REAL PROP. CODE ANN. § 8-203(c) (1974) (concerning security deposits) (Count V). *Id.* at 3-4, 515 A.2d at 1180-81.
4. *Bocchini*, 69 Md. App. at 3, 515 A.2d at 1180.
5. *Id.* at 5, 515 A.2d at 1181.
6. *Id.* at 4, 515 A.2d at 1181.
7. *Id.* at 22, 515 A.2d at 1190.
8. R. SCHOSHINSKI, AMERICAN LAW OF LANDLORD AND TENANT, § 1:1, at 1 (1980); 3 G. THOMPSON, THE LAW OF REAL PROPERTY, § 1028, at 83 (1980); *see* Lesar, *Landlord and Tenant Reform*, 35 N.Y.U. L. REV. 1279, 1280 (1960).

tract imposing personal obligations.[9] Accordingly, the tenant became an owner of a possessory interest in the land, thereby acquiring all the rights and the duties that came with ownership.[10] The landlord-tenant law that developed was consistent with this theory of the tenant's possessory interest.[11] The rule of *caveat emptor*, "let the buyer beware," governed the landlord-tenant agreement.[12] Thus, there was no implied covenant that the premises were fit for the tenant's use.[13] The *caveat emptor* arrangement served the needs of the agrarian economy because land was of paramount value and the farmer-lessee was capable of taking care of the property.[14]

The landlord-tenant agreement imposed no obligations on the landlord other than the implied covenant of quiet enjoyment.[15] The covenant protected the lessee from interference in the use and possession of the premises by the lessor or anyone claiming rights under him.[16] This implied covenant, however, could be negated by express agreement.[17] In the absence of an express agreement, the covenant of quiet enjoyment was breached by an actual or constructive eviction of the tenant.[18] Therefore, a breach of the covenant relieved the tenant from the obligation to pay rent.[19]

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9. 1 H. TIFFANY, LANDLORD AND TENANT, § 49, at 338 (1912).
10. Lesar, *supra* note 8, at 1280.
11. R. SCHOSHINSKI, *supra* note 8, § 1:1, at 2-3.
12. *Id.*, § 1:1, at 2.
13. Lesar, *supra* note 8, at 1280.
14. R. SCHOSHINSKI, *supra* note 8, § 1:1, at 3; Lesar, *supra* note 8, at 1286.
15. 1 H. TIFFANY, THE LAW OF REAL PROPERTY, § 91 (3d ed. 1939); *see also* G. THOMPSON, *supra* note 8, § 1129; R. SCHOSHINSKI, *supra* note 8, § 3:10, at 109.
16. G. THOMPSON, *supra* note 8, § 1130, at 455-56, *quoted in* Q C Corp. v. Maryland Port Admin., 68 Md. App. 181, 198, 510 A.2d 1101, 1110, *modified*, 310 Md. 379, 529 A.2d 829 (1987); *see also* H. TIFFANY, *supra* note 15, § 92, at 139. This principle was first recognized in Maryland in Baugher v. Wilkins, 16 Md. 35, 44-45 (1860). The principle was later codified in MD. REAL PROP. CODE ANN. § 2-115 (1988). The statute provides:

> There is no implied covenant of warranty by the grantor as to the title or possession in any grant of land or of any interest or estate in land. However, in a lease, unless the lease provides otherwise, there is an implied covenant by the lessor that the lessee shall quietly enjoy the land.

Id.
17. R. SCHOSHINSKI, *supra* note 8, § 3:3, at 95; Morris v. Harris, 9 Gill 20, 27 (1850) (implied covenants are controlled or annuled by express covenants between the parties).
18. G. THOMPSON, *supra* note 8, § 1132, at 471. *See generally* R. SCHOSHINSKI, *supra* note 8, § 3:4.
19. R. SCHOSHINSKI, *supra* note 8, § 3:5. Alternative remedies for a breach of the covenant of quiet enjoyment may include damages or an action to recover the premises. *See generally id.*, § 3:8. Where damages at law may be inadequate, injunctive relief may be ordered to prevent a constructive eviction. *See* Baltimore Butcher's Abattoir & Live Stock Co. v. Union Rendering Co., 179 Md. 117, 17 A.2d 130 (1941) (court affirmed the issuance of an order enjoining the landlord from terminating the supply of steam to the leasehold). Termination of the steam supply would have been deemed a constructive eviction since steam was vital to the operation of the tenant's business. *Id.* at 120-21, 17 A.2d at 132. A split of authority exists over the

A constructive eviction resulted when a tenant was forced to vacate the property because the landlord allowed conditions to become so unbearable that the tenant was deprived of the use and enjoyment of the property.[20] The actions of an independent third person, however, not under claim of title or right from the landlord, did not breach the landlord's covenant.[21] Therefore, the actions of one tenant, who did not act under claim of title or right of the lessor, would not constitute a breach of the covenant of quiet enjoyment.[22] Consequently, the tenant would remain liable for the rent despite the tenant's abandonment of the premises in response to the disturbing conduct of another tenant.

This situation existed because the legal relationship between a landlord and his tenant was insufficient to create an obligation on part of the landlord to control one tenant's conduct for the benefit of another tenant.[23] Therefore, under the traditional common law approach, the landlord was not accountable to one tenant for the failure to enforce restrictive lease provisions against another tenant.[24] The landlord, under the traditional common law approach, was required to have actively supported or encouraged the disturbing conduct in order for a tenant's conduct to be attributed to the landlord for purposes of finding a constructive eviction.[25]

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availability of damages for a breach of the covenant of quiet enjoyment when the tenant has not vacated the premises. R. SCHOSHINSKI, *supra* note 8, § 3:8, at 106. The Maryland courts have followed the common law position. McNally v. Moser, 210 Md. 127, 139-40, 122 A.2d 555, 562 (1956) (to constitute constructive eviction the landlord's act must have been done with the intent and have the effect of depriving the tenant of the use and enjoyment of the premises); Stevan v. Brown, 54 Md. App. 235, 240, 458 A.2d 466, 470 (1983) (a constructive eviction occurs when the acts of a landlord cause serious or substantial interference with the tenant's enjoyment of the premises so that the tenant vacates).

20. G. THOMPSON, *supra* note 8, § 1132, at 471 (constructive eviction involves the surrender of possession by the tenant on justifiable grounds); R. SCHOSHINSKI, *supra* note 8, § 3:5 (actions of the landlord which fall short of physical expulsion but which are so injurious to the enjoyment and use of the premises as to justify abandonment constitute constructive eviction).
21. G. THOMPSON, *supra* note 8, § 1130, at 458.
22. R. SCHOSHINSKI, *supra* note 8, § 3:7; *see also* 1A A. CASNER, AMERICAN LAW OF PROPERTY, § 3.53 (1952) (most American courts hold that the lessor is not liable to a tenant for the acts of another tenant even if the acts complained of violate a provision common to all leases).
23. R. SCHOSHINSKI, *supra* note 8, § 3:7.
24. A. CASNER, *supra* note 22; *see also* Eley v. L. & L. Mfg. Co., 30 Ga. App. 595, 118 S.E. 583 (1923) (tenants are strangers under the law; where a tenant is disturbed by another tenant, the disturbing tenant is liable, not the landlord, despite a clause in lease against excess noise); Katz v. Duffy, 261 Mass. 149, 158 N.E. 264 (1927) (in order for there to be an eviction, landlord must perform some act on the premises; conduct of other tenants, however disturbing, does not constitute an eviction); *see generally* Annotation, 41 A.L.R. 2d 1414 (1955).
25. *See, e.g.*, Thompson v. Harris, 9 Ariz. App. 341, 452 P.2d 122 (1969) (another tenant's employee used common wall as toilet; court held that breach of quiet enjoyment did not extend to acts of other tenants unless acts are performed on behalf of landlord; landlord did not assume duty by addressing problem with other tenant); Stewart v. Lawson, 199 Mich. 497, 165 N.W. 716 (1917) (landlord not liable for acts

Strict adherence to the traditional common law approach, however, was disregarded in some cases where the disturbing conduct of the other tenant involved immoral conduct.[26] For example, in *Milheim v. Baxter*,[27] the tenant vacated her premises when the other tenants' immoral conduct on the landlord's adjoining property prevented the tenant from the free use and enjoyment of her premises.[28] The landlord was charged with knowingly permitting the other tenants' immoral conduct because the adjoining property had been used as an assignation house for some time.[29] The Supreme Court of Colorado rejected the landlord's argument that the tenant could not abandon the premises without first requesting that the landlord terminate the offending conduct.[30] Thus, the court determined that the landlord's actual knowledge of the conditions, which justified the tenant's vacation of the premises, was sufficient to state a cause of action for constructive eviction.[31]

As social patterns have changed, the courts' treatment of a lease as a conveyance of an interest in land has become increasingly supplanted with modern contract principles.[32] The high visibility of management and the use of extensive lease restrictions in multi-unit housing has created the reasonable expectation that landlords have the authority and the ability to control their tenants' use of the premises.[33] Urban tenants of

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of other tenant, and fact that landlord allowed disturbing conduct to continue is not enough to create liability unless landlord gave active support or encouragement); Seaboard Realty Co. v. Fuller, 33 Misc. 109, 67 N.Y.S. 146 (1900) (an eviction cannot come from conduct, no matter how harmful, unless committed, encouraged, or connived by the landlord).

26. 1A A. CASNER, *supra* note 22; *see also* Lancashire v. Garford Mfg. Co., 199 Mo. App. 418, 203 S.W. 668 (1918) (premises used as a bawdy house where thieves frequented); J.W. Cushman & Co. v. Thompson, 58 Misc. 539, 109 N.Y.S. 757 (1908) (landlord's failure to correct problem of other tenants' immoral conduct was a valid defense to action for rent). *But cf.* Brauer v. Kaufman, 72 Misc. 2d 718, 339 N.Y.S. 2d 373 (1972) (tenants complained of unlawful conduct of alleged prostitutes in the building; nevertheless, the court noted that criminal activity has become a way of life, and without evidence connecting prostitutes' conduct to the landlord, failure to pay rent is actionable).
27. 46 Colo. 155, 103 P. 376 (1909).
28. *Id.* at 157, 103 P. at 377.
29. *Id.* at 158, 103 P. at 377.
30. *Id.*
31. *Id.* at 157, 103 P. at 377; *see also* Keenan v. Flanigan, 157 La. 749, 751, 103 So. 30, 31 (1925) (once landlord had been notified of a continuing disturbance, his failure to correct the problem amounted to a condonation of the action); Maple Terrace Apartment Co. v. Simpson, 22 S.W.2d 698, 700 (Tex. 1929) (court found management sanctioned lease violation when a dog was kept in violation of lease and management had knowledge and did not object).
32. Cribbet, *Conveyance Reform*, 35 N.Y.U. L. REV. 1291, 1296-97 (1960). "Law seldom changes society; it only reflects and confirms changes that have already occurred. The shift from rights to duties as a focus of emphasis followed a major shift in land use from rural to urban." *Id.*; *see* R. SCHOSHINSKI, *supra* note 8, § 1:1, at 2; *see generally* Goetz, *Wherefore the Landlord-Tenant Law "Revolution"? Some Comments*, 69 CORNELL L. REV. 592, 599 (1984).
33. Humbach, *Landlord Control of Tenant Behavior: An Instance of Private Environmental Legislation*, 45 FORDHAM L. REV. 224, 240 n.44 (1976).

the twentieth century are more concerned with the services and amenities provided with the rental property than with the rights their agrarian counterparts acquired through ownership of an estate in land.[34] Thus, leases today are viewed not only as estates in land but also as bilateral contracts.[35] This modern approach to leases forces the landlord to exercise control over his tenants where that ability exists because failure to act could result in a breach of the covenant of quiet enjoyment, and therefore, the constructive eviction of other tenants.[36] This approach is in harmony with the trend of increasing landlords' liability in other areas.[37]

An example of a court's application of the modern approach is the case of *Blackett v. Olanoff*.[38] In *Blackett*, the landlord leased property for commercial use in the same area where the landlord had leased property for residential uses.[39] The commercial lease expressly provided that noise created by the activities of the commercial tenants must not reach a level that would disturb the residential tenants on the adjacent property.[40] The landlord failed to control the noise created by the commercial tenants and the residential tenants vacated their homes.[41] The Supreme Judicial Court of Massachusetts determined that the tenants were justified in vacating the premises under these circumstances because of the landlord's ability to control the disturbance.[42] Therefore, under

34. R. SCHOSHINSKI, *supra* note 8, § 1:1, at 3.

35. *Id.* at 2-3; *see also* 3 A. CORBIN, CORBIN ON CONTRACTS, § 686 (1960) (a formal lease of land is both a conveyance and a contract).

36. *See generally* Restatement (Second) of Property § 6.1 comment d (1977); A. CASNER, *supra* note 24.

37. *See* Kline v. 1500 Massachusetts Ave. Apartment Corp., 439 F.2d 477 (D.C. Cir. 1970) (landlord held liable for criminal attack on tenant in common areas); Javins v. First Nat'l Realty Corp., 428 F.2d 1071 (D.C. Cir. 1970) (leases of urban dwellings are to be treated as contracts; warranty of habitability is implied in every lease and cannot be circumvented by exculpatory provisions); Scott v. Watson, 278 Md. 160, 359 A.2d 548 (1976) (landlord has duty to exercise reasonable care for tenant's safety when it is known that criminal activity is occurring on the premises); *see also* Friedman, *Comments on Edward H. Rabin, The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 585, 587 (1984) (arguing that there has been no real "revolution" in law of landlord and tenant).

38. 371 Mass. 714, 358 N.E.2d 817 (1977).

39. *Id.* at 715, 358 N.E.2d at 818.

40. *Id.* at 716, 358 N.E.2d at 819.

41. *Id.* at 715, 358 N.E.2d at 818. It was also shown that the landlord promised each tenant that he would correct the situation and that the landlord made unsuccessful attempts to remedy the problem. *Id.*

42. *Id.* at 718, 358 N.E.2d at 820. The furthest extention of the modern approach is demonstrated by *Hannan v. Harper*, 189 Wis. 588, 208 N.W. 255 (1926), in which an injunction was granted to a tenant thereby preventing the landlord from leasing an upstairs apartment to a fraternity. *Id.* at 596-99, 208 N.W. at 259. The presence of a fraternity clubhouse above a family residence was viewed as an anticipatory breach of the covenant of quiet enjoyment because it was impossible to expect that the residence would be suitable for family living with a fraternity overhead. *Id.* (this decision forms the basis for illustration 12 of Restatement (Second) of Property § 6.1 (1977)).

the modern approach, a landlord's failure to correct known lease violations by a tenant may constitute a violation of another tenant's lease.[43]

No Maryland case prior to *Bocchini v. Gorn Management Co.* [44] had addressed the issue of whether a landlord could be liable for a breach of the covenant of quiet enjoyment by constructive eviction of one tenant resulting from the landlord's failure to control another tenant's actions.[45] In one recent case, however, *Q C Corporation v. Maryland Port Administration*,[46] the Court of Special Appeals of Maryland considered whether a landlord could be liable for breach of the covenant of quiet enjoyment and constructive eviction because of interference which emanated from property adjacent to the tenant and owned by the landlord.[47] In *Q C Corporation*, the landlord leased property adjacent to Q C Corporation to an independent contractor for the performance of the landlord's contractual obligation to dispose of hazardous wastes.[48] The disposal of these wastes resulted in the contamination of Q C Corporation's operations and ultimately forced Q C Corporation to vacate the premises.[49] Consistent with the traditional approach, the court concluded that these facts could constitute a breach of the covenant of quiet enjoyment and constructive eviction because the acts causing the substantial interference to Q C Corporation were performed by a party claiming rights under the landlord, and arguably by the landlord itself.[50]

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43. *See* Blackett v. Olanoff, 371 Mass. 714, 358 N.E.2d 817 (1977); Eskanos & Supperstein v. Irwin, 637 P.2d 403 (Colo. App. 1981) (court in *Eskanos* held that tenant must show that noise made premises unsuitable, and that landlord could control the noise); *see also* Rockrose Assoc. v. Peters, 81 Misc. 2d 971, 972, 366 N.Y.S.2d 567, 568 (1975) (court found that landlord's failure to stop disturbing conduct amounted to an assent to the conduct, constituting a constructive eviction); Bruckner v. Helfaer, 197 Wis. 582, 222 N.W. 790 (1929) (apartment lease restricted excessive noise and landlord ignored tenant's repeated complaints; tenant was justified in vacating).

44. 69 Md. App. 1, 515 A.2d 1179 (1986).

45. In an early case, Baugher v. Wilkens, 16 Md. 35, 44-45 (1860), the court of appeals held that there was no breach of the covenant of quiet enjoyment where the tenant exceeded the authorization of the landlord by altering a party wall. The court found no breach because the covenant encompassed only acts of the lessor and not acts of a third party. *Id.*

    In Sigmund v. Howard Bank, 29 Md. 324 (1868), however, the court refused to extend the scope of the implied covenant of quiet enjoyment to impose a duty on the landlord to put a tenant in possession. *Id.* at 328. Therefore the tenant had no defense against the landlord's action for rent after refusing to take the premises after the holdover tenant vacated. *Id.* at 329. The tenant's sole remedy was at law against the prior tenant given that the prior tenant's wrongful conduct did not constitute a breach of the covenant of quiet enjoyment. *Id.*

46. 68 Md. App. 181, 510 A.2d 1101 (1986), *modified*, 310 Md. 379, 529 A.2d 829 (1987) (judgment on the breach of the covenant of quiet enjoyment and constructive eviction counts not appealed).

47. *Id.* at 199, 510 A.2d at 1110.

48. *Id.* at 195, 510 A.2d at 1108.

49. *Id.* at 196-97, 510 A.2d at 1008-09.

50. *Id.* at 198, 510 A.2d at 1110.

In *Bocchini v. Gorn Management* Co.,[51] the Court of Special Appeals of Maryland adopted the modern view of the covenant of quiet enjoyment and constructive eviction.[52] The court recognized that a landlord can be liable for a breach of the implied covenant of quiet enjoyment and constructive eviction when the landlord is in a position to control the disturbing conduct of another tenant and fails to do so.[53] The court reasoned that the principle purpose of lease restrictions is to permit a landlord to control a tenant's conduct, especially in a multi-unit apartment lease, and thereby protect other tenants' rights to the quiet enjoyment of their homes.[54] Therefore, the court found it both unjust and unreasonable to allow a landlord to escape his duties by refusing to exercise his authority.[55] The court further suggested, in dicta, that the landlord's authority to control the tenant's conduct need not be derived solely from the lease and could come from something implied in the lease or parol to the lease.[56] In conclusion, applying the modern approach, the court found that the tenant stated a claim for a breach of quiet enjoyment and thus reversed the dismissal of the lower court.[57]

The court in *Bocchini* was warranted in adopting the modern approach. This approach is fair and reasonable because it comports with modern urban expectations of the landlord-tenant relationship.[58] The landlord's use of restrictive provisions governing conduct of all tenants,

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51. 69 Md. App. 1, 515 A.2d 1179.
52. Bocchini v. Gorn Management Co., 69 Md. App. at 12, 515 A.2d at 1185.
53. *Id.* Because the tenant in *Bocchini* vacated the apartment, there was no need for the court to address the relationship between the breach of the covenant of quiet enjoyment and constructive eviction. *Id.* Furthermore, the court did not explore the effect of a tenant's notice to the landlord of the disturbance prior to vacating the premises. The facts alleged in *Bocchini* demonstrate that the tenant did notify the landlord of the problems after the tenant failed to solve them herself. *Id.* at 4-5, 515 A.2d at 1181. It remains to be addressed whether this notice to the landlord and the opportunity to cure is required before the court will consider the abandonment a constructive eviction. *See* R. SCHOSHINSKI, *supra* note 8, § 3:5, at 99 (tenant must abandon premises within reasonable time after disturbance begins but only after landlord has no opportunity to cure); *cf.* Milheim v. Baxter, 46 Colo. 155, 103 P. 376 (1909) (tenant permitted to rely on defense of constructive eviction without prior complaint to landlord).

    The landlord in *Bocchini* also attempted to argue that the tenant's sole remedy was the rent escrow provisions of sections 9-9 and 9-9A of the Baltimore City Code. *Bocchini*, 69 Md. App. at 12-13, 515 A.2d at 1185. The court rejected this argument reasoning that the rent escrow provisions pertain to the physical conditions of the premises. *Id.* Even assuming the breach fell within those provisions, the court still rejected the landlord's argument on the grounds that the language of the statute indicates that it is intended as an additional remedy to the common law remedies, not as a replacement. *Id.* at 13-14, 515 A.2d at 1186; *see supra* note 19 (discussion of common law remedies).
54. *Bocchini*, 69 Md. App. at 12, 515 A.2d at 1185.
55. *Id.*
56. *Id.* at 12, 515 A.2d at 1185 ("where, through lease provisions or *otherwise*, he has that ability . . . .") (emphasis added).
57. *Id.*
58. R. SCHOSHINSKI, *supra* note 8, § 1:1, at 3.

especially in multi-unit housing,[59] instills an expectation on the part of the tenant that the control will be exercised.[60] Thus, requiring a landlord to enforce the restrictions in his lease is consistent with the contractual aspect of the modern lease.

The court, however, left open the question of whether a landlord will be expected to exercise control in the absence of specific lease provisions. The question exists because of the court's indirect suggestion that the landlord's authority to control could come from something other than the restrictive lease provisions.[61] This would appear a logical extention of the court's holding based upon the application of implied contract principles.[62] The court's failure to specify other origins of this duty, however, opens the door to the possibility that a court may recognize an implied authority to control all aspects of tenants' conduct.

The *Bocchini* court, in adopting the modern view of the breach of the covenant of quiet enjoyment and constructive eviction, recognized that a tenant may have a cause of action against a landlord for disturbances caused by another tenant. The cause of action exists when the activity of the tenant is restricted by a lease provision and the landlord knows or should know of the disturbing tenant's activity. The court has chosen a rule consistent with the expectations and realities of the modern urban landlord-tenant relationship.

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59. *Id.*; *see* Hicks, *The Contractual Nature of Real Property Leases*, 24 BAYLOR L. REV. 443, 451-52 (1972). These concepts may also apply in the commercial lease setting. *Compare* Eskanos & Sapperstein v. Irwin, 637 P.2d 403 (Colo. App. 1981) (constructive eviction of commercial tenant by disturbing conduct of other commercial tenants in shopping center) *and* Blackett v. Olanoff, 371 Mass. 714, 358 N.E.2d 817 (1977) (constructive eviction of residential tenant by disturbing conduct of nearby commercial tenant) *with* Q C Corp. v. Maryland Port Admin., 68 Md. App. 181, 510 A.2d 1101 (1986), *modified*, 310 Md. 379, 529 A.2d 829 (1987) (commercial tenant was constructively evicted by another commercial tenant; however, the disturbing tenant was in effect the agent of the landlord).

60. Friedman, *supra* note 33, at 587; Humbach, *supra* note 36, at 225.

61. *Bocchini*, 69 Md. App. at 12, 515 A.2d at 1185.

62. *See generally* 3 A. CORBIN, *supra* note 35, § 561. There are many cases in which a contract containing one promise has been found to contain another promise by implication. *Id.*