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RECENT DEVELOPMENT

RHANEY v. UNIVERSITY OF MARYLAND EASTERN SHORE: A LANDLORD DOES NOT OWE HIS TENANT A DUTY TO CONTROL THE TORTIOUS ACTS OF A THIRD PERSON PROVIDED THE ACTS ARE NOT FORESEEABLE

By: Jennifer Lewandowski

The Court of Appeals of Maryland held that a landlord does not owe his tenant a duty to control the tortious acts of a third person provided that the acts are not foreseeable. *Rhaney v. Univ. of Md. E. Shore*, 388 Md. 585, 880 A.2d 357 (2005). Specifically, a duty does not extend to the harm inflicted by a third party whose presence cannot reasonably be considered a “dangerous condition,” but is instead, an unforeseeable danger. *Id.* at 599, 880 A.2d at 365. The Court of Appeals also clarified that a student is not a business invitee within the confines of a dormitory. *Id.* at 598, 880 A.2d at 364.

On October 29, 1998, Anthony F. Rhaney, Jr. (“Rhaney”) and Ennis Clark (“Clark”), roommates and students enrolled at the University of Maryland Eastern Shore (“UMES”), engaged in an argument in the confines of their dormitory room. The argument consisted of Clark alleging that Rhaney had cracked his fish tank. Clark punched Rhaney in the jaw after Rhaney denied cracking the tank.

Clark was involved in two prior altercations resulting in one disciplinary action, his suspension from school. Clark’s return to UMES was contingent upon his participation and completion of professional conflict resolution counseling, which he satisfied through a Save Our Streets program. UMES did not reveal Clark’s previous violent incidents to Rhaney prior to placing them as roommates. However, Rhaney learned of Clark’s previous incidents prior to their dispute.

Rhaney filed a complaint against UMES alleging that UMES was negligent in failing to disclose Clark’s dangerous propensities, an assault was foreseeable, and UMES breached its duty of care to Rhaney as an invitee. The Circuit Court for Somerset County sent the

case to trial after denying UMES's motion for summary judgment. The jury returned a verdict against UMES.

UMES appealed in the Court of Special Appeals of Maryland, which reversed the circuit court's judgment stating that the evidence was insufficient to establish that Clark's assault on his roommate was foreseeable. The Court of Appeals of Maryland granted Rhaney's petition for certiorari to determine whether an incorrect restrictive standard of foreseeability was applied and whether an improper addition to the law of premises liability was made regarding policy on college admission and disciplinary procedures.

The Court of Appeals of Maryland began its analysis by stating the elements of negligence as derived in *Muthukumarana v. Montgomery County*, 370 Md. 447, 486, 805 A.2d 372, 395 (2002), which include duty, breach of that duty, an actual injury sustained, and the injury proximately resulted from a breach of that duty. *Rhaney*, 388 Md. at 596, 880 A.2d at 363-64. The plaintiff's burden is to establish that a duty was breached and that the breach proximately caused the injuries. *Id.* at 596-97, 880 A.2d at 364.

If it was established that no duty existed, then there can be no liability against the defendant. *Id.* at 597, 880 A.2d at 364. The Court of Appeals stated in *Horridge v. St. Mary's County Dep't of Social Servs.*, 382 Md. 170, 183, 854 A.2d 1232, 1239 (2004), that there is no duty to prevent a third person from causing harm to another person, outside of a special relationship. *Rhaney*, 388 Md. at 597, 880 A.2d at 364. The Court specifically found that UMES had a landlord/tenant relationship with Rhaney because of the "Residence Hall Agreement" that governed the dormitory room where this incident occurred. *Id.* at 602, 880 A.2d at 367. The premise adopted in *Crown Cork & Seal Co. v. Kane*, 213 Md. 152, 156-59, 131 A.2d 470, 472-75 (1957), is that a person's legal status is generally controlled by that person's status on the land at the time of the incident. *Rhaney*, 388 Md. at 602, 880 A.2d at 367. The Court distinguished that Rhaney's status may have been as a business invitee anywhere else on UMES's campus. *Id.* However, the landlord/tenant relationship established UMES's standard of care regarding Rhaney's battery by Clark. *Id.*

A landlord has a duty of reasonable care for known or reasonably foreseeable risks to a tenant. *Id.* at 598, 880 A.2d at 364. In *Hemmings v. Pelham Wood Ltd. Liab. P'ship*, 375 Md. 522, 537, 826 A.2d 443, 452 (2003), the Court established "the general principal that a landlord 'has no obligation to maintain the leased premises for the safety of the tenant.'" *Rhaney*, 388 Md. at 598, 880 A.2d at 364. The

Court of Appeals found that, occasionally, a duty towards a tenant arises because of a dangerous condition in common areas that the landlord controls. *Id.* at 598, 880 A.2d at 364-65. To be liable, the landlord must have actual knowledge of an activity that may affect this condition or should have had knowledge and foreseen the sustained injury. *Id.* at 598, 880 A.2d at 365. The Court also reiterated the need established by *Scott v. Watson*, 278 Md. 160, 169, 359 A.2d 548, 554 (1976), to avoid “making a landlord the insurer of its tenant’s safety.” *Rhane*y, 388 Md. at 598, 880 A.2d at 365.

Next, Rhane

y unsuccessfully argued that UMES owed him an affirmative duty under a business owner/invitee relationship. *Id.* at 590, 880 A.2d at 359-60. The plaintiff argued that under *Southland Corp. v. Griffith*, 332 Md. 704, 715-16, 633 A.2d 84, 89 (1993), an affirmative duty exists for a business owner to use reasonable and ordinary care in order to keep his premises safe for the purpose of protecting an invitee from injury caused by an unreasonable risk that the invitee would not discover on his or her own by exercising ordinary care. *Rhane*y, 388 Md. at 601, 880 A.2d 366-67.

The Court of Appeals discounted Rhane

y as a business invitee of UMES because of the explicit terms in the “Residence Hall Agreement,” which stated that within the dormitory his status was that of a tenant and UMES’s status was a landlord. *Id.* at 602, 880 A.2d at 367. The Court of Appeals further held that even if Rhane

y did have this business owner/invitee relationship with UMES, he would not succeed in litigation because of insufficient evidence, his personal knowledge of Clark’s prior incident, and his own inaction of finding a new roommate. *Id.* at 603, 880 A.2d 367-68.

Further, based on previous decisions by the Court of Appeals, UMES would be liable if Clark’s presence constituted a “dangerous condition” and the harm that Rhane

y suffered was a result of UMES’s actual knowledge of Clark’s violent tendencies toward his future roommate. *Id.* at 599, 880 A.2d at 365. *Hemmings* and *Scott* demonstrated that physical dangers or conditions that contributed to criminal activity on the premises constituted “dangerous conditions.” *Id.* at 599, 880 A.2d at 365. *Scott* held that a landlord maintains a duty of reasonable care if the landlord possessed knowledge of such conditions. *Id.* The Court of Appeals held that neither of those cases implied that the actual criminal act that occurred constituted a “dangerous condition.” *Id.* at 599-600, 880 A.2d at 365. In *Scott* the Court further held that a landlord only has a duty to “take reasonable measures” in eliminating conditions that contribute to criminal

activity. *Id.* The Court of Appeals held that Clark cannot be considered a “dangerous condition.” *Id.* at 600, 880 A.2d at 366. Furthermore, even if Clark amounted to a “dangerous condition,” UMES would not be liable because it still did not have actual knowledge that Clark would batter Rhaney. *Id.*

The Court of Appeals determined that one disciplinary action against Clark was insufficient for UMES to foresee or have knowledge Clark was more than a one-time offender of the UMES disciplinary system. *Id.* at 600-01, 880 A.2d at 366. Comparisons made between *Hemmings* police records of multiple crimes in an area and *Scott* noting 72 total crimes in the vicinity indicated that one incident by Clark remained insufficient for UMES to have had knowledge of a foreseeable harm being inflicted upon Rhaney. *Id.* at 601, 880 A.2d at 366.

Comparing the present case to past precedent, the Court of Appeals communicated an idea that only existed prior to this case through inference. The Court succinctly compiled the negligence standards for premise liability for both landlord/tenant and business owner/invitee relationships. A general rule of no duty against tortious acts of third persons that are not foreseeable was likely adopted in previous opinions, but has been expressly accepted in *Rhaney v. University of Maryland Eastern Shore*.