

Raczkowski v. McFarlane et al. (AC 42024)

Brief Summary: Plaintiff sought damages from the defendant landlord after being bitten by a tenant's dog. Lease permitted the tenant to keep a pet in exchange for increased rent but required the pet pose no threat to anybody and that be determined by the landlord. Court held that summary judgment in favor of the defendant was warranted because the lease did not require the landlord to investigate the dog's behavior nor did the lease impose a duty of care onto the landlord to keep the leased portion of the property safe.

The plaintiff, Toni Raczkowski, sued her landlord, Evelyn Garrow, for negligence. The plaintiff sought damages for injuries suffered when she was bitten by a dog owned by the defendant's tenant, David J. McFarlane, on the leased property. The plaintiff alleged that the defendant was negligent in that she knew or should have known that McFarlane's dog was dangerous and that allowing the dog to stay on the property constituted a failure to use reasonable care to keep the property in a reasonably safe condition. Further, the plaintiff alleged that the lease between the defendant and McFarlane, which left the approval of any dogs living on the property to the defendant's discretion, imposed on the defendant a duty of care to third persons who are not parties to the lease. The trial court granted summary judgment in favor of the defendant concluding that there was no issue of material fact as to whether the defendant knew or should have known of the dog's supposed vicious propensities nor whether the lease agreement imposed a duty of care that extended to nonparties to the lease. Further, the court concluded that the language of the lease did not impose a duty on the defendant to make a reasonable inquiry about the dog's behavior. The issues on appeal were whether there was an issue of material fact as to: (1) whether the lease created a duty requiring the defendant to investigate the dog's behavioral propensities on the property on behalf of nonparties to the lease;

and (2) whether the defendant reserved control over the property, which created a duty to use reasonable care to keep in a reasonably safe condition those portions of the property over which she reserved control. The court held that no genuine of material fact exists regarding both issues, thus, affirming summary judgment in favor of the defendant.

Because the lease is a contract the court had to interpret the lease in accordance with contract interpretation principles. Where the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms. When only one interpretation of a contract is possible, the court need not look outside the four corners of the contract. Thus, when the language of the contract is clear the court must interpret it in accordance with the language of the contract. When the claim of a duty of care arising out of a contract is brought by an individual who is not a party to the contract, the duty must arise from something other than mere failure to perform properly under the contract. The test for the existence of a duty of care is found in the foreseeability that harm will result if care is not exercised. The court stated that in this case, unless the signatories of the lease intended that the plaintiff be a third-party beneficiary to the lease, then the harm was not foreseeable. To determine whether a lease creates a third-party beneficiary, the court must look at whether the parties intended to create a direct obligation from one party to another.

The provision in question stated “The tenant may keep a pet but this will increase the monthly payment by \$50.00 per month. The tenant must keep the pet healthy and well groomed. The pet must pose no threat to anyone coming on the property. This is to be determined by the landlord.” The court stated that the language simply provides the defendant with the discretion to approve or deny the tenant’s ability to own or keep pets on the property. The court concluded that the language clearly demonstrates that the defendant and McFarlane did not intend to create

an obligation to any third persons as no third party is every mentioned. Consequently, the court held that there was no genuine issue of material fact that the plain language of the lease did not require the defendant to investigate the behavioral propensities of the dog and that the lease did not create a duty on the part of the defendant to third persons who might encounter the dog on the property.

The general rule regarding premises liability in the landlord-tenant context is that landlords owe a duty of reasonable care as to those parts of the property over which they have retained control. Generally, landlords do not have a duty to keep in repair any portion that is leased and in exclusive possession and control of the tenant. Thus, a landlord owes a duty of care in the common areas for example, not inside a tenant's apartment unless they retain control over it.

The plaintiff argued that the language of the lease proves that the tenant retained possession and control over the leased property—where the incident took place. The defendant argued that the lease simply vests discretion in her to approve pets and does not grant her control over the property. The defendant submitted leases and affidavits which demonstrated that the tenant was responsible for the exterior maintenance of the property, including the front and back lawn and driveway. Further, the lease stated that the entirety of the property was leased to McFarlane. Thus, the court concluded that because the entire property was leased to McFarlane, McFarlane had exclusive possession of the property, thus, the defendant had no right to enter the property and to physically remove McFarlane's dog. The court also distinguished this case from *Giacalone v. Housing Authority*, because unlike in *Giacalone*, the plaintiff was not bit in the common area of the property where the landlord retained control. Therefore, the court concluded

that no issue of material fact exists over whether the defendant had possession or control over the property, thus, the defendant owed no duty of care to the plaintiff.

The key takeaway from this case is that a landlord retaining the right to approve or deny a tenant keeping a pet does not impose a duty onto the landlord to keep the leased portion of the premises safe from the pet. A landlord is obligated to keep any area they retain possession over safe, but not the leased portion which remains the responsibility of the tenant.