Filed 11/14/19 Oliver v. Worldwide Corporate Housing, L.P. CA2/5

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

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| SHIRLEY OLIVER,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>WORLDWIDE CORPORATE HOUSING, L.P.,<br><br>Defendant and Appellant. | B291230<br><br>(Los Angeles County Super. Ct. No. BC516791) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Paul A. Bacigalupo, Judge. Reversed.

Moranga & Morgenstern and Paul Andrew Elkort; Greines, Martin, Stein & Richland, Robert A. Olson and Mark J. Poster for Defendant and Appellant.

Grassini & Wrinkle, Roland Wrinkle and Robert B. Reagan, Jr. for Plaintiff and Respondent.

Fred J. Hiestand, General Counsel for Amicus Curiae, The Civil Justice Association of California.

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The question presented by this appeal is whether a landlord of a furnished apartment is strictly liable for injuries to a tenant caused by a latent defect in one of the furnishings. The Supreme Court in *Peterson v. Superior Court* (1995) 10 Cal.4th 1185 (*Peterson*) addressed this question with respect to a fixture in a hotel room in which the injured party was staying. The Court concluded that hotel owners/operators are not strictly liable for injuries resulting from defects in their premises. We find that the reasoning in *Peterson* applies as well to defective furnishings in a leased residence. While landlords that breach the applicable standard of care may be held liable under other tort principles for injuries resulting from defective furnishings, they are not strictly liable for such damages.

***FACTUAL AND PROCEDURAL BACKGROUND***

Defendant Worldwide Corporate Housing, L.P. (landlord) appeals from a judgment holding it liable for the death of a tenant, Lauren Humphrey, caused by a television that caught fire. Landlord leased a fully furnished studio apartment to Humphrey.[1] The television was installed in the apartment when Humphrey moved in.

On November 13, 2012, a fire broke out in Humphrey's apartment. When the firefighters arrived, the apartment was filled with smoke and Humphrey was deceased. The cause of death was determined to be carbon monoxide poisoning.

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[1] Worldwide Corporate Housing owns Oakwood Apartments, which provided housing to the tenant here, and which was also sued in the complaint. We collectively refer to both entities as "Landlord."

Humphrey's mother, Shirley Oliver (plaintiff), sued Landlord and others for wrongful death based on theories of negligence and strict liability. Plaintiff settled with the television manufacturer for $1,000,000, and the court found the settlement to be in good faith. Landlord moved for summary judgment and for a directed verdict on strict products liability. The trial court denied the motions.[2]

At trial, plaintiff proceeded on the theory that Landlord was strictly liable for injuries caused by the defective television. The jury found in favor of plaintiff and awarded her $3 million in damages. The jury further apportioned liability as follows: 80 percent to Landlord and 20 percent to the decedent. The net judgment, after apportioning liability and crediting the manufacturer's $1,000,000 settlement with plaintiff was $1,400,000. In a motion for judgment notwithstanding the verdict, Landlord argued it was not strictly liable for plaintiff's damages. The court denied the motion, and Landlord timely appealed.

## ***DISCUSSION***

California's products liability doctrine "provides generally that manufacturers, retailers, and others in the marketing chain of a product are strictly liable in tort for personal injuries caused by a defective product." (*Peterson*, *supra*, 10 Cal.4th at p. 1188.) Strict liability "is not imposed even if the defendant is technically a 'link in the chain' in getting the product to the consumer market if the judicially perceived policy considerations are not

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[2] Landlord sought review of the denial of its motion for summary judgment. We summarily denied a petition for writ of mandate. (*Oakwood Woodland Hills Lessess v. Superior Court of Los Angeles*, case No. B282154.)

satisfied. Thus, a defendant will not be held strictly liable unless doing so will enhance product safety, maximize protection to the injured plaintiff, and apportion costs among defendants. [Citations.]" (*Arriaga v. CitiCapital Commercial Corp.* (2008) 167 Cal.App.4th 1527, 1537.)

The *Peterson* court was confronted with an injury caused by a fall in a hotel bathroom. The present appeal involves related, but not identical facts—a wrongful death caused by a television that caught fire in a rented apartment. The parties, understandably, have different views on whether this factual distinction has any legal significance. Landlord argues that the principles articulated in the Supreme Court's opinion in *Peterson* mandate that landlords not be held strictly liable for such injuries. Plaintiff relies on *Fakhoury v. Magner* (1972) 25 Cal.App.3d 58 (*Fakhoury*) for the argument that a landlord is not the same as a hotel proprietor, and that a landlord that furnishes a large number of televisions should be considered a distributor of that product to which strict products liability applies. We decline to follow *Fakhoury* but rather conclude, under the reasoning of *Peterson*, strict liability does not apply here.

In *Peterson*, a hotel guest was injured when she slipped and fell in the bathtub. (*Peterson*, *supra*, 10 Cal.4th at p. 1189.) Our Supreme Court held that "neither landlords nor hotel proprietors are strictly liable on a products liability theory for injuries to their respective tenants and guests caused by a defect in the premises." (*Id.* at pp. 1188–1189.) Instead, liability was limited to premises liability based on a breach of the standard of care. (*Id.* at pp. 1189.)

The *Peterson* court explained why imposing strict liability on retailers in the chain of distribution did not support the extension of strict liability to the case before it. "In some cases the retailer may be the only member of that enterprise reasonably available to the injured plaintiff. In other cases the retailer himself may play a substantial part in insuring that the product is safe or may be in a position to exert pressure on the manufacturer to that end . . . . Strict liability on the manufacturer and retailer alike affords maximum protection to the injured plaintiff and works no injustice to the defendants, for they can adjust the costs of such protection between them in the course of their continuing business relationship." (*Peterson*, *supra*, 10 Cal.4th p. 1198.)

The court observed that most of the "reasons for imposing strict liability upon a retailer of a defective product do not apply to landlords or hotel proprietors who rent residential premises." (*Peterson*, *supra*, 10 Cal.4th at pp. 1198–1199.) "A landlord or hotel owner, unlike a retailer, often cannot exert pressure upon the manufacturer to make the product safe and cannot share with the manufacturer the costs of insuring the safety of the tenant, because a landlord or hotel owner generally has no 'continuing business relationship' with the manufacturer of the defective product." (*Id.* at p. 1199.) "The mere circumstance that it was contemplated customers of these businesses would use the products . . . or be benefited by them does not transform the owners of the businesses into the equivalent of retailers of the products. [Citation.]" (*Id.* at pp. 1199–1200.)

*Peterson* expressly overruled *Becker v. IRM Corp.* (1985) 38 Cal.3d 454 (*Becker*). (*Peterson*, *supra*, 10 Cal.4th at p. 1190.) The plaintiff in *Becker* was injured by a shower door in an

apartment he rented from the defendant. (*Becker*, at p. 458.) The Supreme Court held the defendant strictly liable, reasoning that "a lease for a dwelling contains an implied warranty of habitability" and, thus, a landlord makes an "implied assurance of safety." (*Id.* at pp. 462, 465.)

The *Becker* court relied on *Fakhoury* in support of its holding. (*Becker*, *supra*, 38 Cal.3d at p. 464.) In *Fakhoury*, a couch in a furnished apartment injured the plaintiff, and the court held the landlord strictly liable for the defective piece of furniture. (*Fakhoury*, *supra*, 25 Cal.App.3d at p. 63.) The *Becker* court concluded that "the rationale" of *Fakhoury* "establishing the duties of a landlord and the doctrine of strict liability in tort, *requires* us to conclude that a landlord engaged in the business of leasing dwellings is strictly liable in tort for injuries resulting from a latent defect in the premises . . . ." (*Becker*, at p. 464 (emphasis added).)

We find significant that when the *Peterson* court framed the issue before it, the court stated it could treat *Becker* in one of two ways. "We granted review in the present case to decide whether *Becker* was wrongly decided and should be overruled, or, if *Becker* is not overruled, whether the principles underlying that decision apply outside the landlord-tenant context and warrant the imposition of strict products liability upon the proprietor of a hotel for an injury to its guest caused by a defect in the hotel premises." (*Peterson*, *supra*, 10 Cal. 4th at p. 1188.) If the court had taken the second path, *Peterson* and *Becker* could have coexisted with different rules for landlords and hotel proprietors. But it did not. "Upon reexamining the basis for *Becker*'s holding with regard to the proper reach of the products liability doctrine, we conclude that we erred in *Becker* in applying the doctrine of

strict products liability to a residential landlord that is not a part of the manufacturing or marketing enterprise of the allegedly defective product that caused the injury in question." (*Ibid.*)

Plaintiff attempts to draw a distinction between defects in the premises (the bathtub in *Peterson*) and a defective furnishing (television in the present case) provided by a landlord. We see nothing in *Peterson* that would allow for different treatment.

The purpose of strict liability " 'is to insure that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market rather than by the injured persons who are powerless to protect themselves.' [Citation.]" (*O'Neil v. Crane Co.* (2012) 53 Cal.4th 335, 348.) By contrast, landlords are not obligated insure the safety of their tenants. Nor, on this record, would holding landlords strictly liable lead to safer products or the spreading of loss through the chain of commerce. Whether the defect is with a fixture or a furnishing, it does not always follow that landlord has the ability to exert pressure upon the manufacturer to make the product safe. A defendant landlord often has no continuing business relationship with manufacturers that would allow it to share the costs of insuring the safety of the tenant. The *Peterson* court cited one commentator who predicted that, in fact, the "cost of insuring risk will not be distributed along the chain of commerce but will probably be absorbed by tenants who will pay increased rents." (*Peterson*, *supra*, 10 Cal.4th at p. 1199.)

We hold that *Peterson* precludes strict liability against a landlord of a furnished apartment where, as on the facts here, a tenant is injured by a defective furnishing. The trial court erred in denying Landlord's motion for judgment notwithstanding the verdict.

## *DISPOSITION*

The judgment is reversed. Appellant Worldwide Corporate Housing, L.P. is awarded its costs on appeal.

RUBIN, P. J.

WE CONCUR:

BAKER, J.

MOOR, J.