

SUPREME COURT OF VERMONT

Timothy Terry and Penny Terry v. William O'Brien and Susan Cain
O'Brien

2015 VT 132, 200 Vt. 511 · No. 2014-370 · Decided October 23, 2015

SUMMARY

The Vermont Supreme Court reviews a landlord-tenant dispute involving statutory warranty-of-habitability, Consumer Protection Act, negligence, and emotional-distress claims arising from a residential fire. The court holds that the trial court improperly instructed the jury that actual notice was unnecessary for latent habitability defects and gave an overbroad Consumer Protection Act instruction. It vacates the verdict and judgment except for the jury’s unpaid-rent award and remands for further proceedings.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dennis R. Pearson, J.; opinion by Chief Justice Reiber; Chief Justice Reiber; Justice Dooley; Justice Skoglund; Justice Robinson; Justice Eaton
JURISDICTION	Vermont
DECIDED	October 23, 2015
DOCKET	2014-370
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Defendant landlords appealed from a jury verdict and post-judgment order in a residential landlord-tenant action involving warranty-of-habitability, Consumer Protection Act, negligence, and related claims.
STANDARD OF REVIEW	The court reviewed jury instructions to determine whether they conveyed the true spirit and doctrine of the law. Unpreserved instructional-error claims were reviewed under Vermont Rule of Civil Procedure 51(b)'s preservation requirement. The trial court's attorney-fee ruling was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	William O'Brien, Susan Cain O'Brien v. Timothy Terry, Penny Terry

TOPICS

landlord tenant

consumer protection

statutory interpretation

appellate procedure

remedies

PRACTICE AREAS

landlord-tenant law

consumer protection

contracts

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QUESTIONS PRESENTED

1. Whether the jury instruction on Vermont's statutory warranty of habitability improperly excused tenants from proving that landlords received actual notice of the alleged habitability defect.
2. Whether the warranty-of-habitability claim could be based on a latent electrical defect of which the landlords had no actual notice.
3. Whether the trial court improperly instructed the jury that renting a residence with any code violation constituted a deceptive practice under the Consumer Protection Act without requiring materiality or landlord knowledge.
4. Whether the trial court properly vacated the jury's award of unpaid rent to the landlords.
5. Whether the trial court properly awarded attorney's fees to the tenants and denied attorney's fees to the landlords.

HOLDINGS

1. Under 9 V.S.A. § 4458(a), a tenant seeking statutory habitability remedies must establish actual notice of the material noncompliance from the tenant, a governmental entity, or a qualified independent inspector. The notice requirement applies even when the alleged defect is latent, and a landlord without actual notice of the defect cannot be held liable under the statutory warranty on that basis.
2. A Consumer Protection Act claim based on a landlord's failure to disclose habitability-related code violations requires proof that the alleged deceptive act was material and that the landlord knew or should have known of the alleged defect. Renting premises with any code violation, without more, is not automatically a deceptive act imposing strict liability.
3. Because the statutory habitability claim was vacated, the tenants had no remaining basis in this action to withhold rent; therefore, the jury's \$20,000 unpaid-rent award to the landlords had to stand.
4. The trial court properly denied the landlords attorney's fees under 9 V.S.A. § 4456(e) because the evidence did not establish that the tenants' conduct violated a code or regulation or contributed to the landlords' noncompliance with the applicable electrical code.

KEY QUOTATIONS

“We agree with this reasoning and hold that, in cases where tenants are basing a CPA claim upon the failure of landlords to disclose code violations related to the habitability of residential premises, the tenants must show that the landlords knew or should have known of the alleged defect in the premises.” (¶ 38)

“We emphasize, however, that landlords may be held liable for not revealing material defects or code violations of which they should have been aware.” (¶ 39)

“Because there is no evidence that landlords had actual notice of a habitability defect that led to the fire, tenants’ statutory habitability claim fails as a matter of law.” (¶ 21)

FACTUAL BACKGROUND

The landlords owned a Burlington residence occupied by the tenants under an oral rental arrangement. The property had documented code-related problems, and the furnace was in extremely poor condition; tenants used supplemental space heaters and extension cords. In December 2008, an attic fire began at an electrical splice connecting older knob-and-tube wiring to newer wiring, causing substantial damage and forcing the tenants to relocate. The tenants alleged that the landlords' statutory habitability and consumer-protection violations caused emotional and other intangible injuries.

PROCEDURAL HISTORY

The tenants sued the landlords after a fire damaged the rented residence, asserting breach of an oral rental agreement, breach of the statutory warranty of habitability, breach of quiet enjoyment, Consumer Protection Act violations, negligence, and negligent infliction of emotional distress. The landlords counterclaimed for unpaid rent. After a jury trial, the jury found warranty-of-habitability and Consumer Protection Act violations, awarded emotional-distress damages, found tenants comparatively negligent, and awarded the landlords \$20,000 in unpaid rent. The trial court entered judgment for the tenants, later vacated the unpaid-rent award and awarded tenants attorney's fees. The Supreme Court vacated the verdict and judgment except for the unpaid-rent award, reversed the post-judgment order, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including retrial of the tenants' Consumer Protection Act claim under the requirements of materiality and landlord knowledge or constructive knowledge. The jury verdict and judgment are vacated except for the \$20,000 award of unpaid rent to the landlords; the trial court's post-judgment order is reversed. The tenants' attorney-fee award is vacated, while the denial of landlords' attorney's fees is affirmed.

CASES CITED

- DeYoung v. Ruggiero, 2009 VT 9, 185 Vt. 267, 971 A.2d 627
- Willard v. Parsons Hill P'ship, 2005 VT 69, 178 Vt. 300, 882 A.2d 1213
- Hilder v. St. Peter, 144 Vt. 150, 478 A.2d 202 (1984)
- E.B. & A.C. Whiting Co. v. City of Burlington, 106 Vt. 446, 175 A. 35 (1934)
- Favreau v. Miller, 156 Vt. 222, 591 A.2d 68 (1991)

- Weiler v. Hooshiari, 2011 VT 16, 189 Vt. 257, 19 A.3d 124
- Straw v. Visiting Nurse Ass'n & Hospice of VT/NH, 2013 VT 102, 195 Vt. 152, 86 A.3d 1016
- Bisson v. Ward, 160 Vt. 343, 628 A.2d 1256 (1993)
- Peabody v. P.J.'s Auto Village, Inc., 153 Vt. 55, 569 A.2d 460 (1989)
- Winton v. Johnson & Dix Fuel Corp., 147 Vt. 236, 515 A.2d 371 (1986)
- Carter v. Gugliuzzi, 168 Vt. 48, 716 A.2d 17 (1998)
- Gregory v. Poulin Auto Sales, Inc., 2012 VT 28, 191 Vt. 611, 44 A.3d 788
- L'Esperance v. Benware, 2003 VT 43, 175 Vt. 292, 830 A.2d 675
- Vastano v. Killington Valley Real Estate, 2007 VT 33, 182 Vt. 550, 929 A.2d 720
- Anderson v. Johnson, 2011 VT 17, 189 Vt. 603, 19 A.3d 86
- Kwon v. Eaton, 2010 VT 73, 188 Vt. 623, 8 A.3d 1043
- Ferrisburgh Realty Investors v. Schumacher, 2010 VT 6, 187 Vt. 309, 992 A.2d 1042