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No. 78788-8-1

SUPREME COURT OF THE STATE OF WASHINGTON

LONE PINE APARTMENTS, LLC; TARGA REAL ESTATE
SERVICES, INC.,

Petitioner,

v.

LUCY CELES,

Respondent.

AMICUS CURIAE BRIEF FOR HOUSING AUTHORITY OF THE
CITY OF SEATTLE

By:

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1. INTRODUCTION

Lone Pine Apartments, LLC and Targa Real Estate Services, Inc. own and operate the Lone Star Apartments in Lakewood, Washington. Lucy Celes, a tenant in the Lone Pine Apartments, was badly injured when she jumped from her second-floor balcony to escape the flames from a fire deliberately started in a stairwell adjoining her unit. The arsonist was involved in a dispute with the companion of a tenant in a unit that also adjoins the stairwell. The companion was known to sell drugs from the unit and the dispute was purportedly drug related. Celes sued Lone Pine and Targa for damages for the injuries she suffered from the fire and the jump from her balcony. The trial court dismissed Celes' negligence claim, holding that there was no duty of care because the criminal conduct that caused her injury was not legally foreseeable. The Court of Appeals reversed, holding that the arson was a reasonably foreseeable consequence of drug dealing on the property.

2. IDENTITY AND INTEREST OF AMICUS

The Housing Authority of the City of Seattle (hereinafter "the Housing Authority") is a municipal corporation, organized pursuant to the State Housing Authorities Law (Chapter 35.82 RCW) to provide decent, safe and sanitary housing for low-income people in the City of Seattle. The Housing Authority owns and manages more than 8,000 units of housing.

This includes approximately 6,000 units of low-income public housing and 2,000 units of market rate housing. In addition, the Housing Authority provides housing voucher subsidies to more than 7,000 low income people. In total, the Housing Authority serves nearly 35,000 mostly low-income people.

In the main, Housing Authority residents are responsible and law abiding, but drug use, addiction and dealing are common problems. Eviction, or the threat of eviction, is the Housing Authority's primary tool for controlling problem behavior, but tenants who are evicted often become homeless and have difficulty qualifying for housing in the future. Moreover, lease enforcement, particularly eviction actions, are subject to factual disputes and the court's discretion. The Housing Authority, therefore, makes every effort to work with non-compliant tenants, including tenants who have problems with drugs, and uses eviction only as a last resort. In addition, many tenants with drug problems also have psychological and emotional disabilities that by law must be accommodated. As a consequence, the Housing Authority has significant number of tenants who misuse drugs, alcohol or have mental health issues, who may not be in strict compliance with the terms of their leases, and who, as a consequence of the Court of Appeals holding in this case, constitute a source of potentially unlimited liability and litigation.

3. ISSUES ADDRESSED BY AMICUS

1. Is a residential landlord legally obligated to protect its tenants from reasonably foreseeable criminal acts of third parties?
2. Is known or suspected drug activity sufficient to create a duty obligating landlords to protect other tenants from injuries caused by the criminal activity of non-tenant third parties?

4. STATEMENT OF THE CASE

The Lone Pine apartments are owned by Lone Pine Apartments, LLC ("Lone Pine) and managed by Targa Real Estate Services (Targa). Lucy Celes (Celes) leased unit #4 at Lone Pine apartments. Unit #2 at Lone Pine Apartments was leased to Tyronda Bermudez. A common stairwell connects units #2 and #4. Linwood Smith, a frequent visitor in unit #2, was known to deal drugs from the unit #2. On September 6, 2014 one of Smith's acquaintances or customers, enraged by Smith's actions and/or attitude, started a fire in the stairwell. Flames from the fire forced Celes to jump from her second floor balcony which caused her to suffer significant injuries.. Celes sued Lone Pine and Targa for negligence, contending that Lone Pine and Targa had a duty to protect her from the arson that caused her injuries.

5. ARGUMENT

Landlords are liable for injuries to tenants, caused by the criminal acts of third parties, only if there is a special duty to protect tenants from such injuries. *Nivens v. Hoagy's Corner*, 133 Wn.2d 192, 943 P.2d 286 (1997), .Whether such a duty exists is a question of law to be decided by the court, *Snyder v. Medical Service Corp of Eastern Washington*, 145 Wn.2d 233, 35 P.3d 1158 (2001). If the court finds no duty there is no liability. *Linville v. State*, 137 Wn.App. 201, 151 P.2d 1073.

Relying upon the appellate court decision in *Griffin v. West RS, Inc.*, 97 Wn. App. 557 (1999), the Court of Appeals here held that the residential landlord-tenant relationship is the sort of “special relationship” that gives rise to such a heightened duty of care. *Celes v. Lone Pine Apts., LLC*, 2020 Wash. App. LEXIS 1411, *6 (Wash. Ct. App. May 18, 2020). The *Griffin* Court, in determining that the landlord-tenant relationship is a “special relationship” extrapolated from prior “special relationship” cases to rest its holding on the assumption, without explanation, that “[t]here is no principled distinction between the duty owed by the hotel owner to its guest . . . , the innkeeper to its guest . . . , and the landlord to its tenant . . .” *Griffin*, 97 Wn.App. at 566. The Court of Appeals’ assumption, however, is a false one, a point illustrated by the numerous jurisdictions to have considered and refused to extend a heightened duty of care to the residential

landlord-tenant relationship. *See id.* at 563, n. 13 (listing cases holding no special relationship in landlord-tenant context). This Court has expressly not opined on the issue. *See Griffin v. W. RS, Inc.*, 143 Wn.2d 81, 83 (2001) (“The principal question is whether, or to what extent, a residential landlord is legally obliged to protect its tenants from the foreseeable criminal acts of third persons. But this question we need not answer . . .”). It should consider the issue now, as the existence of any such “special relationship” and its potential scope and application may ultimately be dispositive of the issues in this case.

Furthermore, the Court of Appeals, citing no study, report, authority or evidence in the record, found that Lone Pine and Targa had a duty to Celes because the harm to Celes,

““Fell into a general field of danger that respondents should have anticipated” based upon the “well known nexus between drugs or drug trafficking and violence, and the arson was a consequence of the drug related criminal activity that occurred at Lone Pine.”” ___ Wn.App ___, ___ P2d _____ (2020)

The court makes no distinction between drugs and drug trafficking. Presumably, “drugs” refers to drug use and the Court concluded that the nexus between drug users and violence is the same as the nexus between drug trafficking and violence. In the Housing Authority’s experience, the overwhelming majority of drug users are not violent or associated with

violence. They may have difficulty with activities of daily living and or trouble with lease obligations, but neither they nor their friends or associates constitute any danger to themselves or others.

Even drug traffickers fall on a continuum, from those who sell relatively small amounts of drugs to support a habit to actual drug dealers who are involved with drug cartels and organized crime. Drug dealers who sell drugs to support a habit are seldom violent or associated with violence. The Court of Appeals' "well known nexus" between drugs and violence applies, again in the Housing Authority's experience, to a very small number of core drug traffickers. The Court's "nexus" is well known because drug violence by gangs and organized crime is well reported but, by basing its holding on only worst cases, the Court adopted a rule that is far too broad.

Finally, even if "drugs" and "drug trafficking" were interchangeable and drug users and drug traffickers behaved uniformly, the notion that a tenant's associates or guests are likely to harm other tenants by engaging in arson or some other criminal behavior is much too attenuated to be reasonably foreseeable.

A landlord's ability to successfully enforce the terms of a lease due to misbehavior is not a foregone conclusion. In Seattle, and an increasing number of jurisdictions, landlords must prove a lease violation to terminate

a tenancy. (*See e.g.*, 22.206.160 Seattle .Municipal .Code). Drug use and drug dealing are generally grounds for eviction, but drug use or drug dealing can be extraordinarily difficult to prove. Most drug use and drug dealing occurs in the user's or dealer's unit, out of sight of the landlord, property managers and other residents. In these circumstances there is seldom *any* evidence of the resident's drug use or dealing which effectively precludes termination of these tenancies. With active drug dealers there may be increased foot traffic, noise or other evidence of drug activity but the activity in itself is not proof of drug use or drug dealing. Proving drug use or drug dealing requires testimony from a person who actually witnessed the use or dealing. Drug use and dealing seldom occurs in the landlord's presence, so landlords must rely upon residents and visitors to provide the needed testimony. Although residents frequently complain about drug use and dealing, few will testify and rarely is anyone willing to testify against a violent or potentially violent drug dealer.

Few landlords have the resources to successfully evict a tenant for drug use or drug dealing. The Housing Authority has its team of investigators who investigate tenants involved in serious drug dealing. These investigations take weeks or months and include extensive surveillance, interviews of residents and witnesses, and coordination with police and federal law enforcement agencies, but even these efforts are often

not enough to establish a credible case for termination. Following an investigation, drug dealers can sometimes be persuaded to ply their trade elsewhere, but seldom is a Housing Authority tenancy terminated for drug use or dealing.

Finally, and again in the Housing Authority's experience, what a tenant who uses or deals drugs will do in the future is impossible to forecast, and forecasting what an acquaintance of such a tenant will do, now or in the future, is equally impossible. Tenants who use or deal drugs frequently recover from their addictions and/or their need to deal drugs. Eviction seriously lessens the likelihood that a drug user or dealer will ever lead a normal, productive life. Routine eviction of such tenants is, therefore, not in the best interest of many tenants or society in general.

6. CONCLUSION

The existence of a duty is based upon considerations of logic, common sense, justice, policy and precedent, *Snyder* at 1164. This Court, however, has never opined on whether or to what extent a residential landlord owes a duty to protect its tenants from third party criminal conduct. Moreover, the Court of Appeals summary conclusion that there is a "well known nexus between drugs or drug trafficking and violence" is not based upon the required considerations in any respect. This Court should accept

review so that the scope of a landlord's duty, if any, to tenants who are injured by the criminal acts of third parties can be properly analyzed and determined.

For the above stated reasons, undersigned counsel respectfully requests this Court grant Petitioner's Petition for Review. The error of law committed by Division I and the Housing Authority's ability to work with many of its tenants who are most in need and in danger of becoming homeless. Under the Court's holding the Housing Authority will be required to evict first instead of as a last resort. For these reasons the issues presented here are of substantial public importance meritorious of review. The existence of a duty is based upon considerations of logic, common sense, justice, policy and precedent, *Snyder* at 1164. This Court, however, has never opined on whether or to what extent a residential landlord owes a duty to protect its tenants from criminal conduct. Moreover, the Court of Appeals summary conclusion that there is a "well known nexus between drugs or drug trafficking and violence" is not based upon the required considerations in any respect. This Court should accept review so that the scope of a landlord's duty, if any, to tenants who are injured by the criminal acts of third parties can be properly analyzed and determined.

Respectfully submitted this 17th day of August, 2020,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that under the laws of the State of Washington that on the 17th day of August, 2020, I caused a true and correct copy of the foregoing document, "AMICUS MOTION" to be delivered to the following counsel of record as indicated:

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Filing Petition for Review

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