SUPREME COURT OF THE STATE OF WASHINGTON

NO. 98664-9

LUCY CELES,

Respondent,

v.

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

Petitioners.

RESPONDENT'S OPPOSITION TO AMICUS CURIAE BRIEFS

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The amicus curiae briefs submitted by the Seattle Housing Authority ("SHA") and by Drew Mazzeo ("Mazzeo") (collectively "Amici Curiae") in support of the Petition for Review of Defendants-Petitioners Lone Pine Apartments, LLC, and Targa Real Estate Services, Inc. (collectively "Defendants") fail to justify review by the Washington Supreme Court. Amici Curiae do not argue that Defendants' conduct was reasonable. They do not argue that the Court of Appeals applied the wrong test for foreseeability, and, while they express dissatisfaction with the outcome, they do not explain in any meaningful way how that test was misapplied here. And they do not dispute that Defendants themselves already had duties directly imposed on them by state and federal criminal laws to prevent drug trafficking on property they owned or managed.

Instead, Amici Curiae misapprehend both the record and the applicable law, and they rely on unsupported factual claims to suggest that application of routine negligence principles is so unworkable such that landlords should be exempt from liability for injuries caused by the landlords' own unreasonable conduct. These unsupported arguments are no different from the overused arguments available to every other class of defendants that wishes to avoid the operation of tort law, which the courts trust to be sufficiently flexible to account for the nuances of an immense array of factual scenarios. The Petition for Review should be denied, and

Plaintiff-Respondent Lucy Celes ("Ms. Celes" or "Plaintiff") should be permitted to proceed to trial.

I. Defendants were unambiguously party to a "special relationship" in this case.

Under Washington law, a duty to protect others from third-party criminal conduct may arise if a "special relationship" exists between the defendant and the third person or between the defendant and the plaintiff. *Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 200, 943 P.2d 286 (1997). In *Griffin v. West RS, Inc*., 97 Wn. App. 557, 984 P.2d 1070 (1999), Division I of the Washington Court of Appeals held that the relationship between a landlord and a tenant qualifies as such a special relationship. On further appeal, the Washington Supreme Court reversed but did not address the special relationship issue, concluding it was unnecessary to do so because the jury specifically found that proximate cause had not been established. *Griffin v. W. RS, Inc.*, 143 Wn.2d 81, 83, 88, 18 P.3d 558, 559-60, 562 (2001). SHA, citing this history, suggests the question of whether a landlord-tenant relationship qualifies as a "special relationship" of this sort remains open. SHA is mistaken.

As an initial matter, the Court of Appeals reaffirmed its "special relationship" analysis from *Griffin* almost immediately after the Washington Supreme Court reversed in that case. *See Faulkner v.*

Racquetwood Vill. Condo. Ass'n, 106 Wn. App. 483, 486-87, 23 P.3d 1135, 1137 (2001) (citing Division I's analysis in *Griffin* and discussing "a landlord's duty to protect the tenant from foreseeable criminal conduct"). And in the nearly 20 years since, the Court of Appeals has continued to hold that landlord-tenant relationships are special relationships giving rise to duties to use reasonable care to address foreseeable harms. *See, e.g., Juarez v. Bravado Apartments, LLC*, No. 72856–3–I, 2015 WL 6874949, at *2 (2015) (unpublished, cited pursuant to GR 14.1) ("Washington recognizes a special relationship exists between a landlord and a tenant.").

Moreover, it is beyond dispute that the relationship between a business and its invitee is a special relationship that gives rise to a duty to use reasonable care to address foreseeable harms. *Nivens*, 133 Wn.2d at 202–04, 943 P.2d at 291–92. And the Washington Supreme Court has repeatedly held that tenant are invitees. *See, e.g., Curtis v. Lein*, 169 Wn.2d 884, 890, 239 P.3d 1078, 1081 (2010) ("A tenant is an invitee."); *Mucsi v. Graoch Associates Ltd. P'ship No. 12*, 144 Wn.2d 847, 855, 31 P.3d 684, 687 (2001) ("A residential tenant is an invitee."); *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 54, 914 P.2d 728, 733 (1996) ("Where the landowner invites a child on the property for business purposes[—as a tenant in this instance—]the landowner has a duty to take reasonable precautions to make the property safe." (Emphasis removed)). Accordingly,

even it if was not already clear that landlord-tenant relationships specifically qualify as "special relationships," Defendants owed duties to Ms. Celes because she was Defendants' invitee.

Finally, Defendants also had a special relationship with the occupants of Unit 2 by virtue of their control over that unit. *See Nivens*, 133 Wn.2d at 200; *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 229, 802 P.2d 1360 (1991) ("[O]ne's possession of land may give the possessor control over the conduct of others the land possessor allows to enter, so that the possessor is required to exercise that control for the protection of persons off the premises."); Restatement (Second) of Torts §§ 315(a), 318. For example, Defendants, unlike Ms. Celes, had control over selection of the occupants of Unit 2 and had the right to control their conduct through enforcement of lease provisions. For this reason, too, Defendants had a duty to use reasonable care to address foreseeable harms arising from the drug trafficking connected to Unit 2.

Accordingly, existing precedent unambiguously compels the conclusion that, for multiple reasons, Defendants were party to a "special relationship" sufficient to give rise to a duty to take reasonable care to address foreseeable harms. Indeed, Defendants did not contest that issue in their summary judgment motion. *See* CP at 552-68. Nor do Defendants seek review of the holding by the Court of Appeals that such a special

relationship existed here.[1] *See* Pet. for Rev., at 3 (seeking review solely of holding regarding foreseeability). There is no open question of law for the Washington Supreme Court to decide on this point, and it is not a basis for review.

II. The "well-known nexus between drugs or drug trafficking and violence" was not disputed, is supported by the record, and should not be subject to attack for the first time on appeal from a summary judgment order.

SHA objects to reference by the Court of Appeals to the "well known nexus between drugs or drug trafficking and violence," which SHA suggests is an unsupported "summary conclusion" that "is not based upon the required considerations." SHA Br. at 5, 8, 9. SHA has seemingly neglected to review the factual record in this case. While Defendants argued that arson specifically was not foreseeable, the evidence of the well-known nexus between drugs or drug trafficking and violence generally was clear and effectively undisputed, as such evidence came in large part directly from *Defendants' own expert criminologist.* CP at 775-76; *accord* CP at 385, 400-02. At summary judgment, where the evidence must be viewed in the light most favorable to Ms. Celes, this testimony must be credited, and

[1] Even Mazzeo appears to concede that the landlord-tenant relationship is a "special relationship." Mazzeo Br., at 2.

SHA's desire to attack this evidence for the first time on appeal is not a basis for review.

III. Amici Curiae's remaining concerns about "unlimited liability," burdens on landlords, and line-drawing difficulties are unsupported and without merit.

Preliminarily, Amici Curiae's complaints about the purported difficulties in identifying risks and about the purported difficulties and costs associated with exercising reasonable care are almost entirely unsupported by citations to data, evidence, or any sources or authority at all.[2] Even if Amici Curiae had provided meaningful sourcing for their claims, Plaintiff has had no opportunity probe any such evidence or marshal corresponding evidence on her own behalf. Similarly, because Defendants have consistently addressed their arguments solely to foreseeability rather than to the reasonableness of their conduct, Plaintiff had no need to address most of these matters in the record below. For these reasons alone, these complaints should not justify further review or constitute the basis for a decision on appeal.

[2] Mazzeo cites one article that does not deal with rental housing. *See* Mazzeo Br., at 5 n.2. Mazzeo cites a second article that states rents were increasing rapidly in Tacoma and Pierce County in 2018. *Id.* at 5 n.1. However, the article attributes rent increases to increased demand rather than increased costs, and the article notes that "[m]ore Pierce County homes than ever are owned by investment companies, which demand high rates of return," seemingly contradicting Mazzeo's unsupported claims about "thin margins."

Regardless, Amici Curiae's handwringing about unlimited liability is unwarranted. The Washington Supreme Court recently addressed fears about "unrestrained liability" in the context of special relationship cases. *See H.B.H. v. State*, 192 Wn.2d 154, 176-77, 429 P.3d 484, 495–96 (2018). The Court noted that the duty owed is limited to one of reasonable care under the circumstances and extends only to harms that are foreseeable, and as a result it concluded that "concerns about limitless liability are without merit." *Id*. Under the applicable negligence standard, landlords by definition may be reasonably mistaken about the proper course of action without incurring liability, and the inquiry will necessarily be informed by the burdens of the various remedial measures available and by the nature of the risk that is foreseeable based on the specific facts of each case. *See Bailey v. Town of Forks*, 108 Wn.2d 262, 271, 737 P.2d 1257, 1261–62 (1987), *amended*, 753 P.2d 523 (Wash. 1988) (explaining negligence inquiry will involve consideration of financial resources and burdens, the degree to which remedial actions are practical, and the foreseeability of the risks at issue). Accordingly, the Court of Appeals opinion in this case does not require landlords to guarantee the safety of their tenants, and concerns about detecting and ameliorating risks to tenants in factual circumstances not at issue here may all be appropriately accounted for in the negligence inquiry.

Ultimately, this is the balance our tort system has struck in a wide variety of contexts. To the extent Amici Curiae contend liability under this standard is too expansive or that the line drawing is too hard, their complaint is with the civil justice system and negligence principles in general, and they suggest no alternative standard. Regardless of however Amici Curiae may seek to dramatize them, these concerns may be leveled at negligence claims of any sort and should not be a basis for review.

Notably, Ms. Celes's case presents *none* of the supposed dilemmas hypothesized by Amici Curiae. The evidence here is sufficient to support a finding that Defendants not merely should have known but instead *actually knew of the drug trafficking from Unit 2 up to 17 months before Ms. Celes was injured*. *See* CP at 205; CP at 992 (concluding evidence supports inference Defendants had notice of drug trafficking). Defendants received further notice of the dangerous nature of the activity in Unit 2 when gunshots were fired from that unit the months before the fire, and Defendants' own maintenance man, who lived on the premises, was fearful for his family's safety. CP at 195, 201-02. There has been no dispute that, in this instance, a variety of remedial actions would have been almost trivially easy for Defendants to take, from notifying the actual lessor of the problems with their sublessee to declining to renew what had become a month-to-month lease years earlier. *See* CP at 65, 67, 142, 144. Moreover,

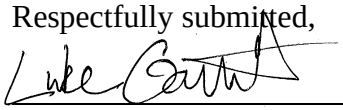
there is no dispute that *Defendants were themselves directly obligated under state and federal criminal laws to refrain permitting property they owned or controlled from being used for drug trafficking*. *See* 21 U.S.C. § 856; RCW 69.53.010. Accordingly, Defendants were *already* obligated to act, and compliance with their tort duties to Ms. Celes would have imposed no *additional* burden or cost on Defendants.

IV. Conclusion.

For the foregoing reasons and for the reasons stated in Respondent's Opposition to Petition for Review, the opinion of the Court of Appeals is neither erroneous nor does it meet the criteria for review by the Supreme Court. While Plaintiff is confident she will prevail should review be accepted, she asks that review be denied and that Ms. Celes's day in court be delayed no further.

DATED this 14th day of September, 2020.

Respectfully submitted,



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