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NYIT, Manhattan Campus

# Brief Analysis

**Business Law**

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**CASE # 22**

Argo Management owns commercial buildings around the City, leasing space to many businesses including a MHB Liquor store, a popular local liquor store. The lease requires the tenants to obtain all necessary licensing and insurance policies and the landlord is responsible to keep the building in good repair. The owner of the liquor store directed his broker to get insurance. Shortly thereafter the broker sent the liquor store an invoice for the insurance policy. Unfortunately, the broker pocketed the money and never obtained the necessary insurance policies. MHB reported to Argo that part of the ceiling appeared to be collapsing.

Argo retained ACE construction to perform the necessary repairs; however ACE did not complete the repairs in the time agreed to with Argo. Before the repairs were done a portion of the ceiling collapsed, hitting Max Robinson on the head and fractured his skull. Max sues MHB, Argo and ACE.

## I. Statement of the facts

Well Structured,

Argo Management leased a site for MHB Liquor store business. The lease agreement indicated that the tenant is required to obtain necessary license to sell alcohol as well as an insurance to cover possible unforeseen circumstances and the landlord is liable to keep the space in good condition. The owner of MHB liquor store delegated his responsibility to get insurance to his broker, who sent an invoice of non-existing contract with an insurance company to the liquor store owner later on. Necessary insurance policies were not obtained. However, MHB informed Argo Management that the lease terms were satisfied to their best, relying on the information supplied by the broker. Argo Management called the ACE insurance company when the fragment of a ceiling at the liquor store appeared to be collapsing. Necessary repairs were scheduled to be performed on site by the insurance company. Before the repairs took place part of the ceiling had collapsed fracturing the skull of Mr. Max Robinson – one of the customers of the store. Mr. Robinson sued Argo Management, MHB Liquor store and ACE insurance company.

## II. Issue (Legal questions)

good presentation of issues

1) Did the store owner act negligently by failing to inform his customers regarding the foreseeable risks of possible injury inside the store?
2) Did the broker commit a crime? If so, what was it?
3) Is the broker liable for the damages by failing to perform his responsibilities delegated to him by the liquor store owner?
4) Is ACE insurance company liable for the injuries occurred even though it did not receive payment from the MHB and ultimately did not issue necessary policies to the liquor store? Is the insurance company still responsible because they agreed to make the repairs?
5) Is the injured person a third party beneficiary to the contract between Argo Management and MHB liquor store owner? If so, is he an intended or unintended third party beneficiary? In addition is he legally eligible to enforce the terms of the lease and receive insurance?
6) Is Argo Management liable for the collapsed ceiling since it is responsible for keeping the leased space in good condition?

## III. Application of facts to the Law

### 1) Negligence

good analysis

"Conduct that falls below the standards of behavior established by law for the protection of others against unreasonable risk of harm is called negligence. A person has acted negligently if he or she has departed from the conduct expected of a reasonably prudent person acting under similar circumstances."

**The duty of Landowners**

great point!

"Landowners are expected to exercise reasonable care to protect individuals coming onto their property from harm. Landowners who rent or lease premises are responsible for all the damages occurring in this property except for its depreciation with time. Tenants renting the properties for business are responsible for making sure their customers are safe when entering the property and are aware in case there are any foreseeable risks present."

*(Negligence and Strict Liability, Chapter 7; 'Business Law'; G. Jentz, R. Miller, F. Cross; 2010)*

**Duty to warn business invitees of risks**

"Retailers and other firms that explicitly or implicitly invite persons to come into their premises are usually charged with a duty to exercise reasonable care to protect these business invitees. For example, if you entered a supermarket, slipped on a wet floor, and sustained injuries as a result, the owner of the supermarket would be liable for damages if, when you slipped, there was no sign warning that the floor was wet. A court would hold that the business owner was negligent because the owner failed to exercise a reasonable degree of care in protecting the store's customers against foreseeable risks about which the owner knew or should have known that a person might slip on the wet floor and be injured as a result of foreseeable risk, and the owner should have taken care to avoid the risk or warn the customer of it. A business owner can warn the customer by placing a sign, traffic cone, sawhorse, board, or any other warning visible to the customer. Does a sign relief the defendant of liability?

*(Negligence and Strict Liability, Chapter 7; 'Business Law'; G. Jentz, R. Miller, F. Cross; 2010)*

**2) White-collar Crime**

"Crimes occurring in the business concept are popularly referred to as white-collar crimes. The term used to mean an illegal act or series of acts committed by an individual or business entity using some nonviolent means to obtain a personal or business advantage. Usually, this kind of crime takes place in the course of a legitimate business occupation.

**Embezzlement**

When a person entrusted with another person's property or funds fraudulently appropriates that property or those funds, embezzlement occurs. Typically, embezzlement is carried out by an employee who steals funds. Banks are particularly prone to this problem, but embezzlement can occur in any firm. Embezzlement is considered to be a criminal law element."

*(Criminal Law and Cyber Crime, Chapter 9; 'Business Law'; G. Jentz, R. Miller, F. Cross; 2010)*

**3) Brokers** Implied? Apparent?

" A broker is the agent of an applicant and not the agent of the insurance company. Therefore, if the broker fails to procure a policy, or in other words, an insurance contract, the applicant normally is not insured. According to general principles of agency law, if the broker fails to obtain policy coverage and the applicant is harmed as a result, then the broker is liable to the harmed applicant-principal for the loss. Broker is an independent contractor; hence neither the insurance companies nor the applicants are responsible for his or her physical conduct. This is because the employer has no right to control the details of an independent contractor's performance."

*(Insurance, Chapter 49; 'Business Law'; G. Jentz, R. Miller, F. Cross; 2010)*

**4) Conditions of an insurance contract (brief)**

"The insurance contract is called a policy. The effective date of an insurance contract – that is, the date on which the insurance begins –is important. In some instances, the insurance applicant is not protected until a formal written policy is issued. If the parties agree that the policy will be issued and delivered at a later time, the contract is not effective until the policy is issued and delivered or sent to the applicant, depending on the agreement.

Thus, any loss sustained between the time of application and the delivery of the policy is not covered."

*(Insurance, Chapter 49; 'Business Law'; G. Jentz, R. Miller, F. Cross; 2010)*

✓ **5) Third party beneficiaries** Intended? Unintended? Good!

"A third party beneficiary is ~~the~~ one who is not a direct party to a particular contract but who is benefited by it anyway.

There are two types of third party beneficiaries: an intended beneficiary and incidental beneficiary. An intended beneficiary is a third party to whom performance is rendered directly and who has the right to control the details of the performance and to sue the parties to the contract to enforce it. An incidental beneficiary is a third party who benefits from a contract but whose benefit was not the purpose for the contract and who has no rights in the contract hence his or her inability to sue to enforce the contract. Any beneficiary who is not deemed an intended beneficiary is considered incidental."

What are the ramifications between being an intended and unintended beneficiary?

*(Third Party Rights, Chapter 16; 'Business Law'; G. Jentz, R. Miller, F. Cross; 2010)*

**6) Breach of Contract and Remedies**

✓ "When one party breaches the contract, the other party-the nonbreaching party-can choose one or more of several remedies. A remedy is a relief provided for an innocent party when the other party has breached the contract. The most common remedies include damages, rescission and restitution, specific performance, and reformation. A breach of contract entitles the nonbreaching party to sue for monetary damages. Rescission – termination of the contract can take place in case of terms breach. When fraud, mistake, duress, undue influence, misrepresentation, or lack of capacity to contract is present, unilateral rescission is available."

*(Breach of Contract and Remedies, Chapter 18; 'Business Law'; G. Jentz, R. Miller, F. Cross; 2010)*

## IV. Decision

Wow! Well said

1) The store owner did act negligently by failing to inform his customers about the possible risks within the store, therefore he may be held liable for the incident occurred. Store owner didn't express the duty of care for his customers and as a result ended up being sued by one of them. Mr. Robinson was injured and therefore has a right to demand compensation for fractured skull and moral damages. Recognizable injury makes the store owner partially responsible for the incident occurred. A business owner could have warned the customer by placing a sign, traffic cone, sawhorse, board, or any other warning visible to the customer to avoid such incidents and further litigations.

2) According to the information provided, the broker did commit a crime of embezzlement by keeping the money he received form the liquor store owner which initially were intended to acquire necessary insurance policies for the store. Embezzlement is considered to be a white-collar crime and it is punishable by law.

3) The broker is certainly not responsible for the fact that the liquor store was sued by the injured customer. Nevertheless, he is still responsible for the financial damage since the owner is considered a harmed applicant who will have to cover all of the medical expenses for the customer plus pay the moral damages compensation depending on the courts' ultimate decision. However the injured customer is not likely to succeed in court if he sues the broker for failing to acquire valuable insurance policies because the fact of embezzlement has nothing to do with the celling falling over someone's head. In other words, the fact that the broker committed the crime could not have influenced the way the shop owner maintained his premises. However the liquor store owner has a right to sue his broker for failing to obtain insurance policies, violating common agency law, which resulted in significant financial loss for the store owner. The MHB store owner has a legal right to compensate his expenses that could have been covered by the insurance company if the policies had been purchased.

4) The ACE insurance company does not have a responsibility to reimburse the possible medical treatment for plaintiff due to the fact that it was not listed as an insurance source for this particular property. According to the common insurance principles the applicant is not granted with insurance until necessary polices are delivered, except for the cases with life insurance. In addition the ACE insurance will not be liable to pay the monetary damages to the store owner since there was no contract between them in the first place. Despite the fact that ACE agreed to solve the issue of the collapsing celling for unknown reasons they still cannot be responsible for the injury because it could have taken place any time between the fact when the owner noticed there was something wrong about the celling and the actual date of repairs scheduled by the insurance company. However if the insurance company was obliged to perform its duties to the store owner under the contract- it might have been held liable to pay off the damages to the customer and to fix the celling.

5) Mr. Robinson is in fact a third party beneficiary to the contract between Argo and MHB since he was one of the initial purposes for this contract as a potential customer. However this contract was not conducted to benefit Mr. Robinson in particular rather than all of the potential customers of the liquor store. Therefore he can be considered as an incidental third party beneficiary, meaning that he has no rights to sue to enforce the contract terms or make amendments to it. In other words, Mr. Robinson has no legal right to demand compensation from Argo management or MHB liquor store trough ACE insurance company only by claiming his rights to the contract as an intended third party beneficiary.

6) Even though the Argo Management is supposed to maintain the premises in good condition, MHB's owner is still responsible for making sure his store is a safe place for customers to shop in. Argo Management cannot be held liable for covering the incident expendetures occurred due to the fact that they have leased the property to the liquor store under specific terms which indicated that the store owner is responsible for acquiring necessary insurance and making sure there are no foreseeable dangers for store's clients. Argo therefore may claim that the liquor store

owner has not fulfilled his part of the contract at the time of the incident and that they were not aware of the fact that the insurance wasn't purchased. In addition MHB store is not the only business that Argo Management have agreement with so it is rather challenging for Argo to keep track of every single issue regarding the properties they offer for leasing in terms of making sure they are safe for others at all times. The lease agreement indicates that it is the responsibility of a party renting the space to make sure the necessary safety is in place and it is lessor's responsibility to keep the property in good condition. Ultimately the contract rescission by Argo Management may take place.

**Conclusion**

To sum up, Mr. Robinson can only sue the MHB liquor store owner for negligence and get his compensation for the required medical treatment. The MHB store owner, in his turn, may sue his broker for providing misleading information about purchasing necessary insurance policies. It is going to be a completely different lawsuit. Even though there was no actual written contract between the broker and the store owner the terms had been clearly expressed verbally. Nevertheless the store owner is still responsible for the incident because it is his duty to exercise a reasonable amount of care to protect those who enter his store. The owner should have anticipated the outcome and put up a sign until the owner or the insurance company fixed the fragile ceiling element.

Argo Management may rectify the contract due to the terms' breach by MHB store owner who failed to make sure that insurance policies were acquired. Both Argo Management and ACE insurance Company cannot be held liable for the incident occurred and therefore are free from being punished legally. Still Argo Management Company will have to make sure that all necessary repairs by ACE insurance take place before they lease the property to another business. Until then the sign must be placed by the hazardous zone of collapsing ceiling.

Outstanding analysis
you deserve a 10+ !!!