

## MEMORANDUM

TO: LARRY  
FROM: PHIL  
DATE: 9/27/07  
RE: OHIO PREMISES DUTIES

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### ISSUES PRESENTED

**DOES A PROPERTY OWNER OWE THE SAME DUTY OF CARE TO A GUEST OF AN INVITEE AS THE INVITEE HIMSELF?**

**YES.**

### ANALYSIS

**DOES A PROPERTY OWNER OWE THE SAME DUTY OF CARE TO A GUEST OF AN INVITEE AS THE INVITEE HIMSELF?**

In *Shump v. First Continental-Robinwood Associates*, the Ohio Supreme Court held that a landlord owes the same duties to persons lawfully upon the leased premises as the landlord owes to the tenant. 644 N.E.2d 291, 293 (Oh. 1994). Further, in an unpublished decision, *McKay v. Cintas Corp.*, 2002 WL 34178103 (Oh. Com. Pl. 2002), the Ohio Court of Common Pleas applied the *Shump* rule to a guest (albeit not overnight) of a resident in a *Federal Section 8 nursing home*.

In *Shump*, Mr. Ronald Daugherty leased a two-floor apartment from the Defendant, Robinwood Associates. Mr. Daugherty's townhouse contained one smoke detector on the second floor of building, in violation of a municipal ordinance. *Id.*

On the night of October 11, 1987, Ms. Sandra Burnside was visiting Mr. Daugherty. *Id.* At approximately 1:30 a.m., a couch caught fire in the downstairs living

room of the apartment. *Id.* The fire alarm on the second floor did go off, but Mr. Daugherty and Ms. Burnside were not able to escape, and both were killed. *Id.*

Ms. Burnside's children, through the decedent's administrator, Joe Shump sued both the landlord, First Continental Robinwood and Bill Gossell Electric, Inc., the company that was to install the fire alarms. *Id.* The defendants moved for summary judgment, which was granted by the Montgomery County trial court. *Id.* at 293-294. The court reasoned that defendant Gossell was not liable for negligence, as defendant First Continental was unable to delegate its duty to comply with municipal codes. *Id.* The court further found that First Continental could not be liable, construing Ms. Burnside as a licensee, whom Robinwood merely owed a duty to refrain from willful and wanton conduct. *Id.* at 416.

Mr. Shump appealed, arguing that the trial court erred on three grounds, first that the electrical contractor could not be exonerated for his own negligent acts by the nondelegable duty of Robinwood. *Id.* Secondly, Mr. Shump argued that the question of First Continental's willful or wanton negligence was a question of fact for the jury, not ripe for summary judgment, and finally that the common-law premises liability distinctions should be abolished. *Id.*

The court of appeals, in reversing the trial court held that even though First Continental could not delegate their duty to plaintiffs, Gossel, the independent contractor could still be held liable for his own bad acts. *Id.* The appeals court secondly held that a finding of willful or wanton conduct is normally a question for the jury, and finally that the Ohio Supreme Court had not disregarded the common-law premises liability distinctions, and that Mr. Shump's third assignment of error should be overturned. *Id.*

Both parties filed motions for certification to the Ohio Supreme Court, which the court granted. *Id.*

The Ohio Supreme Court held that the common law distinctions of premises liability govern the duty owed by those in possession of a property, and thus the common law distinctions of premises liability did not exclusively govern the duty owed by a landlord to a tenant. *Id.* at 295. The court noted that a landlord's duty to a tenant and his/her guests is determined by the common law, holding that "a landlord owes the same duties to persons *lawfully* upon the leased premises as the landlord owes a tenant [and] it is improper to treat a tenant's guest as a licensee. *Id.* at 295-296 (emphasis added).

The *Shump* court then discussed landlord-tenant duties under Ohio Revised Code, Chapter 5321. *Id.* at 297. R.C. § 5321.04 discusses the obligations of a landlord, which include compliance with codes that "materially affect health and safety," and to keep the property in "safe and sanitary condition."<sup>1</sup> Section 5321.07 of the Ohio statute includes no mention of duties to the guests of tenants. *Id.* However, the *Shump* court, in discussion of the landlord-tenant statute noted that

[s]tatutes are to be read and construed in the light of and with reference to the rules and principles of the common law in force at the time of their enactment, and in giving construction to a statute the legislature will not be presumed or held, to have intended a repeal of the settled rules of the common law *unless the language employed by it clearly expresses or imports such intention.*

*Id.* (emphasis supplied). The court then noted that R.C. § 5321.12 states that "*any party* may recover damages for the contract or the breach of any duty that is imposed by law."<sup>2</sup>

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<sup>1</sup> R.C. § 5321.04 (West, through Westlaw, Current through 2007 Files 1 through 24 of the 127th GA (2007-2008), apv. by 9/23/07, and filed with the Secretary of State by 9/23/07).

<sup>2</sup> R.C. § 5321.12 (West, through Westlaw, Current through 2007 Files 1 through 24 of the 127th GA (2007-2008), apv. by 9/23/07, and filed with the Secretary of State by 9/23/07).

Applying the principle that a guest of an invitee is owed the same duties of care that the invitee himself is owed under Ohio landlord-tenant law, the *Shump* court then affirmed the court of appeals, and remanded for trial in light of their decision. 644 N.E.2d at 296-298.

Like in *Shump*, Ms. [redacted plaintiff] and her child were guests of the licensee of the premises, [redacted 3d party A]. In [redacted 3d party B's] Section 8 Lease Addendum, which was assigned to [redacted 3d party A], the licensee at bar, [redacted 3d party A] assented that "Lessor. . . leases the premises. . . to be used for residential purposes and *occupied* solely by Lessee, and such other persons as named in the Rental Application submitted by the lessee. . ." (Section 8 Lease Addendum at 007;) (emphasis added). [redacted 3d party A] listed no other parties as members of her family on her application to rent the premises, and further, Mary Jones listed no other occupants on her lease agreement with [redacted defendant], the landlord. The Section 8 Lease Addendum also includes a provision that states that "Lessee agrees that application for rent and the Rules and Regulations. . . shall have the. . . same force and effect as covenants. . . and . . . that he, her, his and her and/or their family *and guests* will observe all such Rules and Regulations." (Section 8 Lease Addendum at 008.) This shows, through implication, that the Section 8 Lease allows for the lessee/assignee, [redacted 3d party B] to have guests in her dwelling. Further, "occupy" is defined by the Webster's New Universal Unabridged Dictionary as "to take possession of by settlement or seizure,"<sup>3</sup> whereas "guest" is defined as "a person entertained at the home or table of another; visitor."<sup>4</sup> [redacted plaintiff] and her daughter did not occupy [redacted 3d party B's] dwelling, but were

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<sup>3</sup> Webster's New Universal Unabridged Dictionary, 1237 (Noah Webster, et. al. eds. 2d Edition, 1983).

<sup>4</sup> *Id.* at 808.

merely guests, and are within the mandate of the Section 8 Housing Contract Addendum. As the *Shump* court considered Ms. Burnside to be a guest when she was staying the night at Mr. Daugherty's rented premises, so should [redacted plaintiff] and minor Plaintiff [redacted] should be considered guests of [redacted 3d party].

As [redacted plaintiff] and the minor Plaintiff were guests within common usage, the Section 8 Contract, and the *Shump* decision, the rule of *Shump* applies, and all of the statutory duties assigned to the landlord should be applied [redacted plaintiff] and her child as licensees, just as they do to her mother.

Finally, it is arguable that the application of the *Shump* decision combined with the language and duties provided by Revised Code, Chapter 5321 should still mandate a duty to the Defendant to [redacted plaintiff] and her daughter. Section 5321.12 provides that “[i]n any action under Chapter 5321. of the Revised Code, *any party* may recover damages for the breach of contract or the breach of any duty that is imposed by law.”<sup>5</sup> As this section of the Revised Code allows a cause of action for any party for a breach of duty, Veda Jones should still have a valid cause of action.

Under both Ohio Law, and Ohio Law through the guise of the Section 8 Contract, Defendant did owe a duty of care to Veda Jones and her daughter.

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<sup>5</sup> R.C. § 5321.12 (West, through Westlaw, Current through 2007 Files 1 through 24 of the 127th GA (2007-2008), apv. by 9/23/07, and filed with the Secretary of State by 9/23/07).