

RED LETTER ALERT – TEXAS TENANTS MAY BE FOUND LIABLE FOR DAMAGES THEY DID NOT CAUSE!



COUNSEL'S CORNER

Carmen White signed a Texas Apartment Association residential lease. Section 12 provided that Carmen must reimburse the landlord for all damages caused to the apartment community by her negligence and also caused by any other party not due to landlord's negligence or fault.

Carmen received a new washer and dryer from her parents. She was able to connect the washer but she could not connect the dryer because the cord sparked and the circuit breaker tripped. So at Carmen's request an apartment employee connected the dryer for her.

It was only a few days later that Carmen's apartment and adjoining units were destroyed in a fire that originated in Carmen's unit. Evidently Carmen was using the dryer to separate allergens from dry and unwashed items.

The fire started in the dryer. The casualty loss was over \$83,000.

Philadelphia Indemnity paid the claim and demanded reimbursement from Carmen. When payment was not forthcoming, Philly Indemnity brought a lawsuit against her for negligence and breach of contract.

At trial, the jury found that Carmen breached the lease agreement by failing to pay for the loss (*recall that an employee of the Landlord installed Carmen's dryer!*). The jury awarded \$93,000+ to Philly Indemnity.

Carmen petitioned the trial court for judgment in favor of Carmen notwithstanding the jury's decision. The trial court agreed with Carmen without specifying the reasons, and essentially ignored the jury's verdict.

Carmen won; Philly Indemnity appealed.

The Texas Court of Appeals affirmed the trial court's decision that the jury was wrong, based on the reasoning that the reimbursement provision in the TAA Lease was void. The Court of Appeals reasoned that it is against Texas public policy to hold residential tenants liable for the conduct of others over whom such tenants have no control. *Such as the Landlord's employee who negligently installed the dryer.*

Philly Indemnity appealed again.

The Texas Supreme Court evaluated the facts and Lease. In a 36-page opinion, the Court concluded that: (a) the general rule in Texas is that parties may contract as they wish if there is no violation of law or offense to Texas public policy; (b) Texas landlords may impose virtually unlimited liability upon their tenants; (c) the reimbursement policy is enforceable; but (d) essential facts were not properly developed in the trial court.

The Supremes sent the case back to the trial court to find those missing "essential facts," but in doing so the Supremes also advised that while the Court of Appeals' conclusion may have been correct, their reasoning was not. *Meaning*, because the facts were not properly developed the Court of Appeals affirmation of the trial court's Judgment was correct, but their reasoning that the repair reimbursement clause was void because it violated Texas policy was incorrect.

Whew. Complicated stuff. No wonder it took 36 pages to explain.

So far, Carmen White has won at every turn. See [Philadelphia Indemnity Insurance v. White](http://docs.texasappellate.com/scotx/op/14-0086/2016-05-13.guzman.pdf); Cause No. 14-0086; Texas Supreme Court; May 13, 2016: <http://docs.texasappellate.com/scotx/op/14-0086/2016-05-13.guzman.pdf>.

Lessons learned:

1. I was surprised at this outcome. Every other year when our Texas legislature meets we get more laws in favor of consumers in all areas, including residential leasing. It doesn't comport with our Texas system of favoring residential consumers to hold such tenants liable for virtually anything that happens at the community, as long as it was not caused by Landlord's negligence.
2. Seemingly Texas landlords may now impose further obligations on their tenants, including liability for matters beyond the control of those tenants. If our 2017 legislature doesn't fix this problem, then based on this new Supreme Court authority a Texas residential tenant may now be found liable for a multi-million dollar loss which the tenant did not cause.
3. Perhaps property managers should require substantial renters' insurance from all tenants as a condition to allowing the tenants to move into the dwelling. Because

as a matter of practicality, few residential tenants would be able to pay for the loss.

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