Case Western Reserve Law Review

Volume 11 | Issue 3 Article 19

1960

Landlord and Tenant

Marshall I. Nurenberg

premises and to remain separate at all times so as to provide ample passing room for other persons arriving at or leaving the plant.[30]

In *Pancakes, Incorporated v. Cincinnati Joint Executive Board*,[31] action was brought by the employer to enjoin the Union from engaging in certain picketing, and the Union filed a cross petition against the employer to enjoin him from displaying a sign saying that its employees were not on strike and from refusing to reinstate three Union members with back pay.

The court held that where the evidence was limited to a single occasion on which one of the Union members threatened to strike the employer's manager with a banner which the former was carrying on the picket line, along with evidence of some interference with patrons of the employer, such incidents were insufficient bases for denying the Union the right to peacefully and lawfully picket. However, the Union was restricted to two pickets and enjoined from committing unlawful acts.

With respect to the cross petition, the court held that the employer should be enjoined from displaying untruthful signs, but since the employment relationship was subject to termination at will, the court declined to direct the employer to reinstate the employees with back pay.[32]

EDWIN R. TEPLE

LANDLORD AND TENANT

The factual situation in *Jareb v. Riss & Company*,[1] poses interesting food for thought. The defendant corporation, as lessee of a portion of the premises shared with the lessor, was required as a condition of the lease to maintain the parking area. When repairs were found necessary upon a semiannual inspection, a competent contractor

30. The court also held that when the Union and its officers brought about the picketing at the employer's premises, it thereby assumed full responsibility for events and occurrences ensuing therefrom, particularly where it had been declared that the purpose thereof was to put the employer's local plant out of business if it could not organize the employees. This was in the nature of a warning respecting future conduct on the limited picket line contemplated by the court's order.

31. 160 N.E.2d 743 (Ohio C.P. 1959).

32. The evidence had disclosed that the scale of wages paid by this employer was considerably lower than that prevailing for other restaurants in the area, and that the hours of work were longer than those prevailing. Eleven out of twenty-nine of the employees were in favor of the Union, according to a vote taken among the employees, and several of these were discharged. Ten of the employees who took part in the picketing testified that they were trying to obtain higher wages, shorter hours and greater job security. Under these circumstances, the court held that a legitimate grievance and labor dispute existed between the employer and the Union, distinguishing the "stranger picketing" cases previously discussed. It is submitted that this is a more realistic view than that expressed in Brown v. Amalgamated Meat Cutters, 148 N.E.2d 357 (Ohio C.P. 1956), discussed in Teple, *Labor Law, Survey of Ohio Law — 1958*, 10 WEST. RES. L. REV. 421, 423 (1959).

was to be employed to make all necessary repairs, the expense of which was to be paid by the lessee. Discovering that the parking area needed repairs, the lessee obtained for the lessor bids from contractors. The lessor, however, negotiated the contract with an independent contractor to make the repairs, which included work on a driveway and apron across the public sidewalk. The lessee's terminal manager obtained in lessee's name the necessary sidewalk permit. The independent contractor blocked the public sidewalk in such manner that decedent had to enter the roadway, where he was struck by an automobile and killed. Plaintiff brought an action in tort against the lessee for the wrongful death of her decedent. The Ohio Supreme Court held that where there was no showing of control by the lessee in the performance of the contract, it was not liable as a matter of law.

The court noted that an *owner*[2] of premises is liable for the negligence of an independent contractor where there is a duty to safeguard the public. The court, however, admitted its willingness to impose this liability upon the defendant-lessee in this case *if it had been a principal in the contract of construction.*

Brown v. Wolfson[3] is illustrative of a common practical problem. The lessee entered into an agreement to lease on a month to month basis, paying rent in advance for one month's tenancy. Upon being transferred before occupancy he sought to cancel the agreement, which the lessor refused to do. The lessor then re-leased to another tenant for a lesser sum. This was held to be an interference with the leasehold rights of the original lessee so as to entitle him to a refund of his entire deposit.

Frownfelter v. Graham[4] involved a claim by a lessee for a share of the condemnation proceeds. The basis of lessee's action was that the market value of his leasehold exceeded the rental which he would have to pay under the lease. To prove this fact the lessee introduced evidence that he had paid a premium for the lease. The trial court and court of appeals both refused to award any portion of the condemnation proceeds to the lessee because he had failed to introduce evidence showing that the market value of his lease exceeded the amount of rent he was obligated to pay. The Ohio Supreme Court properly reversed, noting that the evidence as to the payment of a premium to obtain the lease was proper evidence in support of the lessee's claim.

MARSHALL I. NURENBERG

---

1. 169 Ohio St. 178, 158 N.E.2d 199 (1959).
2. Richman Brothers Co. v. Miller, 131 Ohio St. *424, 3 N.E.2d 360 (1936).
3. 108 Ohio App. 393, 159 N.E.2d 922 (1959).
4. 169 Ohio St. 309, 159 N.E.2d 456 (1959).