Tenant And Landlord Duties In A Hotel Set-Up

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Hotels have existed as a business in Malaysia since Malaya (as it was then called). It is known that since 16th Century hotels provide businesses of furnishing rest and accommodation to travelers. The turning point during rapid development in the hotel business was when the hotel proprietors rented the hotel premise to other business operators in the hotel premise in order to provide more facilities to the customers. This paper focuses on this legal issue and examines the duties of tenant and landlord in the hotel set-up using the qualitative research methodology.

Key words: landlord, tenant, duties, hotel set-up

Introduction

Generally, landlord is defined as 'a person of whom lands and tenements are leased and tenant is described as a person in possession of the lands by the lease or tenancy agreement (Mozley & Whiteley, 2001). Rights and liabilities between landlord and tenant are spelled out under the respective tenancy agreement signed between them. For example, should injury to users of the hotel facilities which provided in the hotel premise be caused by the negligent act or failure to warn against a dangerous condition, which party will be responsible to the claimant? Should the action be taken against the hotel proprietor ('landowner') or the business operator ('tenant')? When the hotel entered into the tenancy agreement with the tenant, the hotel as the landowner has the benefit to receive rental from the tenant and indirectly prospective customers increased as a result of the high publicity of the hotel. It seems to suggest that the right to control the premises is an important factor to determine the duty of an owner and occupier of premises (*Butcher v Scott*, 1995). The issue of right to control and liability of landlord and tenant in the hotel set-up needs to be addressed.

Methodology

This paper will rely on local and foreign statutes, case reports, articles from journals and books. The research also uses comparative method where the research compares the issues of right to control and liability of the landlord and tenant in the hotel set-up. This paper is a qualitative research approach.

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Literature Review

According to F. Bohlen and Eldredge, historically, in feudal England the emphasis was all on the side of the proprietors of landed estates. Hence, it was not expected that in an age in which feudal lords were practically sovereigns, they would not be subject to liability for harm to persons on the land (F. Bohlen, 1926; Eldredge, 1937). Pertaining to the term of 'landowner', according to Gary T. Shara, the term 'landowner' is said to synonymous with 'land occupier' (Gary T. Shara, 1968-1969).

Edward A. Strenkowski pointed out that in the middle of 19th Century, English judges developed a system of categorizing land entrants. The movement was made in order to control the extension of landowner liability. He exposes that the landowner's responsibility is in the aspect of duty of care based upon the entrant's classification. According to him, the history of this subject is one of conflict between the general principles of the law of negligence and the traditional immunity of landowners (Edward A. Strenkowski, 1979-1980).

Jacqueline L. Hourigan observed that an owner's liability to an injured party depended upon the status of the individual. With regards to legal status of the visitor, Jacqueline L. Hourigan states that the common law recognised three categories: (1) trespasser; (2) licensee; and (3) invitee. The rationale behind such a distinction was to determine the duty of care owed by a landowner to a party injured on its property. She contended that the determination represented "a rough sliding scale, by which, as the legal status of the visitor improves, the possessor of the land owes him more of an obligation of protection (Jacqueline L. Hourigan, 1995).

Donald W. Fish pointed out that the law of landowners' liability has developed upon the basic assumption that the occupier has the initiative to invite persons to enter his premises and to exclude or expel those who are not welcome (Donald W. Fish, 1965-1966). Meanwhile, Manley O. Hudson contends that the "ownership" of land is not to be regarded as a fixed absolute, however, but rather as a skeleton to be filled in with certain rights. (Manley O. Hudson, 1922-1923). The legal consequences on liability of a proprietor is then discussed by Gibson B. Witherspoon, where he discusses that generally the liability of a proprietor in failing to render the premises reasonably safe, or failing to warn invitees of existing dangers, must be predicated upon the proprietor's superior knowledge concerning the danger (Gibson B. Witherspoon, 1971). Meanwhile, Linda Sayed observed that when a landowner purposefully invites a person onto his premises for the purpose of transacting business, he has both the obligation to use ordinary care to keep his property reasonably safe and the obligation to warn of dangers on the premises (Linda Sayed, 1996-1997).

In the absence of literature on the specific duties of tenants and landlord in a hotel set-up, this paper is to fill this gap. In order to determine the duty of care of the hotel owner and tenant, the right to control is an important criteria. It is examined that generally, an occupier of land is deemed to have control only over the area which he possesses (Bruce G. Warner, 1991-1992). In *Wheat v Lacon & Co Ltd* (1966), the court held that at common law the responsibilities of the occupiers are based on the control, and not the ownership of the premises. The occupier need not have entire or exclusive control. Any person having sufficient degree of control over the state of the hotel is an occupier. At common law, when a landlord lets premises to a tenant he is treated as parting with all control even though he may have undertaken to repair. Thus, a landlord is not an occupier at common law (Richard Johnstone, 1983-1984). Patrons in a hotel are classified according to their relationship with the hotel

management and the duty of care varied toward such persons depending on their classification (Nuraisyah Chua Abdullah, 2010).

Findings

In the case of *Payne v. Roger* (1794), it was held that if there is an agreement that the landlord will conduct repair work, then he will be liable for any interference that arises as a result of any disrepair. It is mentioned that generally the liability of a proprietor in failing to render the premises reasonably safe, or failing to warn invitees of existing dangers, must be predicated upon the proprietor's superior knowledge concerning the danger. It is commented that the modern trend is to hold the occupiers duty to an invitee is not necessary discharged by giving warning of a dangerous condition but also must extent to doing more such as removing the danger or preventing invitee access to even open or obvious danger areas (Gibson B. Witherspoon, 1971). In a hotel liability suit, the issue arose is the duty of the owner or occupier of the hotel, the classification of the plaintiff who institutes the claim against the hotel owner or occupier, and also whether the claim is made on the ground of a negligent activity, what is the condition of the hotel and the foreseeability of the wrongful acts on the hotel (Tab H. Keener, 1997). It seems to suggest that control is a prerequisite to liability of the hotel owner, regardless of where the injury occurred. For example, in *Exxon Corp. v. Tidwell* (1993), the question as to whether the defendant had specific control over the safety and security of the premises, rather than to draw inference from defendant's general control over operations (Tab H. Keener, 1997).

It is examined that as a general principle, a hotel owner who has surrendered possession and control of a certain part of the hotel will not be held liable for any nuisance that occurs on those part of the hotel. However, if the hotel owner authorises the nuisance either expressly or impliedly, he will be held liable. In *Hussain v. Lancester City Council* [1999), the test is whether the nuisance is something that is normal and natural as a result of the tenancy or lease. In the case of Brew Brothers ltd v Snax (Ross) Ltd (1970) it was held that the landowner or landlord is also liable if he ought to have known of the nuisance at the time the tenancy commenced. However, it is mentioned that this rule does not apply if it is not reasonable for him to have known of the situation giving rise to an actionable nuisance. Knowledge of the existence of the nuisance before the hotel is let will make the hotel owner liable. It is examined that this is based on the principle that the creator of the nuisance is liable even though he does not occupy the land himself. It is stated that even if the tenant has agreed to improve the conditions on the hotel, the hotel owner will nevertheless be liable if the nuisance is not abated, as it is his responsibility and not the tenant's to remedy the nuisance before it causes injury to another (Norchaya Talib, 2011).

In the case of *El Chico Corp. v. Poole* (1987) the court held that a landowner has no duty to prevent criminal acts of third parties who are not under the landowner's supervision or control. However, it was held in the case of *Nixon v. Mr. Property Management* (1985), the court held that a landowner does have a duty to protect invitees on the premises from criminal acts of third parties if the landowner knows or has reason to know of an unreasonable risk of harm to the invitee. It is observed that this duty developed out of the premise that the party with the 'power of control or expulsion' is in the best position to protect against the harm'.

Conclusion

Knowledge of the existence of the nuisance before the hotel owner enters into a tenancy agreement with the tenants will make the landlord liable. It is examined that this is based on the principle that the creator of the nuisance is liable even though he does not occupy the land himself. It is stated that even if the tenant has agreed to improve the conditions on the premises, the hotel owner will nevertheless be liable if the nuisance is not abated, as it is his responsibility and not the tenant's to remedy the nuisance before it causes injury to another. It is examined that if the nuisance occurs after the tenant has occupied the premises, liability of the hotel owner depends on the degree of control that he has over the premises (Norchaya Talib, 2011).

The law provides that in the landlord-tenant relationship, a duty to the tenant also attaches when the hotel owner has the right of control over the leased premises (Jones v. Houston Aristocrat Apartments Ltd. (1978). Hence, it is timely that the hotel owner and tenant in the hotel set-up are aware of their duties in this modern era.

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