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### PHWL, LLC v. HOUSE OF CB USA, LLC, 140 Nev. Adv. Op. 53 (Aug. 22, 2024)

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*PHWLV, LLC v. HOUSE OF CB USA, LLC*, 140 Nev. Adv. Op. 53 (Aug. 22, 2024)<sup>1</sup>

## COMMERCIAL PROPERTY OWNERS OWE A DUTY TO USE REASONABLE CARE IN SERVICING AND INSPECTING THEIR TENANT’S FIRE SUPPRESSION SYSTEMS

### **Summary**

The Nevada Supreme Court concluded that the appropriate standard of care between commercial property owners and their tenants regarding maintenance of the property owner’s internal fire-suppression system is the duty to use reasonable care in servicing and inspecting the fire-suppression system, and in responding to issues arising from failures of the system.

### **Background**

PHWLV operates the Miracle Mile Shops, a retail shopping mall, on the Las Vegas Strip. House of CB, a clothing retailer, and Chinese Laundry, a footwear retailer, leased spots in the mall. On July 8, 2017, the pressurized fire-suppression pipe separated at one of its couplings and caused water to flood the mall. Two hours after the pipe separated, PHWLV’s employees and contractors stopped the water flow. The retailer’s inventory and stores were damaged by the water flow.

Retailers sued PHWLV alleging negligence. The retailers moved for partial summary judgment against PHWLV which was granted by the district court. The district court found that PHWLV breached its duty as a property owner to ensure “that whatever is on a person’s property does not invade or otherwise damage the property of another.” Subsequently, the district court granted the retailer’s motion for a directed verdict on the element of causation and the jury awarded the House of CB \$3,133,755.56 and Chinese Laundry \$411,581.41 based on the damages they individually suffered. The district court then denied PHWLV’s motion for a new trial or remittitur of the jury award.

### **Discussion**

#### ***The district court erred in granting summary judgment to the retailers***

PHWLV challenged the retailers’ award of partial summary judgment. PHWLV argued that the district court imposed a strict liability standard by improperly defining its duty and finding the breach as a matter of law. The Nevada Supreme Court considered (1) PHWLV’s duty owed to the retailers, (2) the scope of that duty, and (3) if they breached that duty.

First, the Court points to the adopted principle in *Foster v. Costco Wholesale Corp.*, 128 Nev. 773, 781, 291 P.3d 150, 156 (2012) that “landowners bear a general duty of reasonable care to all entrants.”<sup>2</sup> The Court held that PHWL and the retailers had such a relation that the community imposes a legal obligation on PHWLV for the benefit of the retailers. Therefore, (1) PHWLV owed a duty to exercise reasonable care under the circumstances to the retailers.

Second, the Court looked to *Foster* when determining the scope of PHWLV’s duty. The duty must be “analyzed with regard to foreseeability and gravity of harm, and the feasibility and availability of alternative conduct that would have prevented the harm.”<sup>3</sup> Here, the Court held

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<sup>1</sup> By Sierra Bergquist.

<sup>2</sup> *Foster v. Costco Wholesale Corp.*, 128 Nev. 773, 781 (2012).

<sup>3</sup> *Id.*

that PHWLV owed the duty to exercise reasonable care under the circumstances and that the district court erred by expanding that duty.

Third, the Court decided that they cannot determine whether PHWLV exercised reasonable care under the circumstances as that is for the jury to decide as it is case-specific.<sup>4</sup> The Court issued two questions for the jury to resolve: first, whether the PHWLV breached its duty of reasonable care by not properly maintaining the system; and second, whether PHWLV breached its duty when responding to the incident.

Ultimately, the Court held that the district court erred in granting partial summary judgment in favor of the retailers.

***The district court's error marred the subsequent proceedings***

The negligence case against PHWLV was built on an incorrect formulation of its duty to the retailers; therefore, the subsequent proceedings were tainted. The Court reversed the district court's judgment and vacated the district court's post-judgment order granting attorney fees and prejudgment interest.

***The district court erred by denying PHWLV's motion for a new trial***

The district court erred in defining the duty that PHWLV had to the retailers. The Court found that this constituted an error in law. Subsequently, the Court reversed the previously denied motion by the district court for a new trial.

***PHWLV has not shown that reassignment is necessary***

PHWLV failed to produce evidence that a reassignment of judicial department was needed. Therefore, the Court denied PHWLV's request for reassignment.

**Conclusion**

The Court decided that the district court erred in formulating PHWLV's duty at the summary judgment stage. The standard of care determined by the Court between commercial property owners and their tenants regarding maintenance of the property owner's internal fire-suppression system is the duty to use reasonable care in servicing and inspecting the fire-suppression system, and in responding to issues arising from failures of the system. Therefore, the Court reversed the district court's judgment on the jury verdict and order denying a new trial, vacated the post-judgment award orders, and remanded for proceedings congruous to this Court's opinion.

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<sup>4</sup> Lee v. GNLV Corp., 117 Nev. 291, 295 (2001).