LANDLORD/TENANT, CONSUMER, ETC.

1. Uniform Residential Landlord Tenant Act Tenn. Code Ann. § 66-28-101

2. Helpful Common Law Cases in Landlord/Tenant Cases

   a. Morrison v. Smith, 757 SW2d 678 (Tenn. App. 1988).
   When does tenancy end?

   b. Woods v. Forest Hill Cemetery, Inc., 192 SW2d 987 (Tenn. 1946)

3. Debt Collection for Hospital Bills

   a. Doe v. HCA, 46 SW3d 191 (Tenn. 2001)
   Ambiguity
   Quasi contract
   Unjust enrichment
   Quantum meruit
   Recover reasonable cost

4. Debt Collection

   a. Strategy
   b. Personal Property Exemptions
   c. Homestead Exemption
   d. Sworn Denial

Contact information:
J. Kevin Fowler
Managing Attorney
Legal Aid Society
120 Franklin Street, Suite C
Clarksville, Tennessee 37040
(931) 552-6656
kfowler@las.org

Residential Landlord Tenant Act § 66-28-101

66-28-103. Purposes

(a) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(b) Underlying purposes and policies of this chapter are to:

(1) Simplify, clarify, modernize and revise the law governing the rental of dwelling units and the rights and obligations of landlord and tenant;

(2) Encourage landlord and tenant to maintain and improve the quality of housing;

(3) Promote equal protection to all parties; and

(4) Make uniform the law in Tennessee.

§ 66-28-201. Conditions and terms

1. Tenant cannot waive or forego rights or remedies.

2. Landlord must advise in writing that he/she is not responsible for and will not provide fire/casualty insurance for tenant's personal property.

3. MAY WAIVE RIGHT TO NOTICE FOR NONPAYMENT OF RENT IN A WRITTEN RENTAL AGREEMENT.

4. 5 day grace period for rental payment.

5. Late payment for rent cannot exceed 10% of rental amount.

(a) The landlord and tenant may include in a rental agreement, terms and conditions not prohibited by this chapter or other rule of law including rent, term of the agreement, and other provisions governing the rights and obligations of parties. A rental agreement cannot provide that the tenant agrees to waive or forego rights or remedies under this chapter. The landlord or the landlord's agent shall advise in writing that the landlord is not responsible for, and will not provide, fire or casualty insurance for the tenant's personal property.

(b) In absence of a lease agreement, the tenant shall pay the reasonable value for the use and occupancy of the dwelling unit.

(c) Rent shall be payable without demand at the time and place agreed upon by the parties. Notice is specifically waived upon the nonpayment of rent by the tenant only if such a waiver is provided for in a written rental agreement. Unless otherwise agreed, rent is payable at the dwelling unit and periodic rent is payable at the beginning of any term of one (1) month or less and otherwise in equal monthly installments at the beginning of each month. Upon agreement, rent shall be uniformly apportionable from day to day.

(d) There shall be a five-day grace period between the day the rent was due and the day a fee for the late payment of rent may be charged. If the last day of the five-day grace period occurs on a Saturday, Sunday or legal holiday, as defined in § 15-1-101, the landlord shall not impose any charge or fee for the late payment of rent, provided that the rent is paid on the next business day. Any charge or fee, however described, which is charged by the landlord for the late payment of rent shall not exceed ten percent (10%) of the amount of rent past due.

(e)(1) No charge or fee for the late payment of rent due from a tenant in a public housing project shall exceed five dollars ($5.00) per month. No late charge or fee shall be assessed such tenant unless more than fifteen (15) days have elapsed since the rent was due.

(2) The provisions of this subsection (e) shall apply only to counties with a population between two hundred fifty thousand (250,000) and three hundred thousand (300,000) according to the 1980 federal census or any subsequent federal census.

§ 66-28-203. Prohibited provisions

1. No confession of judgment allowed.
2. No limitation of liability arising under law.
3. Tenant may recover actual damages.

(a) No rental agreement may provide that the tenant:

(1) Authorizes any person to confess judgment on a claim arising out of the rental agreement;

(2) Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected with such liability.

(b) A provision prohibited by subsection (a) included in an agreement is unenforceable. Should a landlord willfully provide a rental agreement containing provisions known by the landlord to be prohibited by this chapter, the tenant may recover actual damages sustained. The tenant cannot agree to waive or forego rights or remedies under this chapter.

§ 66-28-301. Security deposit

1. Deposit must be in separate account used only for that purpose.
2. Must inform tenant of location of account.
3. 10 business days prior to termination of lease:
a. Prepare list of damages to be assessed to security deposit with cost of repair.

b. Tenant has right to inspect following landlord's review.

c. A listing signed by both landlord and tenant is conclusive evidence of the accuracy of listing.

d. Tenant that refuses to sign must prepare list of disputed items and sign it. Tenant is limited to contest only items provided in this list.

e. If tenant does not respond to notice allowing inspection, landlord may mail list to tenant's last known address and begin preparing the premises for occupancy.

f. SHALL NOT RETAIN ANY PORTION OF DEPOSIT, IF NOT DEPOSITED IN SEPARATE ACCOUNT.

h. SHALL NOT RETAIN ANY PORTION OF DEPOSIT, IF DAMAGE LISTING NOT PROVIDED.

i. LANDLORD MAY REMOVE DEPOSIT MONEY IF TENANT LEAVES OWING RENT AND MAY APPLY MONEY TO UNPAID DEBT.

j. If tenant is owed money from deposit, landlord may notify tenant in writing and, after 60 days, may keep this money if tenant fails to respond.

(a) All landlords of residential property requiring security deposits prior to occupancy are required to deposit all tenants' security deposits in an account used only for that purpose, in any bank or other lending institution subject to regulation by the state of Tennessee or any agency of the United States government. Prospective tenants shall be informed of the location of the separate account.

(b) Within ten (10) business days of the termination of occupancy, but prior to any repairs or cleanup of the premises:

(1) The landlord shall inspect the premises and compile a comprehensive listing of any damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. The tenant shall then have the right to inspect the premises to ascertain the accuracy of the listing. The landlord and the tenant shall sign the listing, which signatures shall be conclusive evidence of the accuracy of the listing. If the tenant refuses to sign the listing, the tenant shall state specifically in writing the items on the list to which the tenant dissents, and shall sign the statement of dissent; or

(2) If the tenant has moved or is otherwise inaccessible to the landlord, and, if at least ten (10) days before the lease termination date, the landlord has given the tenant written notice of the tenant's right to schedule a mutual inspection of the subject premises with the landlord during normal business hours and the tenant has not contacted the landlord prior to vacating the premises or the tenant has waived in writing the right of inspection, the landlord shall then inspect the premises and compile a comprehensive listing of any damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the

damage. The landlord shall then mail a copy of the listing of damages and estimated cost of repairs to the tenant at the tenant's last known mailing address. After mailing the copy of the listing of damages and estimated cost of repairs to the tenant, the landlord may begin to prepare the unit for occupancy.

(c) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in a separate account as required by subsection (a) and if the final damage listing required by subsection (b) is not provided.

(d) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (b) may bring an action in a circuit or general sessions court of competent jurisdiction of this state. The tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the listing or specifically dissented in accordance with subsection (b); otherwise the tenant shall not be entitled to recover any damages under this section.

(e) Should a tenant vacate the premises with unpaid rent or other amounts due and owing, the landlord may remove the deposit from the account and apply the moneys to the unpaid debt.

(f) In the event the tenant leaves not owing rent and having any refund due, the landlord shall send notification to the last known or reasonable determinable address, of the amount of any refund due the tenant. In the event the landlord shall not have received a response from the tenant within sixty (60) days from the sending of such notification, the landlord may remove the deposit from the account and retain it free from any claim of the tenant or any person claiming in the tenant's behalf.

(g) This section does not preclude the landlord or tenant from recovering other damages to which such landlord or tenant may be entitled under this chapter.

(h)(1) Notwithstanding the provisions of subsection (a), all landlords of residential property shall be required to notify their tenants at the time such persons sign the lease and submit the security deposit, of the location of the separate account required to be maintained pursuant to this section, but shall not be required to provide the account number to such persons, nor shall they be required to provide such information to a person who is a prospective tenant.

(2) The provisions of subdivision (h)(1) do not apply in counties having a population according to the 1990 federal census or any subsequent federal census, of:

not less than	nor more than
80,000	83,000
92,200	92,500
118,400	118,700
140,000	145,000

§ 66-28-402. Rules and regulation

1. Must be adopted to promote convenience, safety or welfare of the tenants.
2. Must have notice.
3. Must have reasonable notice of subsequent rules.

(a) A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if:

(1) Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(2) It is reasonably related to the purpose for which it is adopted;

(3) It applies to all tenants in the premises;

(4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply;

(5) It is not for the purpose of evading the obligations of the landlord; and

(6) The tenant has notice of it at the time the tenant enters into the rental agreement.

(b) A rule or regulation adopted after the tenant enters into the rental agreement is enforceable against the tenant if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification of the rental agreement.

§ 66-28-403. Landlord access

1. Tenant may not unreasonably withhold access.
2. Landlord may enter without consent if:
- **a. Emergency.**
- **b. Court order.**
- **c. Tenant's failure to maintain or absence exceeding 7 days.**
- **d. Abandonment or surrender.**
- **e. Death, incapacity or incarcerated.**

(a) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed

services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers or contractors.

(b) The landlord may enter the dwelling unit without consent of the tenant in case of emergency. "Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action.

(c) The landlord shall not abuse the right of access or use it to harass the tenant.

(d) The landlord has no right of access except:

(1) By court order;

(2) As permitted by §§ 66-28-506 and 66-28-507(b);

(3) If the tenant has abandoned or surrendered the premises; or

(4) If the tenant is deceased, incapacitated or incarcerated.

§ 66-28-405. Abandonment

1. Extended absence with nonpayment of rent for 30 days allows reentry and possession.

2. Absence of 15 days with nonpayment and other indication of abandonment, landlord shall post and mail notice with following provisions:

- **a. Belief in abandonment.**
- **b. Intention to reenter after 10 days.**
- **c. Intend to rerent if not contacted.**
- **d. Dispose of property 30 days after reentry.**
- **e. Must include phone/address of landlord.**

3. Landlord may dispose of property in any manner following 30 days and apply any proceeds to unpaid rents, damages, storage fees, sale costs and attorney's fees. Any amount remaining must be kept for 60 days.

(a) The tenant's unexplained or extended absence from the premises for thirty (30) days or more without payment of rent as due shall be prima facie evidence of abandonment. The landlord is then expressly authorized to reenter and take possession of the premises.

(b)(1) The tenant's nonpayment of rent for fifteen (15) days past the rental due date, together with other reasonable factual circumstances indicating the tenant has permanently vacated the premises, including, but not limited to, the removal by the tenant of substantially all of the tenant's possessions and personal effects from the premises, or the tenant's voluntary termination of utility service to the premises, shall also be prima facie evidence of abandonment.

(2) In cases described in subdivision (b)(1), the landlord shall post notice at the rental premises and shall also send the notice to the tenant by regular mail, postage prepaid, at the rental premises address. The notice shall state that:

(A) The landlord has reason to believe that the tenant has abandoned the premises;

(B) The landlord intends to reenter and take possession of the premises, unless the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice;

(C) If the tenant does not contact the landlord within the ten-day period, the landlord intends to remove any and all possessions and personal effects remaining in or on the premises and to rerent the dwelling unit; and

(D) If the tenant does not reclaim the possessions and personal effects within thirty (30) days of the landlord taking possession of the possessions and personal effects, the landlord intends to dispose of the tenant's possessions and personal effects as provided for in subsection (c).

(3) The notice shall also include a telephone number and a mailing address at which the landlord may be contacted.

(4) If the tenant fails to contact the landlord within ten (10) days of the posting and mailing of the notice, the landlord may reenter and take possession of the premises. If the tenant contacts the landlord within ten (10) days of the posting and mailing of the notice and indicates the tenant's intention to remain in possession of the rental premises, the landlord shall comply with the provisions of this chapter relative to termination of tenancy and recovery of possession of the premises through judicial process.

(c) When proceeding under either subsection (a) or (b), the landlord shall remove the tenant's possessions and personal effects from the premises and store the personal possessions and personal effects for not less than thirty (30) days. The tenant may reclaim the possessions and personal effects from the landlord within the thirty-day period. If the tenant does not reclaim the possessions and personal effects within the thirty-day period, the landlord may sell or otherwise dispose of the tenant's possessions and personal effects and apply the proceeds of the sale to the unpaid rents, damages, storage fees, sale costs and attorney's fees. Any balances are to be held by the landlord for a period of six (6) months after the sale.

§ 66-28-502. Essential services; failure to supply

1. Essential service means utility, including gas, heat, electricity. Any other obligation which materially affect health and safety of tenant. (?)

2. DELIBERATE or negligent failure to provide service allows tenant, after given written notice, to:

a. Procure service and deduct from rent.

b. Recover diminution in fair rental value.

c. Procure alternative housing and owe no rent and may recover value of alternate housing costs.

d. Attorney's fees for any violation.

(a)(1) If the landlord deliberately or negligently fails to supply essential services, the tenant shall give written notice to the landlord specifying the breach and may do one (1) of the following:

(A) Procure essential services during the period of the landlord's noncompliance and deduct their actual and reasonable costs from the rent;

(B) Recover damages based upon the diminution in the fair rental value of the dwelling unit, provided tenant continues to occupy premises; or

(C) Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) In addition to the remedy provided in subdivision (a)(1)(C), the tenant may recover the actual and reasonable value of the substitute housing and in any case under this subsection (a), reasonable attorney's fees.

(3) "Essential services" means utility services, including gas, heat, electricity, and any other obligations imposed upon the landlord which materially affect the health and safety of the tenant.

§ 66-28-504. Unlawful ouster

1. Unlawful removal or exclusion of tenant, or interruption of essential services AS PROVIDED BY RENTAL AGREEMENT, tenant may:

a. Recover possession.

b. Terminate lease.

c. Recover actual, punitive damages.

d. Attorney's fee.

e. Termination of lease under this section forfeits prepaid rent and security deposit.

If the landlord unlawfully removes or excludes the tenant from the premises or willfully diminishes services to the tenant by interrupting essential services as provided in the rental agreement to the tenant, the tenant may recover possession or terminate the rental agreement and, in either case, recover actual damages sustained by the tenant, and punitive damages when appropriate, plus a reasonable attorney's fee. If the rental agreement is terminated under this section, the landlord shall return all prepaid rent and security deposits.

§ 66-28-505. Tenant noncompliance

1. Material noncompliance with lease or noncompliance affecting health and safety, landlord may give 30 day notice of termination.

2. Tenant has 14 days to remedy by repairs, payment of damages or otherwise. No remedy, may proceed with termination.

3. If remedied, landlord may terminate on 14 days notice within 6 months of the original breach if subsequent breach is substantially similar to original breach.

4. WAIVER OF NOTICE FOR NONPAYMENT OF RENT IN THE LEASE ALLOWS LANDLORD TO PROCEED IMMEDIATELY FOR DETAINER WARRANT.

5. Punitive damages allowed for willful destruction of property.

(a) Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with § 66-28-401 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach, and that the rental agreement will terminate upon a date not less than thirty (30) days after receipt of the notice. If the breach is not remedied in fourteen (14) days, the rental agreement shall terminate as provided in the notice, subject to the following. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least fourteen (14) days' written notice specifying the breach and the date of termination of the rental agreement.

(b) If rent is unpaid when due and the tenant fails to pay, written notice by the landlord of nonpayment is required unless otherwise specifically waived in a written rental agreement. The rental agreement is enforceable for collection of rent for the remaining term of the rental agreement.

(c) Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 66-28-401. The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.

(d) The landlord may recover punitive damages for willful destruction of property.

§ 66-28-506. Dwelling; tenant failure to maintain

1. Tenant noncompliance materially affecting health and safety that can be repaired, replaced or cleaned, allows landlord to repair after 14 days notice and charge tenant costs.

If there is noncompliance by the tenant with § 66-28-401 materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, and the tenant fails to comply as promptly as conditions require in case of emergency or within fourteen (14) days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost or the fair and reasonable value thereof as rent on the next date when periodic rent is due, or if the rental agreement has terminated, for immediate payment.

§ 66-28-508. Landlord right to terminate; waiver

1. ACCEPTANCE OF RENT WITH KNOWLEDGE OF DEFAULT CONDONES THE DEFAULT AND WAIVES RIGHT TO TERMINATE BASED UPON THAT BREACH. TO CURE THIS, SIMPLY INDICATE "WITH RESERVATION" ON THE RECEIPT.

If the landlord accepts rent without reservation and with knowledge of a tenant default, the landlord by such acceptance condones the default and thereby waives such landlord's right and is estopped from terminating the rental agreement as to that breach.

§ 66-28-511. Landlord recovery of possession

1. Possession must be obtained through lawful means.

A landlord may not recover or take possession of the dwelling unit by action or otherwise, including willful diminution of services to the tenant by interrupting or causing the interruption of electric, gas, water or other essential service to the tenant, except in case of abandonment, surrender, or as permitted in this chapter.

§ 66-28-512. Periodic tenancy; termination

1. Week to week tenancy requires 10 day written notice.

2. Month to month requires 30 day written notice.

3. Action for possession may be taken if tenant remains in possession following proper notice of termination or the end of the lease.

(a) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least ten (10) days prior to the termination date specified in the notice.

(b) The landlord or the tenant may terminate a month-to-month tenancy by a written notice given to the other at least thirty (30) days prior to the periodic rental date specified in the notice.

(c) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and if the tenant's holdover is willful and not in good faith, the landlord, in addition, may recover actual damages sustained by the landlord, plus reasonable attorney's fees. If the landlord consents to the tenant's continued occupancy, § 66-28-201(c) applies.

Morrison v. Smith, 757 SW2d 678 (Tenn. App. 1988).

Without waiver of notice, unlawful possession of premises only begins after completion of the notice period.

If notice is provided in the middle of the period, a full term must follow before unlawful possession occurs.

Simple cure of this is to provide waiver of notice of nonpayment.

West's Tennessee Code Annotated
Title 66. Property
Chapter 28. Uniform Residential Landlord and Tenant Act (Refs & Annos)
Part 5. Enforcement and Remedies

T. C. A. § 66-28-505

§ 66-28-505. Tenant noncompliance

Effective: March 28, 2014
Currentness

(a)(1) Except as otherwise provided in subsection (b), if there is a material noncompliance by the tenant with the rental agreement or a noncompliance with § 66-28-401 materially affecting health and safety, the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and that the rental agreement shall terminate as provided in subdivisions (a)(2) or (a)(3).

(2) If the breach for which notice was given in subdivision (a)(1) is remediable by the payment of rent, the cost of repairs, damages, or any other amount due to the landlord pursuant to the rental agreement, the landlord may inform the tenant that if the breach is not remedied within fourteen (14) days after receipt of such notice, the rental agreement shall terminate, subject to the following:

(A) All repairs to be made by the tenant to remedy the tenant's breach must be requested in writing by the tenant and authorized in writing by the landlord prior to such repairs being made; provided, however, that the notice sent pursuant to this subdivision (a)(2) shall inform the tenant that prior written authorization must be given by the landlord to the tenant pursuant to this subdivision (a)(2)(A); and

(B) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within six (6) months, the landlord may terminate the rental agreement upon at least seven (7) days' written notice specifying the breach and the date of termination of the rental agreement.

(3) If the breach for which notice was given in subdivision (a)(1) is not remediable by the payment of rent, the cost of repairs, damages, or any other amount due to the landlord pursuant to the rental agreement, the landlord may inform the tenant that the rental agreement shall terminate upon a date not less than fourteen (14) days after receipt of the notice.

(4) Nothing in subdivision (a)(2) or (a)(3) shall be construed as requiring a landlord to provide additional notice to the tenant other than the notice required by this section.

(b) Notwithstanding subsection (a), if the tenant waives any notice required by this section, the landlord may proceed to file a detainer warrant immediately upon breach of the agreement for failure to pay rent without the landlord providing notice of such breach to the tenant; provided, however, that this subsection (b) shall not reduce the tenant's grace period as provided in § 66-28-201. The tenant's waiver pursuant to this subsection (b) shall be set out in twelve (12) point bold font or larger in the rental agreement.

(c) Notwithstanding notice of a breach or the filing of a detainer warrant pursuant to this section, the rental agreement is enforceable by the landlord for the collection of rent for the remaining term of the rental agreement.

(d) Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 66-28-401. The landlord may recover reasonable attorney's fees for breach of contract and nonpayment of rent as provided in the rental agreement.

(e) The landlord may recover punitive damages from the tenant for willful destruction of property caused by the tenant or by any other person on the premises with the tenant's consent.

Credits

1975 Pub.Acts, c. 245, § 4.201; 2011 Pub.Acts, c. 272, § 11, eff. Oct. 1, 2011; 2014 Pub.Acts, c. 593, §§ 1 to 3, eff. March 28, 2014.

Formerly § 64-2845.

Notes of Decisions (1)

T. C. A. § 66-28-505, TN ST § 66-28-505
Current with laws from the 2015 First Reg. Sess., eff. through March 17, 2015

End of Document

tion was the testimony of Riad Nimri, SWEPCO's Vice–President of Technical Affairs, who stated that although the sales representative normally would fill out the information regarding a roof's age,

> there's another procedure. He may send this form without this information, and his regional manager, or the manager, the sales manager for that area, would call him and obtain the information by phone.

Since Tate had already testified that he did not provide that information to SWEPCO, the issue was one of the credibility of witnesses. "The findings of fact of the trial judge involving the credibility of witnesses are entitled to great weight on appeal." *Sisk v. Valley Forge Ins. Co.*, 640 S.W.2d 844, 849 (Tenn.Ct.App.1982) (citation omitted). The evidence does not preponderate against the trial court's implicit finding that neither Tate nor the Board of Education misrepresented the age of the roof.

[8] Similarly, the preponderance of evidence is that Tate applied the Topcoat system in accordance with the directions for application provided by the company. The school principal, who was an experienced construction contractor, was satisfied with Tate's application. Bruce Cherry, SWEPCO's own expert witness, testified that, "as far as applying SWEPCO Topcoat, just about anyone could take a brush and a bucket of coating, and if he knows how to put on paint he could put our Topcoat on." Certainly, Tate applied the system to a roof deck to which it should not have been applied, but his process of application was more than adequate under the guidelines provided by SWEPCO.

The fundamental problem with the entire transaction is that SWEPCO created an agency in Tate but made only minimal efforts to train Tate to perform those duties of his agency that SWEPCO now insists he should have performed. SWEPCO, "having sent out its agent, clothed with plenary powers, to represent it in a matter vital to its interest, and having accepted the fruits thereof must abide the consequences." *Howard v. Haven*, 198 Tenn. 572, 583, 281 S.W.2d 480, 485 (1955) (citations omitted). The law of Tennessee is clear that "a principal generally is bound by its agent's acts done in its behalf and within the actual or apparent scope of the agency.... The agent ordinarily does not incur liability unless it is shown that he intended to be personally responsible for his actions." *V.L. Nicholson Co.*, 595 S.W.2d at 483 (citations omitted). This was Tate's first job for the Board of Education, and he testified that he had wanted to perform well in order to get more jobs. Tate attempted in good faith to perform his duties as sales representative for SWEPCO, and there is no showing that he intended to be personally responsible for his actions. The liability for damages arising as a result of the failed roof repair, therefore, rests on SWEPCO alone.

For the foregoing reasons, the judgment of the trial court is affirmed as to SWEPCO, reversed as to Tate, and remanded. Costs of this appeal are taxed to SWEPCO.

GODDARD and FRANKS, JJ., concur.

Yvonne MORRISON, Plaintiff–Appellee,

v.

Linda SMITH, Defendant–Appellant.

Court of Appeals of Tennessee, Middle Section, at Nashville.

June 22, 1988.

Permission to Appeal Denied by Supreme Court Sept. 6, 1988.

Landlord brought unlawful detainer action against tenant and tenant counterclaimed. The Circuit Court, Lawrence County, James L. Weatherford, J., entered judgment in favor of landlord and dismissed tenant's counterclaim, and tenant

appealed. The Court of Appeals, Cantrell, J., held that: (1) landlord's shutting off electricity and water was not trespass; (2) landlord's actions did not constitute constructive eviction; but (3) tenant was entitled to recover damages for breach of covenant of quiet enjoyment.

Reversed and remanded.

1. **Landlord and Tenant ⇐290(2)**

Tenant or someone in collusion with tenant who willfully and without force holds over the possession from the landlord is guilty of unlawful detainer. T.C.A. § 29-18-104.

2. **Landlord and Tenant ⇐290(2)**

Until tenancy ends, possession belongs to tenant and he is not holding over nor guilty of unlawful detainer.

3. **Landlord and Tenant ⇐116(5)**

If tenancy is month-to-month and notice of eviction is given in middle of month, tenant has until end of following month to vacate premises.

4. **Landlord and Tenant ⇐393**

Tenant who received notice to vacate in middle of month had until end of following month to vacate mobile home lot and was not unlawfully detaining premises when unlawful detainer suit was filed 11 days after notice to vacate.

5. **Trespass ⇐10**

Invasion of close must be physical and accomplished by tangible matter in order to support action for trespass on tenant's right to exclusive possession of premises.

6. **Trespass ⇐10**

Landlord's act in cutting off water and power was not physical and tangible invasion of close of tenant constituting trespass.

7. **Landlord and Tenant ⇐172(2)**

Tenant is constructively evicted when landlord renders premises unfit for occupancy or deprives tenant of beneficial enjoyment of premises provided that tenant actually abandons premises within reasonable time.

8. **Landlord and Tenant ⇐178**

Tenant who fails to abandon premises within reasonable time after conditions constituting constructive eviction occur waives constructive eviction claim.

9. **Landlord and Tenant ⇐180(6)**

Whether constructive eviction claim has been waived is question of fact.

10. **Landlord and Tenant ⇐180(4)**

Damages arising out of constructive eviction accrue only after abandonment.

11. **Action ⇐6**

Constructive eviction was moot issue where tenant made no claim for damages after she quit the property.

12. **Landlord and Tenant ⇐130(1)**

Lease of realty includes implied covenant that lessee will have quiet and peaceable possession and enjoyment of leased premises.

13. **Landlord and Tenant ⇐130(2)**

Actual eviction need not occur in action for damages for breach of covenant of quiet enjoyment absent lease contract provision to the contrary.

14. **Landlord and Tenant ⇐374**

Landlord's shutting off electricity and water to tenant's mobile home was clear interference by landlord with tenant's quiet enjoyment of premises.

15. **Landlord and Tenant ⇐374**

Tenant whose electricity was shut off due to her failure to pay rent was entitled to recover for food spoilage, expense of eating out, and harm to use of trailer.

David Kozlowski, Legal Services of South Central Tenn., Columbia, for defendant-appellant.

David Comer, Lawrenceburg, for plaintiff-appellee.

OPINION

CANTRELL, Judge.

The plaintiff brought an unlawful detainer action against the defendant in the Gen-

eral Sessions Court of Lawrence County, alleging that the defendant was $272.27 in arrears in rental and utility charges. The general sessions judge awarded the plaintiff possession of the real property in question and judgment for the $272.27. The defendant then applied for writs of certiorari and supersedeas to remove the case to Circuit Court, and counterclaimed for $750 damages resulting from constructive eviction and trespass by the plaintiff. The Circuit Judge affirmed the award of the General Sessions Court and dismissed the counterclaim. The defendant appeals, and we reverse.

From the proof at trial, it appears that the defendant signed a lease on June 25, 1986 to rent a lot for $60 per month at "New Prospect Village", the plaintiff's mobile home park located near Lawrenceburg. Most of the tenants at the park live in mobile homes belonging to the plaintiff, and pay their rent and electric bills weekly. However, the defendant had her own trailer and the standard form lease which follows was altered in her case:

> TENNANT (SIC) AGREES TO THE FOLLOWING TERMS:
>
> 1. RENT *$60* PER WEEK PLUS UTILITIES.
>
> * * * * * *
>
> 3. YOUR rent and utility bills are due each Friday. Electric and gas meters will be read weekly and the utility amounts included in your weekly rent. Any rent and utility bills not paid by 6 PM on Saturday are in arrears....
>
> 4. If rent and/or utility bills are arrears (sic) seven (7) days, utilities will be turned off. Pre-arrangement must be made with the owner or manager of New Prospect Village for an exception to be made.

Paragraph I of the defendant's lease was modified by crossing out the words "per week" and inserting "monthly lot rent." The remainder of the lease, calling for weekly payments of rent and utilities, was unchanged.

For some reason, rather than having tenants pay electric bills to the local power cooperative in the normal way, the plaintiff had her manager read their electric meters every week, and add the estimated cost of electricity used to the weekly rent. In this case, although the defendant did not have to pay rent weekly, the plaintiff's manager calculated the electric bills on that basis, and entered the amount due on her ledger along with the monthly rental charges.

This ledger shows that the defendant was an irregular payor. After September 12, 1986, she always had an outstanding balance due on her account. She testified that this was due to losing her job after breaking an ankle. After failing to make any payments for three weeks in a row, her electricity was shut off in April 1987. Her daughter's boyfriend then paid $100 to get it turned back on.

From this point, the ledger shows that the defendant made regular weekly payments in the amount of her electric bill, or a little more. Her May rent was not paid, however, until the middle of the month. When she was a week late in paying her June rent, the plaintiff had her electricity and water shut off, and only then gave the following written notice:

> New Prospect Village
>
> Lot # 51 Eviction Notice June 15, 1987.
>
> Linda Smith,
>
> You have a balance owing of $212.72. You have 7 days in which to pay the amount of $212.72 or vacate your lot # 51 within 7 days which is June 22, 1987.
>
> Manager,
> Patricia Nix

When the defendant failed to leave the premises, the plaintiff commenced the unlawful detainer action on June 26, and the defendant eventually moved her trailer in early August.

I. The Notice of Eviction

[1, 2] Where a tenant, or someone in collusion with a tenant "willfully and without force, holds over the possession from the landlord", he is guilty of unlawful detainer. Tenn.Code Ann. § 29-18-104 (1980). The words "holds over possession from the landlord" means "a holding over

after the tenancy has ended. Until then[,] the possession belongs to the tenant, and he is not holding over...and is not guilty of unlawful detainer." *Smith v. Holt*, 29 Tenn.App. 31, 36, 193 S.W.2d 100, 102 (1945).

The question, then, is whether the defendant's tenancy ended on or before June 26, when the unlawful detainer complaint was filed in General Sessions Court. We hold that it had not.

The plaintiff's position is that the defendant had been in breach of the rental agreement from the first day she had fallen behind in her payments, and was liable to be evicted at any time. This is not correct.

More than forty years ago, Judge Felts settled this issue in the leading case of *Smith v. Holt, supra:*

> "A tenant's failure to pay rent does not terminate or forfeit his tenancy, in the absence of a provision in the lease for such a forfeiture; and where there is such a provision, the landlord must make formal demand of the rent, unless such demand is waived by the lease or by act of the parties."

29 Tenn.App. at 37, 193 S.W.2d at 102.

[3] The same case also made it clear that when a month-to-month tenancy has been established, a month's notice of eviction must be given before the commencement of the next month's term. *Id. See also Barnett v. Dooley*, 186 Tenn. 611, 614, 212 S.W.2d 598, 599 (1948). In other words, if the tenancy is month-to-month, and notice of eviction is given in the middle of the month, under the law of Tennessee the tenant has until the end of the following month to vacate the premises—not just thirty days from the date of the notice, as is often assumed. The rule is that the notice "must be given [a month] before the end of the period" where the tenancy is month to month. *Smith v. Holt*, 29 Tenn. App. at 37, 193 S.W.2d at 102. In *Barnett v. Dooley*, for example, the Supreme Court pointed out that where the landlady desired to obtain the property in August, "it was incumbent upon her to give Barnett notice thereof on July 1." 186 Tenn. at 614, 212 S.W.2d at 599.

[4] In the instant case, therefore, since the June tenancy had already commenced, the effect of the notice of eviction on June 15 was to give the defendant Smith until the end of the next month, July, to vacate the lot.

The defendant was not, therefore, unlawfully detaining the premises when the unlawful detainer suit was filed on June 26, or when the General Sessions judgment was rendered on July 21.

II. The Utilities

The plaintiff's counterclaim asserts that the loss of electricity and water to her trailer was a trespass, a breach of the covenant of quiet enjoyment, and amounted to a constructive eviction. We will consider these claims individually.

1. Trespass

At common law it was clear that "every unauthorized, and therefore unlawful entry, into the close of another, is a trespass. From every such entry against the will of the possessor, the law infers some damage; if nothing more, the treading down the grass or herbage...." *Daugherty v. Stepp*, 18 N.C. 371 (1835). One reason underlying this rule was a desire to keep the peace. Harper & James, *Torts*, § 1.8 (1956).

[5, 6] However, since it is the owner or tenant's right to exclusive possession that is being protected by the action, it is generally held that the invasion of the close be physical and accomplished by a "tangible matter." *Ryan v. City of Emmetsburg*, 232 Iowa 600, 4 N.W.2d 435, 438 (1942) ("noxious odors" not a trespass). *See, e.g., Amphitheaters, Inc. v. Portland Meadows*, 184 Or. 336, 198 P.2d 847, 850 (1948) (no trespass where light from defendant's racetrack reflected on plaintiff's drive-in movie screen).

It does not appear from the trial transcript or the depositions introduced whether or not the plaintiff's manager actually had to enter onto the defendant's rented lot in order to shut off the water and electrici-

ty, but as we understand it the defendant is not seeking damages for some trivial invasion of her lot. Rather, she is seeking to establish that the landlady's act in cutting off the water and power was in itself a trespass.

We do not think this proposition can be sustained for the reason stated in the above-cited cases. If the release of noxious fumes or beams of light onto the lands of another cannot be considered a trespass, we cannot conceive that the absence of electricity or water can be considered as such either. Although defendant cites some forcible entry and detainer cases, *see* Tenn.Code Ann. § 29–18–102, for the proposition that a landlord's removal of a roof or changing of locks was a trespass, *see Price v. Osborne*, 24 Tenn.App. 525, 527, 147 S.W.2d 412, 413 (1940); *Cutshaw v. Campbell*, 3 Tenn.App. 666, 687 (1925), those cases involved an actual entry onto the premises. *But cf. Gass v. Newman*, 38 Tenn. (1 Head) 136, 138 (1858) (enclosure of plaintiff's lands by defendant was a forcible entry and detainer; actual trespass immaterial). The forcible entry and detainer statute, Tenn.Code Ann. § 29–18–102, reads as follows:

> (a) A forcible entry and detainer is where a person, by force or with weapons, or by breaking open the doors, windows, or other parts of the house, whether any person be in it or not, or by any kind of violence whatsoever, enters upon land, tenement, or possession, in the occupation of another, and detains and holds the same; or by threatening to kill, maim, or beat the party in possession; or by such words, circumstances, or actions, as have a natural tendency to excite fear or apprehension of danger; or by putting out of doors or carrying away the goods of the party in possession; or by entering peaceably and then turning or keeping the party out of possession by force or threat or other circumstances of terror.
>
> (b) No action for forcible entry and detainer shall lie against any tenant who has paid all rent due for their current occupancy of the premises and who are not in violation of any law nor otherwise in breach of their written lease....

We do not think that the plaintiff was guilty of forcible entry and detainer under the statute simply as a result of turning off the utilities.

2. *Constructive Eviction*

[7–9] When a landlord disturbs his tenant's possession, rendering "the premises unfit for occupancy for the purposes for which they were demised" or depriving "the tenant of the beneficial enjoyment of the premises, causing him to abandon them," the tenant has been constructively evicted, provided that he "abandons the premises within a reasonable time." *Couch v. Hall*, 219 Tenn. 616, 620, 412 S.W.2d 635, 637 (1967). The tenant has a reasonable time to exercise, the right of abandonment, or eviction is waived. Whether a waiver has occurred is a question of fact. *Id.* at 622, 412 S.W.2d at 638.

[10, 11] In this case, however, the question of whether a constructive eviction occurred is moot because, even assuming that it did, damages accrue only after abandonment. *See Weinstein v. Barrasso*, 139 Tenn. 593, 600, 202 S.W. 920, 922 (1918); 49 Am.Jur.2d, Landlord & Tenant, § 323 (1970). Presumably because the lease in this case was for an indefinite duration, the defendant made no counterclaim for any damages after she quit the property.

3. *The Covenant of Quiet Enjoyment*

[12, 13] In any ordinary lease of realty there is an implied covenant that the lessee will have the quiet and peaceable possession and enjoyment of the leased premises. This means that "the lessee will be protected by the lessor from any interference with his possession by ... any acts of the lessor which will destroy the quiet and beneficial use of the property." *W.E. Stephens Mfg. Co. v. Buntin*, 27 Tenn.App. 411, 416, 181 S.W.2d 634, 636 (1944). Where there is nothing in the lease contract to the contrary, there is no requirement for an actual eviction to occur in an action for damages for a breach of the covenant of quiet enjoyment. *Moe v. Sprankle*, 32 Tenn.App. 33,

40, 221 S.W.2d 712, 715 (1948). As the court stated in the *Sprankle* case, "there occurs to us no reason why a lessee ... should be forced to await eviction by the lessor or surrender the premises, often at great loss, before claiming a breach of the covenant for interference with his use and possession of the premises falling short of total eviction." *Id.* at 41, 221 S.W.2d at 715.

[14] As noted earlier in this opinion, the defendant was in legitimate possession of the lot until the end of July, the earliest date at which the notice of eviction could be effective. Shutting off the electricity and water, then, was a clear interference by the plaintiff with the defendant's quiet enjoyment of the premises. Although there was a provision in the lease that utilities could be shut off on a week's notice if rent *or* utility payments were not paid every seven days, the effect of this provision is ambiguous in light of the fact that another written portion of the form was altered to allow monthly rental payments, and is in any event a violation of the covenant of quiet enjoyment if the landlord has not given timely notice to quit. The defendant was in fact paying her electricity bills regularly every week, and it is clear that the only reason electricity and water were shut off was because the rent was in arrears. There can be no question that the provision of electric power and water is vital to the enjoyment of leased premises. The Legislature has required that owners of trailer courts must insure that electricity and water are available to each of the trailers in the court. Tenn.Code Ann. §§ 68–24–107; 68–24–112. It is also significant that the Department of Public Health has set minimum standards for rental properties which require that they have electricity, access to showers and a toilet, and kitchen connections for water, stoves, and refrigerators. Tenn.Admin.Comp. 1200–1–2 *et seq.*

[15] This leaves us with the question of damages. The defendant filed a counterclaim for $750. While the proof of her damages is not very satisfactory, we think she has proved damages in the amount sued for. She testified that when the defendant cut off her electricity she lost $75 to $100 worth of food due to spoilage in her refrigerator. She had no way to cook and for the entire period she had to feed herself and her thirteen year old daughter in fast food restaurants at a cost of $15 a day. Without air conditioning the temperature in the trailer rose to over 100 degrees each day and it was impossible to sleep until after midnight. They had no place to bathe, no toilet, no way to clean dishes. The value of the trailer for living purposes was pretty well ruined. This condition lasted from the time the utilities were shut off until the defendant left the premises in early August, a period in excess of fifty days. Taken together, the spoiled food, the expense of eating out, and the harm to the use of the trailer for living purposes clearly amount to more than $750.

The plaintiff is of course entitled to recover $207.27, the amount the defendant was in arrears on June 8. There is no proof of the rental value of the lot for storage purposes after the utilities were cut off, therefore we hold that the plaintiff is not entitled to anything more.

The judgment of the trial court is reversed, and the cause remanded for entry of judgment consistent with this opinion and any other necessary proceedings. Tax the costs on appeal to the appellee.

TODD, P.J., and LEWIS, J., concur.

Harold Vernon SMITH, Appellant,

v.

STATE of Tennessee, Appellee.

Court of Criminal Appeals of Tennessee, at Knoxville.

June 7, 1988.

Prisoner sought postconviction relief. The Circuit Court, Hawkins County, James

19 Beeler 413
Supreme Court of Tennessee.

WOODS
v.
FOREST HILL CEMETERY, Inc.

March 2, 1946.

Error to Law Court, Shelby County; Harry Adams, Judge.

Action by Sam Woods against the Forest Hill Cemetery, Inc., to recover damages for personal injuries. Judgment for defendant on a directed verdict and plaintiff brings certiorari. Certiorari was also granted to the defendant to have the Supreme Court consider the question of plaintiff's contributory negligence.

Reversed and case remanded for new trial.

Attorneys and Law Firms

**988 *415 Graham Moore and T. L. Campbell, both of Memphis, for plaintiff in error.

Albert F. Johns and Walter P. Armstrong, both of Memphis, for defendant in error.

Opinion

NEIL, Justice.

This suit originated in the Circuit Court of Shelby County, in which the plaintiff Sam Woods sued the defendant for damages for personal injuries based upon the following facts, as found by the court of appeals:

'The premises on which the injury occurred to the plaintiff, and which was owned by the defendant, consisted of a dwelling located in Memphis divided into two apartments, which are identified as 1517 and 1519 Carr Avenue. 1517 which was the upper apartment was leased to Mrs. Alvin Bick and 1519 the lower apartment was leased to Mrs. F. B. Jones. To the rear of the dwelling there was a double garage with two apartments above it. Each lease contract provided that the same was rented *416 'with the privileges and appurtenances thereunto belonging'. Under this Mrs. Bick was in possession of the west side of the garage and the west garage apartment, and Mrs. Jones in possession of the east side of the garage and the east garage apartment.

'There was a porch on the south side of the garage apartments and on the east side there was a stairway leading up to the porch. There was a railing or bannister extending along the east side of the stairway and around the porch. This railing or bannister was about three feet high and was made of two by four timbers.

'The two apartments designated as 1517 and 1519 were first rented to Mrs. Bick and Mrs. Jones respectively October 1, 1938, and were continuously occupied by them until after the injury to the plaintiff occurred.

'Will Williams [subtenant in one of the garage apartments] was a carpenter and had employed the plaintiff, Sam Woods, to assist him in painting a house across the street from the apartment where he lived.

'About the time they started to work it began raining and Will Williams, Sam Woods and Dexter Burns, another employee of Williams, went to Will Williams' apartment. After sitting in the apartment for a short time the three went out on the porch to view the weather and to see whether they would be able to work that day.

'As to the immediate facts of the injury the plaintiff testified: 'A. He said 'Come back tomorrow.' Well, when Will Williams and Dexter went to this side, near the east or south side, why that is the way this bannister runs, north and south, well they went over there and leaned up on the bannister while I went over to the side right here in the east part and the stairs go down here (indicating) and this bannister, I don't know, about four or five or six feet, something like that, I didn't measure it, *417 but I leaned up on the bannister this way, looking east, at the weather, and I turned around and went to put this elbow up on it and it broke, and there was no way for me to catch and I went right down on the sidewalk."

The fact that the banister was 'rotten' is undisputed. Likewise, it is beyond dispute that plaintiff's fall, and consequent injury, were proximately caused by the defective condition of the porch and banister. The lease in question was executed by Mrs. Jones and by Percy Galbreath & Sons as agents for the defendants. It was to take effect October 1, 1942, and was for the term of one year. It contained the following covenant: 'The said tenant covenants that he will not allow the premises to be used for any purpose that will increase the rate of insurance thereon, nor for any other purpose than that herein specified, nor to be occupied in whole or in part by any other

person, and will not sublet the same, nor any part thereof without the landlord's consent in writing.'

B. F. Cornelius testified that he was the son-in-law of Mrs. Jones and that he and his wife and Mrs. Jones had occupied the apartment Number 1519 continuously since April 1, 1938. He had managed Mrs. Jones' business since her husband's death in 1921. It appears that he was not only the agent of Mrs. Jones in renting the apartment, but was an agent and servant of Percy Galbreath & Sons at the time, and continued in their employment until a short time before the plaintiff was injured. He was asked if the agents of the cemetery company had ever complained to any one about tenants' occupying these garage apartments. He replied they had not and 'they explained to me that we had a right to rent it to anybody we wanted to.' Counsel for defendant objected and the evidence was excluded 'under the parol **989 evidence rule'. The trial judge entertained the view *418 that these conversations were merged in the written agreement and that they violated the terms of the written lease. The witness further testified that Galbreath & Sons knew these garage apartments were being occupied by tenants all the time that Mrs. Jones had the property under lease. This testimony was objected to and the objection sustained. He testified that he had told the agents about the condition of the premises around the garage apartments, saying, 'I said the backstairs, Williams', are in bad shape and unless you repair them you are going to have an accident.' Following this statement Galbreath & Sons sent men out there and they made repairs on some of the risers 'and they put a railing going upstairs to the entrance to the two apartments, you see, the two rooms.' He was asked if any repairs were made on the railing of the east side of on the south side of the porch. Answer: 'There were none.'

Mrs. Bick, who rented the other side of the apartment building, which is Number 1517 Carr Avenue, testified that the west side of the garage and the upper apartment over it were appurtenances which went with her lease; that there were tenants in this apartment as well as the one on the other side, or the east side when she moved in. Asked as to repairs on the apartment, she said, 'Every time anything happened I called them,' meaning the agents, Galbreath & Sons. At one time she called them and they made repairs on the screens and windows in her upper garage apartment.

It is further shown that the agents of the property owner employed a janitor for these respective apartments, who fired the furnaces; that his services 'went with the lease'. She stated without objection that no one from Galbreath & Sons or Forest Hill Cemetery Company ever complained to her about sub-letting the apartment. *419 It thus clearly appears from the testimony of Mr. Cornelius and Mrs. Bick that the agents of the defendants made repairs on the property when called upon; that the owner employed a janitor to fire the furnace and do other things incident to his employment for the benefit of the lessees. It was while Cornelius was an employee of the agents of the defendant that repairs were made on the steps railings of the stairway, except no repairs were made on the east end of the porch from which plaintiff fell and was injured.

There is no escape from the conclusion that Percy Galbreath & Sons knew that the two upper garage apartments were occupied by tenants from 1938 until after plaintiff was injured. We think it clearly appears that the stairway leading to these two apartments was a common passage way for the benefit of tenants and subtenants who occupied them, as well as other persons who were lawfully upon the premises as invitees. Moreover, the fact that the agent of the owner repaired these steps, as well as windows and screens of the apartments, tends to show that the owner recognized that it was obligated to make necessary repairs.

At the conclusion of the plaintiff's evidence the defendant made a general motion for a directed verdict in its behalf. The trial court sustained the motion, holding 'that there was no notice brought home to Galbreath & Co., or the defendant, the owner of the premises, that there were any sub-tenants back in these garage apartments during that period,' (from October, 1942, to October, 1943). 'Now the lease carries a provision against sub-letting unless same is secured in writing. There is no proof that that was secured in writing, and I am of the opinion that there was no waiver of the terms *420 in this lease on the part of the landlord or the landlord's agent, Galbreath & Co. So I am of the opinion that the directed verdict should be granted on that ground of the motion.'

The trial judge pretermitted the question of plaintiff's contributory negligence and also whether or not defendant was obligated to keep in repair the stairway leading to the garage apartments.

The plaintiff moved the court for a new trial, which was overruled, and thereupon an appeal was prayed and granted to the court of appeals. That court affirmed the judgment of the lower court. The plaintiff filed his petition for certiorari to review the alleged error of the trial judge in directing a verdict in favor of the defendant. The defendant also petitioned the Court for certiorari to have the Court consider the question of plaintiff's contributory negligence as a bar to his right of action. Certiorari was granted to both plaintiff and the

defendant and the questions raised in their petitions have been fully argued.

**990 We think the learned trial judge was in error in sustaining defendant's motion to dismiss the plaintiff's suit on the ground (1) that neither the landlord nor his agent had notice that the garage apartments were being occupied by sub-tenants contrary to the terms of the lease, and (2) that 'there was no waiver of the terms of the lease on the part of the landlord, to the effect that the premises would not be sub-let without the written consent of the landlord.'

[1] [2] The trial court in determining the question of liability construed the terms of the lease contract most strongly against the plaintiff and in favor of the owner. Both the court of appeals and the trial court failed to observe the general rule that covenants against sub- *421 letting are strictly construed against the lessor. In 32 Am.Jur., Landlord and Tenant, Sec. 397, it is said, 'They are construed with the utmost jealousy, and very easy modes have always been countenanced for defeated them.' We think the trial court correctly held that the restriction in the lease against sub-letting could not be changed or modified by proof of a parol agreement. Parol evidence of such understanding, however, would be competent upon the question of waiver.

In Merritt v. Kay, 54 App.D.C. 152, 295 F. 973, it was held, 'A waiver of a covenant against subletting may be proved by parol or other evidence dehors the contract.' See also Mattox v. Wescott, 156 Ala. 492, 47 So. 170, 16 Ann.Cas. 604, wherein it was said, 'A provision of a lease that the lessee shall not underlease without the lessor's written consent is for the lessor's benefit, and can be waived by parol.'

Now in the instant case it is shown by credible evidence that Cornelius, who was employed by the agents of the defendant, knew that the apartments had been subleased to tenants; the janitor, who was on the premises continuously and who was the servant of the defendant, knew of the subletting prior to 1942 and thereafter. While it is doubtless true that he had no authority to contract with any one about subletting, yet his knowledge of the fact that the apartments were being occupied must be imputed to the landlord. Moreover, it is shown, and not denied, that following the injury to plaintiff the defendant continued to lease the premises with full knowledge of the fact that the garage apartments had been occupied and would, under the new lease, be occupied by the same sub-tenants. Instead of claiming a forfeiture when Sam Woods was injured on the ground of breach of covenant in the lease, the defendant entered into a new lease with *422 the knowledge that Will Williams was then a sub-tenant of the leasee. There is no evidence that the landlord objected to his remaining an sub-tenant under the new lease.

[3] In Brokamp v. Linneman et al., 20 Ohio App. 199, 153 N.E. 130, 131, it was held, 'If, after knowledge of the breach, the lessor, prior to taking any action to forfeit the lease, accepts rent from the lessee, or his assignee, which rent accrued after the breach, he waives the right of forfeiture.' See also to the same effect, Pearson v. Sullivan, 209 Mich. 306, 176 N.W. 597, 9 A.L.R. 438. In the latter case the court quotes with approval from 18 A. & E. Encycl. of L., 2d Ed., Landlord and Tenant, p. 382:

'Acts Constituting Waiver—(1) In General.—It may be stated as a general rule that where the lessor, after knowledge of the breach of a covenant or condition for which he could enforce a forfeiture, expressly or impliedly recognizes the continuance of the tenancy, he thereby waives the forfeiture for such breach, and is afterwards precluded from asserting it. * * *

'Intention of Lessor.—The question whether the landlord intended to waive the forfeiture is not material. Where his act amounts to a waiver of the forfeiture or a recognition of the continuance of the tenancy he is precluded from asserting that it was not his intention to waive the forfeiture. Thus, the receipt of subsequent rents is held to constitute a waiver though the landlord expressly states, at the time of such receipt, that he does not intend to prejudice his right to assert the forfeiture.'

[4] It is earnestly argued by counsel for the defendant that Williams who subleased the east upper garage apartment was unlawfully upon the premises; that the plaintiff Sam Woods was likewise present in said apartment *423 without any lawful right and must be regarded as a licensee and not an invitee. The argument is made upon the theory that the sub-letting to Williams was in violation of the restrictive clause in the contract. The insistence must be regarded as unsound in view of the waiver of this provision in the contract. We are unable to follow the further contention of **991 counsel that Sam Woods was a licensee even though it is shown that the restrictive clause was waived by the lessor. No authority is cited in support of the foregoing contention. If the provision was waived, it was a recognition of sub-lessee's lawful right to be upon the premises as a tenant and if he is lawfully there, his invitee was likewise lawfully present. The effect of such waiver, with full knowledge of the breach, is 'an affirmation by him that the contract of lease is still in force, and he is thereby estopped from setting up a breach in any of the

conditions of the lease and demanding a forfeiture thereof.' 16 R.C.L., Landlord and Tenant, Sec. 653.

It is next insisted by the defendant, 'We say that the liability, if any, in such case must be based upon the narrow grounds of letting defective premises, even though the sub-tenant be considered rightfully on the premises, because not only did defendant not retain, either expressly or impliedly, control of the balcony, but there was no other way in which an obligation to repair could be raised.'

[5] [6] This brings us to a consideration of the question of the landlord's obligation to repair the premises and for alleged negligence in keeping the premises in a safe condition. It must be conceded as a general proposition that, in the absence of a contract to make repairs, there is no obligation resting upon the owner of leased premises to make them tenantable. It has been held in ***424** many cases that the rule of caveat emptor applies and the lessee takes the premises as he finds them. The foregoing rule, however, has no application where the premises are leased to different tenants and the stairways, passages, and hallways, and other portions thereof are reserved by the lessor for the use in common of the different tenants. The weight of authority is to the effect that it is the duty of the landlord to keep in good repair and safe condition such common passage ways. The determinative question raised by counsel for defendant is largely one of fact, that is, (1) whether or not the porch and balcony from which plaintiff fell was a common passage way and under the control of the landlord, and (2) was it negligently maintained? We think it is clear from the facts that it was not under the control of either of the tenants or their respective sub-tenants; the balcony and stairs were a common passage way for both sub-tenants and invitees. Moreover, we find material evidence in the record to the effect that the landlord readily responded to the request of the lessee to make repairs on the stairway, banisters, etc., thereby justifying the reasonable inference that what it did was in the performance of a recognized legal duty.

[7] In the light of these undisputed facts, we will construe the contract between the landlord and tenant as they construed it, as shown by their conduct, as well as other circumstances relating to the occupancy of the premises. If the defendant thought it was its duty to make repairs why should this Court entertain a different view? A waiver may be evidenced by the conduct of the lessor. 35 C.J. 1078.

[8] [9] When the landlord undertook to repair the stairway in question, we think the tenants and sub-tenants were by this act re-assured, and justified in assuming, ***425** that the stairway and railing had been made reasonably safe. Stern v. Miller, 60 Misc. 103, 111 N.Y.S. 659. The repairs in the instant case were made, according to Ben Cornelius, in the spring before he left Galbreath & Sons in 1942. These repairmen and agents of the landlord, had they exercised only a little care, could have discovered the defective banister. We feel entirely warranted in holding that the defendant had at least constructive notice that the banister on the east side of the porch was in an unsafe, if not dangerous, condition.

[10] The cases are abundant to the effect that the landlord is liable in damages caused by the defective condition of common passage ways of which he has actual or constructive notice. Burke v. Hullett, 216 Ill. 545, 75 N.E. 240; Hicks v. Smith, 158 App.Div. 299, 143 N.Y.S. 136.

[11] The obligation of the landlord as to the safe condition of that portion of the leased premises used by tenants in common extends to persons boarding and lodging with a tenant. Karp v. Barton, 164 Mo.App. 389, 144 S.W. 1111. In the latter case a child of a person boarding with a tenant was injured by a porch used in common by different tenants. See also Mullins v. Nordlow, 1916, 170 Ky. 169, 185 S.W. 825. To the same effect plaintiff has cited Reynolds v. Land M. & T. Co., 114 Conn. 447, 159 A. 282, 284. In this case the court, speaking of the landlord's lack of knowledge of the defect, said 'Ignorance of the condition is not in itself a legal ****992** excuse, and, if want of actual knowledge was the result of its own negligence, knowledge will be imputed.' Shortz v. Slobodien, 107 N.J.L. 512, 154 A. 823; Gillespie v. Plotka, 157 A. 175, 9 N.J.Misc. 1230; Bleisch v. Helfrich, Mo.App., 6 S.W.2d 978; Hunter v. Schuchart, Mo.App., 267 S.W. 411, 413. In the latter case, opinion ***426** by the Missouri Court of Appeals, the landlord maintained an outside porch for the common use of tenants occupying the fourth floor. The plaintiff was injured by defects in the railing to the porch. It was there insisted that there was no negligence shown. In considering this question it was held that the obligation was *imposed by law* upon the landlord to keep said porch in a reasonably safe condition for the use of his tenants, '*and of other persons who were rightfully using it in the exercise of due care and having lawful business on the premises.*' (Italics ours.)

[12] [13] We think counsel for the defendant is mistaken in the view that liability in the instant case 'must be based upon the narrow grounds of letting defective premises, even though the sub-tenant be considered rightfully on the premises.' If this were a lease to only on tenant, and the contract silent

as to repairs, a waiver of the restrictive clause forbidding a sublease would impose no liability on the lessor to keep the premises in a safe condition. But we are confronted with an entirely different situation wherein the defendant executed a lease to two tenants, including the common passage way leading to two separate apartments. The duty devolving upon the landlord to keep the porch and common passage way in a reasonably safe condition is not necessarily a contractual obligation, but is a duty imposed by law. Hunter v. Schuchart, supra. It is immaterial whether the persons occupying these upper garage apartments were servants of the lessee, or paying rent as sub-tenants of the lessee, the duty to keep the common passage way reasonably safe for them, and others lawfully upon the premises, continued following the waiver of the right by the landlord to claim a forfeiture.

*427 [14] Counsel for defendant insists that plaintiff's suit is barred by reason of his own contributory negligence, citing Dixon v. Lobenstein et al., 175 Tenn. 105, 132 S.W.2d 215. In that case the court sustained a demurrer to the declaration on the ground that plaintiff alleged certain facts which conclusively showed that she knew of the defective condition of the railing, and with full knowledge of it rested the entire weight of her body upon it, thereby causing the railing to give way. In the instant case the plaintiff was not, in our opinion, making any such improper use of the porch railing. The learned trial judge, from his observation of the plaintiff, may have thought he was putting too much weight upon it and was guilty of some negligence, but we think the question of contributory negligence of the plaintiff was for the jury.

We are constrained to sustain the plaintiff's assignments of error and accordingly reverse and remand the case for a new trial.

Parallel Citations

183 Tenn. 413, 192 S.W.2d 987

End of Document

46 S.W.3d 191
Supreme Court of Tennessee,
at Nashville.

Jane DOE, et al.
v.
HCA HEALTH SERVICES OF TENNESSEE, INC., d/b/a HCA Donelson Hospital.

No. M1998-00267-SC-R11-CV. | May 24, 2001.

Patient and spouse filed action against hospital seeking declaratory judgment that hospital breached contract by demanding unreasonable charges for goods and services. The Circuit Court, Davidson County, Hamilton V. Gayden, Jr., J., held that contract was enforceable, but denied summary judgment for hospital. Appeal was taken. The Court of Appeals affirmed on other grounds. Hospital sought permission to appeal. The Supreme Court, Anderson, C.J., held that: (1) price term in agreement between patient and hospital was indefinite, and thus contract was unenforceable, and (2) hospital was entitled to quantum meruit recovery from patient.

Court of Appeals affirmed; remanded.

Attorneys and Law Firms

***193** H. Lee Barfield, II; James O. Bass, Jr.; Robert E. Cooper, Jr.; Matthew M. Curley; and Lyle Reid, Nashville, TN, for the appellant, HCA Health Services of Tennessee, Inc.

G. Gordon Bonnyman, Jr.; John A. Day; and Kathryn Barnett, Nashville, TN; and Ralph I. Knowles, Atlanta, GA, for the appellees, Jane Doe and John Doe.

William B. Hubbard, Nashville, TN, for the Amici Curiae, THA—An Association of Hospitals and Health Systems—and Adventist Health System Sunbelt Healthcare Corporation.

W. Ovid Collins, Jr. and Blakeley D. Matthews, Nashville, TN, for the Amicus Curiae, Tennessee Association of Business.

OPINION

E. RILEY ANDERSON, C.J., delivered the opinion of the court, in which ADOLPHO A. BIRCH, JANICE M. HOLDER, and WILLIAM M. BARKER, JJ., joined.

E. RILEY ANDERSON, C.J.

We granted this appeal in order to determine whether a hospital's form contract in which the patient agrees to pay the "charges" not covered by insurance is sufficiently definite to constitute a valid contract. The trial court held that the word "charges" was sufficiently definite because the amount of the charges could be determined by referring to the hospital's confidential list of prices for all its goods and services; however, the court went on to hold that the hospital's charges had to be ***194** "reasonable." The Court of Appeals held that the form contract did not incorporate the hospital's secret price list because the form contract contained no "reference to any 'document, transaction or other extrinsic fact' to which reference could be made to ascertain the amount [the patient] promised to pay"; consequently, the intermediate court found that the secret price list was not an independent, objective, or verifiable method by which to determine hospital charges. The intermediate court elected not to declare the contract unenforceable. Instead, the Court of Appeals affirmed the trial court's judgment, holding that the patient is obligated to pay a "reasonable" charge for the medical goods and services she received. We affirm the judgment of the Court of Appeals.

BACKGROUND

Jane Doe was scheduled to have a surgical procedure at HCA Donelson Hospital in July 1991.[1] She was insured at the time through her husband's employer. As part of the hospital's pre-admission process, Jane Doe signed a hospital form titled "Assignment of Benefits" ("the contract") which read in part as follows:

> I hereby authorize payment to **HCA Donelson Hospital** insurance benefits herein specified and otherwise payable to me but not to exceed the total charges for this hospital confinement.... *I understand I am financially responsible to the hospital for charges not covered by this authorization.* I further assume responsibility for payment of reasonable attorney/and/or collection fees in the event such costs are incurred in the collection of this debt.
> (Second emphasis added.)

Jane Doe was admitted to HCA Donelson Hospital on July 2, 1991. She had her scheduled surgery and was released from the hospital on July 6, 1991. The total bill for Mrs. Doe's hospital stay was $6,731.05. This amount was determined according to the hospital's "Charge Master," a confidential list of charges made by the hospital for all its goods and services, which is used to compute charges for all private commercial patients who are treated on a fee-for-service basis. The Charge Master is compiled and maintained by the hospital's chief financial officer on the hospital's computer system. In 1991, the Charge Master contained approximately 295 pages and listed prices for approximately 7,650 items. The Charge Master is considered confidential proprietary information and is not shown to anyone other than the officers and employees of the hospital and authorized consultants. The Charge Master is adjusted on a weekly basis to reflect current cost data; the hospital's costs are marked up by a mathematical formula designed to produce a targeted amount of profit for the hospital. When the Charge Master is adjusted on the hospital's computer, the hospital does not preserve or archive the earlier versions of the Charge Master.

Under the terms of its policy, Jane Doe's insurance carrier paid eighty percent of the hospital bill, leaving an unpaid balance of $1,346.21. The hospital billed ***195** Jane Doe for the unpaid balance. The Does then requested additional time to pay due to their financial circumstances. However, no payments were made, and after six months, the hospital referred the account to a collection agency.

During the collection process, the Does sued HCA Donelson Hospital seeking a declaratory judgment that the hospital breached its contract by demanding unreasonable charges for its goods and services.[2] The hospital answered, denying the allegations of the complaint, and filed a counter-claim to collect the unpaid balance of the account.

The hospital later moved for summary judgment. The hospital argued that the plaintiffs's claims against it are based upon the premise that the contract contained an "open price term," rather than a definite price. However, the hospital argued that the term "charges" is a definite price term because it refers to the hospital's Charge Master. The trial court found that the word "charges" in the contract is sufficiently definite because it can be quantified by reference to the hospital's Charge Master; consequently, the court held that the contract is valid. Despite its holding that the contract is valid, the trial court also ruled that the charges listed in the Charge Master must be "reasonable." The court found that there are material issues of fact concerning the preparation and reasonableness of the charges in the Charge Master, as well as material issues concerning whether Mrs. Doe's bill actually comported with the Charge Master. The trial court therefore denied the hospital's motion for summary judgment.

The Court of Appeals found the contract is indefinite because the promise in the contract to pay "charges" contains no "reference to any 'document, transaction or other extrinsic fact' to which reference could be made to ascertain the amount [the patient] promised to pay." The intermediate court rejected the hospital's argument that the Charge Master is such a document; the court concluded that the Charge Master is not an "independent, objective, or verifiable means" of determining the "charges" for Jane Doe's hospital stay.[3] While the Court of Appeals found that the price term of the contract is indefinite, the court declined to hold that the contract is unenforceable; instead, the intermediate court agreed with the trial court (albeit on different grounds) that Mrs. Doe is "obligated to pay charges that are reasonable" and that the hospital is entitled to recover for the "fair value of the goods and services furnished[.]"

We granted HCA Donelson Hospital's application for permission to appeal.

ANALYSIS

Standard of Review

The standards governing appellate review of a motion for summary judgment are well settled. Summary judgment is proper when the moving party demonstrates ***196** that there are no genuine issues of material fact and that he or she is entitled to judgment as a matter of law. *Seavers v. Methodist Med. Ctr. of Oak Ridge,* 9 S.W.3d 86, 90–91 (Tenn.1999); *Byrd v. Hall,* 847 S.W.2d 208, 210 (Tenn.1993).

We review summary judgments as a question of law; therefore, we review the record in this case de novo without a presumption of correctness to determine whether the requirements for summary judgment have been met. *Griffin v. Shelter Mut. Ins. Co.,* 18 S.W.3d 195, 197–98 (Tenn.2000); *Bain v. Wells,* 936 S.W.2d 618, 622 (Tenn.1997). We must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. *Seavers,* 9 S.W.3d at 90–91; *Byrd,* 847 S.W.2d at 210–11. Summary judgment

is appropriate only when the facts and inferences permit a reasonable person to reach only one conclusion. *Carvell v. Bottoms,* 900 S.W.2d 23, 26 (Tenn.1995) (citing *Byrd,* 847 S.W.2d at 210–11).

[1] The ascertainment of the intention of the parties to a written contract is a question of law, rather than a question of fact. *Hamblen County v. City of Morristown,* 656 S.W.2d 331, 335–36 (Tenn.1983) (citations omitted).

Indefiniteness of Essential Term of Contract

[2] [3] [4] A contract " 'must result from a meeting of the minds of the parties in mutual assent to the terms, must be based upon a sufficient consideration, free from fraud or undue influence, not against public policy and sufficiently definite to be enforced.' " *Higgins v. Oil, Chem., and Atomic Workers Int'l Union, Local # 3–677,* 811 S.W.2d 875, 879 (Tenn.1991) (quoting *Johnson v. Central Nat'l Ins. Co. of Omaha,* 210 Tenn. 24, 34–35, 356 S.W.2d 277, 281 (Tenn.1962) (citations omitted)). Indefiniteness regarding an essential element of a contract "may prevent the creation of an enforceable contract." *Jamestowne On Signal, Inc. v. First Fed. Sav. & Loan Ass'n,* 807 S.W.2d 559, 565 (Tenn.Ct.App.1990) (citing *Hansen v. Snell,* 11 Utah 2d 64, 354 P.2d 1070 (1960)). A contract " 'must be of sufficient explicitness so that a court can perceive what are the respective obligations of the parties.' " *Higgins,* 811 S.W.2d at 880 (quoting *Soar v. National Football League Players' Ass'n,* 550 F.2d 1287, 1290 (1st Cir.1977)); *see also Restatement (Second) of Contracts* § 33(2) (1981) ("The terms of a contract are reasonably certain if they provide a basis for determining the existence of a breach and for giving an appropriate remedy.")

[5] [6] Two of the leading treatises on contract law provide additional authority concerning the requirement of definite contractual terms. "Certainty with respect to promises does not have to be apparent from the promise itself, so long as the promise contains a reference to some document, transaction or other extrinsic facts from which its meaning may be made clear." 1 Richard A. Lord, *Williston on Contracts,* § 4:27, at 593 (4th ed.1990). In addition, as stated in 1 Joseph M. Perillo, *Corbin on Contracts,* § 4.3, at 567–68 (Rev. ed.1993):

> If the parties provide a practicable method for determining [the] price or compensation there is no such indefiniteness or uncertainty as will prevent the agreement from being an enforceable contract. The same is true if they agree upon payment of a "reasonable" price or compensation. There are cases, however, in which it is clear that the parties have not expressly or implicitly agreed upon a "reasonable price," and also have not prescribed a practicable method of determination. Where this is true, the ***197** agreement is too indefinite and uncertain for enforcement.

(Footnotes omitted).

The issue in the case before us is whether the term "charges" constitutes a "sufficiently definite" price term in the contract between Jane Doe and HCA Donelson Hospital.

Price Term of Hospital's Form Contract

In reviewing the hospital's form contract signed by Jane Doe, we note that the contract contains no express reference to a "document, transaction or other extrinsic facts" nor does it set out "a practicable method" by which Jane Doe's "charges" are to be determined. The contract merely states (in pertinent part): "I understand I am financially responsible to the hospital for *charges* not covered by this authorization." (Emphasis added.) HCA Donelson Hospital asserts, however, that its Charge Master is a sufficient means by which to determine Jane Doe's hospital charges, and that the Charge Master thereby supplies a definite price term in the contract.

[7] We disagree. While it is true that the Charge Master *could* be used as a reference in determining a patient's charges, the flaw in the hospital's argument is that the contract itself does not "*contain* [ ] a reference to some document, transaction or other extrinsic facts [e.g., the Charge Master] from which its meaning may be made clear." *See Williston on Contracts,* § 4:27, at 593 (emphasis added). Because the agreement does not refer to a document or extrinsic facts by which the price will be determined, we hold that the price term in the agreement between Jane Doe and HCA Donelson Hospital is indefinite.

In so holding, we are cognizant of the arguments of the hospital and the amici curiae that invalidating the contract in dispute will wreak havoc on both the hospital industry and on non-health-care businesses alike. They argue that hospitals and other businesses commonly use contracts containing language similar to the hospital's use of "charges" in stating the price to be paid by the purchaser. They contend that holding this hospital contract to be indefinite could cause instability in Tennessee's economy because such a holding jeopardizes any contract that does not state a specific price. To be clear, the Court's holding in this case does not invalidate all contracts that do not state a specific price; to the contrary, our holding is based upon the particular facts of this case, *i.e.*, that HCA Donelson Hospital's contract signed by Jane Doe did not provide any reference to a document, transaction or other extrinsic facts by which the price could be determined and the meaning of the term "charge" made clear. Had the agreement adequately defined "charges," the price term of the contract would not have been indefinite.

Enforceability of Indefinite Contract—Quasi–Contract Remedy

[8] **[9]** Having determined that the contract is indefinite, we turn to consider the effect of that indefiniteness on the hospital's right to payment for the medical goods and services Jane Doe received as a patient of the hospital. Where a contract is invalid or unenforceable, the court may impose a contractual obligation when the defendant will be unjustly enriched absent a quasi-contractual obligation. *See Whitehaven Community Baptist Church v. Holloway,* 973 S.W.2d 592, 596 (Tenn.1998) (citing *Paschall's Inc. v. Dozier,* 219 Tenn. 45, 407 S.W.2d 150, 154–55 (1966)); *see also Castelli v. Lien,* 910 S.W.2d 420, 427–28 (Tenn.Ct.App.1995).

> A quantum meruit action is an equitable substitute for a contract claim pursuant to which a party may recover the ***198** reasonable value of goods and services provided to another if the following circumstances are shown:
>
> (1) There is no existing, enforceable contract between the parties covering the same subject matter;
>
> (2) The party seeking recovery proves that it provided valuable goods or services;
>
> (3) The party to be charged received the goods or services;
>
> (4) The circumstances indicate that the parties to the transaction should have reasonably understood that the person providing the goods or services expected to be compensated; and
>
> (5) The circumstances demonstrate that it would be unjust for a party to retain the goods or services without payment.

Swafford v. Harris, 967 S.W.2d 319, 324 (Tenn.1998).

[10] All five circumstances listed in *Swafford* apply to the pending case. First, for the reasons stated earlier in this opinion, there is no existing, *enforceable* contract between the Jane Doe and HCA Donelson Hospital. Second, the record clearly shows that the hospital provided valuable goods or services to Jane Doe. Third, it is undisputed that Jane Doe received the goods or services provided by the hospital. Fourth, the circumstances indicate that the parties reasonably understood that the hospital providing the goods or services expected to be compensated. Fifth, the circumstances demonstrate that it would be unjust for Jane Doe to retain the goods or services without payment to HCA Donelson Hospital. Accordingly, we conclude that the hospital is entitled to be paid the reasonable value of the medical goods and services provided to Jane Doe.

[11] Courts will not award quantum meruit recoveries without some proof of the reasonable value of the goods or services, but the required proof may be an estimation of the value of the goods and services. *Castelli,* 910 S.W.2d at 427. Because our holding will result in a remand of this case for further proceedings, we deem it advisable to briefly address the issue of "reasonable value" for the benefit of the parties and the trial court.

[12] Neither the parties nor our own research have disclosed a Tennessee appellate case considering the issue of "reasonable value" of medical goods and services provided by a hospital to a patient. However, appellate decisions from other states suggest that "reasonable value" in such cases is to be determined by considering the hospital's internal factors as well as the similar charges of other hospitals in the community. *See Galloway v. Methodist Hosp., Inc.,* 658 N.E.2d 611, 614 (Ind.Ct.App.1995) (noting the testimony of hospital's controller that "Hospital's charges were comparable to other facilities in northwest Indiana ... [and that] Hospital's charges were based on Hospital's budgetary needs[,]" the court found that "[t]he fact that Hospital's charges are based on the costs associated with providing health care does not

make the charges unreasonable"); *Heartland Health Sys., Inc. v. Chamberlin,* 871 S.W.2d 8, 11 (Mo.Ct.App.1993) (finding that the testimony of the hospital representative that "she was familiar with the customary charges in the medical industry for services of the same type as those rendered to [the patient]" was sufficient to make prima facie case for the reasonable value of the services rendered)[4]; ***199** *Victory Mem'l Hosp. v. Rice,* 143 Ill.App.3d 621, 97 Ill.Dec. 635, 493 N.E.2d 117, 120 (1986) (stating that "any assessment of the reasonableness of a private hospital's charges must include consideration and recognition of the particular hospital's costs, functions and services to make a valid determination of whether such charges were reasonable for that hospital alone or compared to the charges of other area hospitals"); *Ellis Hosp. v. Little,* 65 A.D.2d 644, 409 N.Y.S.2d 459, 461 (N.Y.App.Div.1978) (stating that proof of the reasonable value of services included testimony that "the cost of the hospital's operation was the basic consideration in establishing the charges for the services rendered" and that "the charges set forth in decedent's ledger were ... similar to those at [another hospital in the community]").

We find that the foregoing standards are appropriate for use in Tennessee in cases in which there is no valid, enforceable contract between a hospital and its patient. We adopt these standards for determining the "reasonable value" of the medical goods and services provided by the hospital to the patient in such cases.

CONCLUSION

The price term in the agreement between Jane Doe and HCA Donelson Hospital is indefinite, and the agreement is therefore unenforceable. For this reason, the trial court correctly denied the hospital's motion for summary judgment. Under quasi-contract principles, HCA Donelson Hospital is entitled to the reasonable value of the medical goods and services it provided to Jane Doe. The judgment of the Court of Appeals is affirmed, and the case is remanded for further proceedings consistent with this opinion.

Costs of this appeal are taxed to the defendant-appellant, HCA Health Services of Tennessee, Inc.

FRANK F. DROWOTA, not participating.

Footnotes

1 The trial court permitted the plaintiffs to use pseudonyms because "Mrs. Doe" is employed in a physician's office, and she feared that public disclosure of her identity might subject her employer to retaliation and/or embarrassment. No issue has been raised on appeal concerning the trial court's decision to allow the plaintiffs to prosecute this action under pseudonyms.

The defendant, HCA Health Services of Tennessee, Inc., operated HCA Donelson Hospital. After the events that led to this lawsuit, the hospital moved to a new location and was renamed Summit Medical Center. For ease of reference, we will refer to the hospital as HCA Donelson Hospital.

2 In addition, the Does' complaint alleged that the hospital violated the Tennessee Consumer Protection Act, Tenn.Code Ann. §§ 47–18–101 to 47–18–125 (Supp.2000); that the hospital violated a duty of good faith and fair dealing; and that the contract was an adhesion contract. Those claims are not at issue in this appeal.

3 HCA Donelson Hospital and the amici curiae argue that the intermediate court's phrase "independent, objective, verifiable means" effectively imposes a requirement that all prices be based upon "independent, objective, verifiable" sources. We do not believe that the interpretation advanced by the defendant and the amici curiae is the meaning intended by the Court of Appeals. Moreover, we do not adopt that phrase in our analysis of the issues discussed in this opinion.

4 We note that the Missouri appellate court also stated in *Heartland Health Sys., Inc. v. Chamberlin* that the hospital did not need to prove that the charge for each individual item billed to the patient was reasonable. 871 S.W.2d at 11. While Missouri law required the hospital to prove both the necessity for and the reasonable value of the services rendered to the patient, the court stated that "the burden of challenging any particular item or items was upon the defendants [-the patient and his mother, who had signed an agreement to pay her son's hospital charges]." *Id.*

West's Tennessee Code Annotated
Title 26. Execution
Chapter 2. Exemptions--Garnishment (Refs & Annos)
Part 3. Homestead Exemptions (Refs & Annos)

T. C. A. § 26-2-301

§ 26-2-301. Basic exemption

Effective: June 27, 2007
Currentness

(a) An individual, whether a head of family or not, shall be entitled to a homestead exemption upon real property which is owned by the individual and used by the individual or the individual's spouse or dependent, as a principal place of residence. The aggregate value of such homestead exemption shall not exceed five thousand dollars ($5,000); provided, individuals who jointly own and use real property as their principal place of residence shall be entitled to homestead exemptions, the aggregate value of which exemptions combined shall not exceed seven thousand five hundred dollars ($7,500), which shall be divided equally among them in the event the homestead exemptions are claimed in the same proceeding; provided, if only one (1) of the joint owners of real property used as their principal place of residence is involved in the proceeding wherein homestead exemption is claimed, then the individual's homestead exemption shall be five thousand dollars ($5,000). The homestead exemption shall not be subject to execution, attachment, or sale under legal proceedings during the life of the individual. Upon the death of an individual who is head of a family, any such exemption shall inure to the benefit of the surviving spouse and their minor children for as long as the spouse or the minor children use such property as a principal place of residence.

(b) If a marital relationship exists, a homestead exemption shall not be alienated or waived without the joint consent of the spouses.

(c) The homestead exemption shall not operate against public taxes nor shall it operate against debts contracted for the purchase money of such homestead or improvements thereon nor shall it operate against any debt secured by the homestead when the exemption has been waived by written contract.

(d) A deed, installment deed, mortgage, deed of trust, or any other deed or instrument by any other name whatsoever conveying property in which there may be a homestead exemption, duly executed, conveys the property free of homestead exemption, but the homestead exemption may not be waived in a note, other instrument evidencing debt, or any other instrument not conveying property in which homestead exemption may be claimed.

(e) Notwithstanding the provisions of subsection (a) to the contrary, an unmarried individual who is sixty-two (62) years of age or older shall be entitled to a homestead exemption not exceeding twelve thousand five hundred dollars ($12,500) upon real property that is owned by the individual and used by the individual as a principal place of residence; a married couple, one (1) of whom is sixty-two (62) years of age or older and the other of whom is younger than sixty-two (62) years of age, shall be entitled to a homestead exemption not exceeding twenty thousand dollars ($20,000) upon real property that is owned by one (1) or both of the members of the couple and used by the couple as their principal place of residence; and a married couple, both of whom are sixty-two (62) years of age or older, shall be entitled to a homestead exemption not exceeding twenty-five thousand dollars ($25,000) upon real property that is owned by one (1) or both of the members of the couple and used by the couple as their principal place of residence.

(f) Notwithstanding subsection (a) to the contrary, an individual who has one (1) or more minor children in the individual's custody shall be entitled to a homestead exemption not exceeding twenty-five thousand dollars ($25,000) on real property that is owned by the individual and used by the individual as a principal place of residence.

Credits

1870 Acts, c. 80, § 1; 1870-1871 Acts, c. 71, § 4; 1879 Acts, c. 171, §§ 1, 2; 1933 Pub.Acts, c. 72, § 1; 1943 Pub.Acts, c. 131, § 1; 1975 Pub.Acts, c. 285, § 1; 1979 Pub.Acts, c. 61, § 1; 1980 Pub.Acts, c. 919, § 1; 2004 Pub.Acts, c. 659, § 1, eff. May 14, 2004; 2007 Pub.Acts, c. 560, § 1, eff. June 27, 2007.

Formerly Shannon's Code, § 3798; mod. 1932 Code, § 7719; 1950 Code Supp., § 7719; § 26-301.

Notes of Decisions (209)

T. C. A. § 26-2-301, TN ST § 26-2-301
Current with laws from the 2015 First Reg. Sess., eff. through March 17, 2015

End of Document

IN THE GENERAL SESSIONS COURT
OF _____ COUNTY, TENNESSEE

,	)	
Plaintiff,	)	
vs	)	Docket Number:
	)	
,	)	
Defendant.	)	

DEBTOR'S CLAIM OF EXEMPT PROPERTY
(OR AMENDMENT TO DEBTOR'S FILING OF EXEMPT PROPERTY)

I, the Judgment Debtor herein and a resident of Tennessee, claim and declare the following items, the total value of which does not exceed $10,000, to be exempt from execution, seizure or attachment pursuant to the provisions of Tennessee Code Annotated §26-2-101 et seq. (or to amend the previous list filed to assert such exemption).

Item	**Value**
Automobiles/Trucks/Vehicles:	
_____	$_____
_____	$_____
Furniture and Appliances:	
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
_____	$_____
Other Household Goods (kitchen utensils, linens, etc.):	
_____	$_____
_____	$_____
_____	$_____
Other Items (including but not limited to: bank accounts **not** listed on 2nd page of form; cash; etc.):	
_____	$_____
_____	$_____
_____	$_____
TOTAL (not to exceed $10,000)	$_____

NOTE: CONTINUED

Tools or equipment used to earn a living (Tools of the Trade):

I further declare the following items, the value of which does not exceed $1900, to be exempt tools of the trade:

Item	Value
_____	$_____
_____	$_____
_____	$_____
TOTAL	$_____

This personal property exemption right is in addition to certain items that are exempt by law and do not need to be included in my $10,000 total, including: all necessary and proper wearing apparel for the actual use of the debtor and the debtors family and the trunks or receptacles necessary to contain them; all family portraits and pictures, the family Bible, heath care aids; and school books; **and further including funds on deposit in checking and/or savings accounts at** (name of bank and account number):

_____

_____

consisting solely of Social Security, SSI, Unemployment, Workers Comp, AFDC/Families First, Veteran's benefits, alimony or child support, and/or state, federal or city pension. This is in addition to other exemption rights that may be provided by state or federal law.

_____
Defendant (Signature)

Sworn to and subscribed before me this the _____ day of _____, 2015.

_____
Notary Public (or Clerk)

My Commission Expires: _____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Debtor's Claim of Exempt Property has been mailed to the Plaintiff's Attorney, _____, on this the ____ day of _____, 2015.

_____
Attorney for Defendant

West's Tennessee Code Annotated
Title 26. Execution
Chapter 2. Exemptions--Garnishment (Refs & Annos)
Part 1. Exemptions

T. C. A. § 26-2-103

§ 26-2-103. Personal property; selection

Effective: July 1, 2014
Currentness

(a) Personal property to the aggregate value of ten thousand dollars ($10,000) debtor's equity interest shall be exempt from execution, seizure or attachment in the hands or possession of any person who is a bona fide citizen permanently residing in Tennessee, and such person shall be entitled to this exemption without regard to the debtor's vocation or pursuit or to the ownership of the debtor's abode. Such person may select for exemption the items of the owned and possessed personal property, including money and funds on deposit with a bank or other financial institution, up to the aggregate value of ten thousand dollars ($10,000) debtor's equity interest.

(b) An item shall not be eligible, in whole or in part, for the personal property exemption provided by this part, if the item has been purchased with or maintained by fraudulently obtained funds or if ownership of the item has been maintained using fraudulently obtained funds. A court shall be required to find by a preponderance of the evidence that an item was purchased with or maintained by funds obtained by defrauding another person or that ownership of an item was maintained by funds obtained by defrauding another person in order to disqualify the item from eligibility for the personal property exemption.

Credits
1978 Pub.Acts, c. 915, § 3; 1980 Pub.Acts, c. 919, § 2; 2010 Pub.Acts, c. 787, § 1, eff. July 1, 2010; 2014 Pub.Acts, c. 803, § 1, eff. July 1, 2014.

Formerly § 26-202; § 26-2-102.

Notes of Decisions (59)

T. C. A. § 26-2-103, TN ST § 26-2-103
Current with laws from the 2015 First Reg. Sess., eff. through March 17, 2015

End of Document

West's Tennessee Code Annotated
Title 26. Execution
Chapter 2. Exemptions--Garnishment (Refs & Annos)
Part 3. Homestead Exemptions (Refs & Annos)

T. C. A. § 26-2-301

§ 26-2-301. Basic exemption

Effective: June 27, 2007
Currentness

(a) An individual, whether a head of family or not, shall be entitled to a homestead exemption upon real property which is owned by the individual and used by the individual or the individual's spouse or dependent, as a principal place of residence. The aggregate value of such homestead exemption shall not exceed five thousand dollars ($5,000); provided, individuals who jointly own and use real property as their principal place of residence shall be entitled to homestead exemptions, the aggregate value of which exemptions combined shall not exceed seven thousand five hundred dollars ($7,500), which shall be divided equally among them in the event the homestead exemptions are claimed in the same proceeding; provided, if only one (1) of the joint owners of real property used as their principal place of residence is involved in the proceeding wherein homestead exemption is claimed, then the individual's homestead exemption shall be five thousand dollars ($5,000). The homestead exemption shall not be subject to execution, attachment, or sale under legal proceedings during the life of the individual. Upon the death of an individual who is head of a family, any such exemption shall inure to the benefit of the surviving spouse and their minor children for as long as the spouse or the minor children use such property as a principal place of residence.

(b) If a marital relationship exists, a homestead exemption shall not be alienated or waived without the joint consent of the spouses.

(c) The homestead exemption shall not operate against public taxes nor shall it operate against debts contracted for the purchase money of such homestead or improvements thereon nor shall it operate against any debt secured by the homestead when the exemption has been waived by written contract.

(d) A deed, installment deed, mortgage, deed of trust, or any other deed or instrument by any other name whatsoever conveying property in which there may be a homestead exemption, duly executed, conveys the property free of homestead exemption, but the homestead exemption may not be waived in a note, other instrument evidencing debt, or any other instrument not conveying property in which homestead exemption may be claimed.

(e) Notwithstanding the provisions of subsection (a) to the contrary, an unmarried individual who is sixty-two (62) years of age or older shall be entitled to a homestead exemption not exceeding twelve thousand five hundred dollars ($12,500) upon real property that is owned by the individual and used by the individual as a principal place of residence; a married couple, one (1) of whom is sixty-two (62) years of age or older and the other of whom is younger than sixty-two (62) years of age, shall be entitled to a homestead exemption not exceeding twenty thousand dollars ($20,000) upon real property that is owned by one (1) or both of the members of the couple and used by the couple as their principal place of residence; and a married couple, both of whom are sixty-two (62) years of age or older, shall be entitled to a homestead exemption not exceeding twenty-five thousand dollars ($25,000) upon real property that is owned by one (1) or both of the members of the couple and used by the couple as their principal place of residence.

(f) Notwithstanding subsection (a) to the contrary, an individual who has one (1) or more minor children in the individual's custody shall be entitled to a homestead exemption not exceeding twenty-five thousand dollars ($25,000) on real property that is owned by the individual and used by the individual as a principal place of residence.

Credits

1870 Acts, c. 80, § 1; 1870-1871 Acts, c. 71, § 4; 1879 Acts, c. 171, §§ 1, 2; 1933 Pub.Acts, c. 72, § 1; 1943 Pub.Acts, c. 131, § 1; 1975 Pub.Acts, c. 285, § 1; 1979 Pub.Acts, c. 61, § 1; 1980 Pub.Acts, c. 919, § 1; 2004 Pub.Acts, c. 659, § 1, eff. May 14, 2004; 2007 Pub.Acts, c. 560, § 1, eff. June 27, 2007.

Formerly Shannon's Code, § 3798; mod. 1932 Code, § 7719; 1950 Code Supp., § 7719; § 26-301.

Notes of Decisions (209)

T. C. A. § 26-2-301, TN ST § 26-2-301
Current with laws from the 2015 First Reg. Sess., eff. through March 17, 2015

End of Document

West's Tennessee Code Annotated
Title 24. Evidence and Witnesses
Chapter 5. Presumptions

T. C. A. § 24-5-107

§ 24-5-107. Sworn accounts; denials

Currentness

(a) An account on which action is brought, coming from another state or another county of this state, or from the county where suit is brought, with the affidavit of the plaintiff or its agent to its correctness, and the certificate of a state commissioner annexed thereto, or the certificate of a notary public with such notary public's official seal annexed thereto, or the certificate of a judge of the court of general sessions, with the certificate of the county clerk that such judge is an acting judge within the county, is conclusive against the party sought to be charged, unless that party on oath denies the account or except as allowed under subsection (b).

(b) The court shall allow the defendant orally to deny the account under oath and assert any defense or objection the defendant may have. Upon such denial, on the plaintiff's motion, or in the interest of justice, the judge shall continue the action to a date certain for trial.

Credits
1819 Acts, c. 25, § 1; 1866-1867 Acts, c. 30, § 3; 1879 Acts, c. 40, § 1; 1903 Acts, c. 33, § 1; 1957 Pub.Acts, c. 68, § 1; modified; impl. am. by 1978 Pub.Acts, c. 934, §§ 22, 36; impl. am. by 1979 Pub.Acts, c. 68, § 3; 1995 Pub.Acts, c. 519, § 1, eff. June 12, 1995.

Formerly 1858 Code, § 3780; Shannon's Code, § 5561; 1932 Code, § 9732; § 24-509.

Notes of Decisions (33)

T. C. A. § 24-5-107, TN ST § 24-5-107
Current with laws from the 2015 First Reg. Sess., eff. through March 17, 2015

End of Document