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Appellant*

**RE: Ron Palimere, and R & E Properties, INC. v. Rudolph Harris
Civil Action No. 2005-06-369**

LETTER OPINION

Dear Counsel:

This is an appeal *de novo* brought pursuant to 10 Del. C. §9571. Trial in the above captioned matter took place on Thursday, March 20, 2008. Following receipt of evidence and testimony, the Court reserved decision. This is the final order and decision by the Court.

The main issues following trial are whether Rudolph Harris (“Plaintiff”) proved by a preponderance of the evidence that the building he was living in collapsed as a result of negligence on the part of Ron Palimere and R&E Properties (“Defendants”), and if so, the amount of damages Plaintiff should be entitled to recover. For the reasons set forth below, the Court finds based upon the trial record that the Defendants are liable for the

damage to the apartment building and that Plaintiff is entitled to recover \$8,000.00 in damages, plus costs and post judgment interest.

THE FACTS

The Court finds the following relevant facts: Seventy-five year old Plaintiff Rudolph Harris is a former tenant of Defendant Ron Palimere in an apartment at 1314 North Broom Street. For about twenty years, until 2003, plaintiff and his disabled wife occupied a first floor unit in the building. The unit had one bedroom, a den, living room, kitchen and bathroom. Plaintiff was also permitted to use the basement as a storage area. Another unit occupied the two floors directly above Plaintiff's home, and additional units were housed in the portion of the building immediately adjacent to Plaintiff. For the last several years of Plaintiff's tenancy, the second and third floor unit remained vacant.

At the time Plaintiff moved into the building, he was working as a handyman for Defendants and continued to do so for several years afterwards. The rental on the unit was remained \$450 for the duration of Plaintiff's occupancy. Approximately every other month, Defendant Palimere would personally come to Plaintiff's residence to obtain the rent, oftentimes staying a few extra minutes to spend time with Plaintiff and his wife.

At some point during Plaintiff's occupancy, the kitchen ceiling began to leak. Plaintiff called Defendant Palimere, and agreed that Plaintiff would fix it himself and Palimere would reimburse him for the cost of the materials. Closer to the end of the tenancy, a leak began in the front of the unit in the living room. Plaintiff began using buckets to collect the water. Plaintiff also noticed that the main wall outside of his unit began separating from the home on the third floor. Plaintiff told Defendant Palimere several times about the problem. Defendant enlisted the help of a few workers to repair

the leaking wall, nevertheless, the leak continued after the workers finished and left the site.

One winter day in 2003, Plaintiff and his wife were inside of the unit watching TV when he heard a crashing noise coming from the upstairs unit. Plaintiff went to the second floor, saw nothing unusual, and then ascended to the third floor, where he observed briks all over the floor. Plaintiff contacted Defendant and told him what had occurred. Because Plaintiff questioned the safety of the building, he began searching for another place for he and his wife to live. He was placed on waiting lists at both the Housing Authority and the Terrace. Defendant did not make any attempts to remedy the problem, of which Plaintiff had informed him.

On March 6, 2003, the front portion of the outside wall supporting the length of Plaintiff's unit collapsed. There was no damage to the adjoining units at 312 North Broom Street. Plaintiff heard a loud noise, went outside, and saw that the house was "crumbled". His wife, who is physically disabled, refused to leave the home and had to be brought out of the house by the local police and fire departments. Plaintiff made attempts to go back into the home to retrieve some items, but was refused entry by the emergency workers, because of the danger of the situation. Harris and his wife were forced to leave the home with nothing more than the clothes they were wearing at the time of the collapse. Soon thereafter, the units at 314 North Broom Street were demolished.

From 1978 until at least 2003, Defendant R&E Properties was the record owner of 314 North Broom Street. Defendant Palimere was the President of the company at all times relevant to this suit. Defendant Palimere allowed the apartment above Harris' to

remain unoccupied after the former tenants left in 2001. The court is convinced by a preponderance of the evidence that Plaintiff Harris had told Defendant Palimere that the building was in danger of collapsing.

On the day of the collapse, Defendant Palimere was contacted at work. He immediately came to the residence and observed the results of the collapse. Defendant Palimere told Harris not to tell others that he, Palimere, knew about the problems with the wall. The building and its contents was demolished within a few days of the collapse. Defendant Palimere did notice furniture in the dwelling and did see many belongings had fallen into the basement portion of the apartment.

OPINION AND ORDER

Harris is seeking to be compensated for his loss in this matter under several theories of recovery. In his pleadings, Plaintiff indicates that recovery is controlled by 25 Del.C. §5305. This statute requires a landlord ensure that the rental unit does not “endanger the health, welfare or safety of the tenants,” and also to “make all repairs and arrangements...necessary to put and keep the rental unit and the appurtenances thereto in as good a condition as they were...at the commencement of the tenancy.”

The Delaware code places a specific duty on the landlord to ensure the property in question is reasonably safe at the inception of the tenancy and to maintain the premises in a safe condition for the duration of the landlord/tenant relationship. Based on the testimony given and the evidence presented in the record, the Court is satisfied that the issues surrounding structural soundness of the wall did not occur suddenly, but appeared over a period of time. Plaintiff Harris repeatedly informed defendant Palimere about his concerns regarding the safety of the wall. Defendant Palimere personally visited the

rental unit on several occasions to collect rent, and each time had an opportunity to observe and address the issues presented by the wall. He failed to take any action to repair the wall so that it no longer posed a threat to the welfare of his tenants. Therefore, it appears from the record that the defendants failed to comply with the requirements of the statute, and under the doctrine of negligence *per se*, plaintiff is entitled to a recovery for his damages.

Harris is entitled to recover damages for his loss at the hands of defendants' negligence. Plaintiff Harris has estimated his damages equal approximately \$20,000.00 for the total loss of all of his belongings, and has provided to the Court an itemized listing of property lost in the collapse based on his belief of the value of the items at the time of loss. The Court recognizes the difficulty with which plaintiff had in calculating damages, and his inability to provide receipts for his property because he was prevented by the city from entering into or returning to the residence after the collapse occurred. Nevertheless, Harris has the burden of proving his damages by a preponderance of the evidence. Harris provided testimony and the Court finds by a preponderance of the evidence that Plaintiffs loss is \$8,000.00 plus interest and pre judgment interest. Plaintiffs attorney is to present an order for the court to execute.

William C. Bradley
Judge