IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CHRISTOPHER BO BERGESON AND AMY LYNN BERGESON,
AS SURVIVING CHILDREN OF LYNN RENEE BERGESON, DECEASED,
Plaintiffs/Appellees,

v.

WEST FRONTIER CONDOMINIUMS HOA, INC.,
AN ARIZONA CORPORATION,
Defendant/Appellant.

No. 2 CA-CV 2019-0117
Filed October 30, 2020

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Gila County
No. CV20080002
The Honorable Bryan B. Chambers, Judge

VACATED AND REMANDED

COUNSEL

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and

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

E S P I N O S A, Judge:

¶1 West Frontier Condominiums HOA, Inc. ("West Frontier" or "the HOA") appeals from the trial court's judgment, following a jury verdict, in favor of Christopher and Amy Bergeson ("the Bergesons"), arguing the court erred by denying West Frontier's motion for judgment as a matter of law, admitting irrelevant and prejudicial evidence, and improperly instructing the jury. West Frontier also contends the jury's verdict was contrary to the evidence. For the following reasons, we vacate the court's judgment and remand for entry of judgment consistent with this decision.

Factual and Procedural Background

¶2 West Frontier is the unit owners' association for the Frontier Condominiums in Payson, Arizona. In October 2005, unit owners David and Joan Levengood rented their unit to Lynn Bergeson. In 2006, with the Levengoods' permission, but without seeking permission from West Frontier or providing any notice that she was doing so, Lynn replaced an overhead light fixture in the Levengoods' unit with a ceiling fan. In 2007, a smoldering fire ignited in the wiring above the fan, producing lethal levels of carbon monoxide that killed Lynn.

¶3 The Bergesons, Lynn's children, brought a wrongful death suit against the Levengoods and West Frontier. This court twice reversed the trial court's entry of summary judgment in West Frontier's favor,[1] and

[1]*See Bergeson v. W. Frontier Condos. HOA, Inc.*, No. 2 CA-CV 2016-0134, ¶¶ 1, 25 (Ariz. App. Aug. 10, 2017) (mem. decision); *Bergeson v. W.*

in 2019, the case proceeded to trial on the Bergesons' claim that West Frontier had negligently caused Lynn's death.[2] The jury returned a verdict for the Bergesons, apportioning seventy-five percent of fault to West Frontier and twenty-five percent of fault to non-parties. After the trial court entered an amended judgment in favor of the Bergesons, West Frontier filed a renewed motion for judgment as a matter of law or in the alternative a motion for new trial. The court denied its motions, after which West Frontier brought this appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1), (5)(a).

Discussion

¶4 West Frontier contends the trial court erred by denying its motion for judgment as a matter of law (JMOL). We review the denial of a JMOL motion de novo but view the evidence in the light most favorable to the Bergesons. *See Dupray v. JAI Dining Servs. (Phoenix), Inc.*, 245 Ariz. 578, ¶ 11 (App. 2018). A court may grant JMOL only when "a reasonable jury would not have a legally sufficient evidentiary basis to find for [a] party" on an issue that is necessary to the party's claim or defense. Ariz. R. Civ. P. 50(a)(1). A court "may not weigh the credibility of witnesses or resolve conflicts of evidence and reasonable inferences drawn therefrom," *McBride v. Kieckhefer Assocs., Inc.*, 228 Ariz. 262, ¶ 11 (App. 2011), but "must give 'full credence to the right of the jury to determine credibility, weigh the evidence, and draw justifiable conclusions therefrom,'" *id.* (quoting *State v. Clifton*, 134 Ariz. 345, 348 (App. 1982)).

¶5 The Bergesons' wrongful death action was based on their claim that West Frontier had negligently failed to use reasonable care to

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Frontier Condos. HOA, Inc., No. 2 CA-CV 2013-0045, ¶¶ 1, 22 (Ariz. App. Dec. 24, 2013) (mem. decision).

[2]The Bergesons and the Levengoods entered into an agreement in which the Levengoods stipulated to entry of judgment against them and assigned their claims against West Frontier's insurer to the Bergesons. The insurer thereafter sought and received a declaratory judgment in federal district court stating that any claim based on the Levengoods' liability was not covered by the insurance policy and the insurer had no duty to defend the Levengoods. *Am. Fam. Ins. Grp. v. Bergeson*, No. CV09-0360-PHX-DGC, 2010 WL 3705344, at *2, *5 (D. Ariz. Sept. 14, 2010). The Ninth Circuit affirmed the district court's ruling. *Am. Fam. Ins. Co. v. Bergeson*, 472 F. App'x 604, 606 (9th Cir. 2012).

discover and fix faulty wiring above the ceiling fan in the Levengoods' living room. The basic elements of negligence are "a duty owed to the plaintiff, a breach thereof and an injury proximately caused by the breach." *Clark v. New Magma Irrigation & Drainage Dist.*, 208 Ariz. 246, ¶ 8 (App. 2004) (quoting *Ballesteros v. State*, 161 Ariz. 625, 627 (App. 1989)). West Frontier argues the trial court should have granted it JMOL because the Bergesons failed to present any evidence that it breached its duty to Lynn.

¶6 At trial, the Bergesons introduced evidence that electrical code violations in the ceiling, specifically the lack of a junction box and unsecured electrical wiring, "could [have] create[d] some sort of" short circuit in the ceiling. Although West Frontier controverted that theory below and continues to do so on appeal,[3] it chiefly maintains the Bergesons failed to introduce any evidence of negligence on its part. Specifically, West Frontier argues the Bergesons did not present evidence that it breached its duty to maintain common areas by either causing the dangerous condition, having actual notice of it, or having any reason to be aware of it. *See Preuss v. Sambo's of Ariz., Inc.*, 130 Ariz. 288, 289 (1981).

¶7 The jury was instructed on a business owner's duty to use reasonable care to warn of or remedy an unreasonably dangerous condition of which it had notice and that it could find West Frontier had notice of an unreasonably dangerous condition if (1) West Frontier or its employees created the condition, (2) West Frontier or its employees actually knew of the condition, or (3) the condition existed for a sufficient length of time that West Frontier or its employees, in the exercise of reasonable care, should have known of it. *See Andrews v. Fry's Food Stores of Ariz.*, 160 Ariz. 93, 95 (App. 1989); *Walker v. Montgomery Ward & Co.*, 20 Ariz. App. 255, 258 (1973). West Frontier challenges the sufficiency of the evidence with regard to

[3] West Frontier disputes the Bergesons' evidence, pointing to its expert's testimony that it was improper installation of the ceiling fan that caused the fire, while the Bergesons' expert "had no opinion as to what specific electrical fault caused the fire." But there was sufficient evidence for a jury to infer that the fire was more probably than not caused by the wiring in the ceiling rather than poor installation of the fan. *See Brand v. J.H. Rose Trucking Co.*, 102 Ariz. 201, 206 (1967) ("[I]f a possible reasonable inference is present, the issue must be presented to the jury for its determination."); *see also Ray v. Bush*, 89 Ariz. 177, 179-80 (1961) (jury permitted to infer unguarded lamp sitting on flammable material caused fire despite no evidence lamp was knocked over).

creation of the condition and constructive notice of the condition, and we address those elements in turn.[4]

Creation of Condition

¶8 West Frontier contends there was no evidence that it or its contractors were responsible for the creation of the dangerous condition, either the lack of a junction box or any unsecured electrical wiring. It points to evidence establishing that the condominiums were built in the mid-1980s, and the electrical work on the building, which included the Levengoods' unit, was inspected and approved by the Town of Payson in February 1985. Although the Condominium Declaration establishing the Frontier Condominium was recorded in 1986, West Frontier was not incorporated until March 2007.

¶9 The Bergesons concede that West Frontier did not incorporate until years after the condominiums were built, but argue the HOA should be deemed to stand in the shoes of the builder-developer of the condominiums and any negligence at that time be attributed to it. They assert "[t]he incorporation of West Frontier did not create a new entity but merely changed the form of the statutorily required association." And, it is a "mere continuation" of the unincorporated association and liable to the same extent because "[t]he developer and original declarant for West Frontier were the same person." The only authority they cite for that proposition is *A.R. Teeters & Assocs., Inc. v. Eastman Kodak Co.*, 172 Ariz. 324, 329 (App. 1992), a successor liability case. There, this court explained that absent fraud to avoid debts, an assumption agreement, or the purchasing corporation acting as a "mere continuation" or "reincarnation" of the former, a transfer of assets and customers between corporations does not make the successor corporation liable for the debts and liabilities of the former. We thus rejected the argument that "substantial similarity of ownership and control" between the two companies, alone, was "enough to impose the debts and liabilities" of the former company on the successor. *Id.* at 330-31.

¶10 The Bergesons presented no evidence of an assumption of liabilities or that West Frontier was a "mere continuation" of a predecessor entity, and they have not explained how this case supports holding West Frontier liable for the creation of the allegedly deficient condition where the

[4]It is undisputed that West Frontier did not have actual knowledge of the condition.

developer obtained the necessary permits and passed electrical inspections in 1985. Moreover, the developer was no longer involved with the condominiums since at least 1995. [5] We therefore find *Teeters* distinguishable and inapposite, *see Miller v. Hehlen*, 209 Ariz. 462, n.7 (App. 2005) (to be a "successor in interest," party must retain same rights as the original owners without a change in ownership; change in form only not in substance), and the Bergesons have not presented any other relevant authority, nor are we aware of any, upon which to anchor its claim of vicarious liability on this basis.

¶11 Furthermore, even assuming, without deciding, that West Frontier is a continuation of the condominium association first created in 1986 and therefore liable to the same extent, we agree that it nevertheless would not be responsible for the creation of the dangerous condition. The evidence in the record establishes that the condominiums were built in the mid-1980s, and the electrical work on the building that included the Levengoods' unit was inspected and approved by the Town of Payson in October 1984 and February 1985, rather than in 1987 as the Bergesons claimed at oral argument before this court, citing a form "inspection request" for electrical work in the building. That document does not demonstrate the electrical work had not previously been completed and passed inspection, nor is it, in light of the other evidence in the record, sufficient to withstand West Frontier's JMOL motion on this basis. *See* Ariz. R. Civ. P. 50(a)(1) (JMOL should be granted when "a reasonable jury would not have a legally sufficient evidentiary basis to find for [a] party" on an issue that is necessary to the party's claim or defense). Thus, neither West nor its employees or independent contractors can be deemed to have created the defective condition in the ceiling of the Levengoods' unit.

Constructive Notice of Dangerous Condition

¶12 We next consider West Frontier's argument that the Bergesons presented no evidence that West Frontier knew or should have known of the condition of the wiring above the ceiling, including any electrical problems or incidents that might have put West Frontier on notice to investigate or inspect for latent wiring deficits. Both of the Bergesons'

[5]Another entity, West Frontier LLC, was the declarant for the first amended declarations recorded in 1995, but it is unclear from the record what, if any, relationship that LLC had to the defendant West Frontier here. The original builder-developer of the condominiums, however, was not involved with the LLC in 1995 or defendant West Frontier in 2007.

expert witnesses testified about possible causes of the fire, but neither provided any reason for West Frontier to have known or suspected there were any defects in the ceiling wiring. The Bergesons claim they demonstrated such grounds, however, by presenting expert testimony about electrical code violations in the Levengoods' kitchen. We reject that argument for several reasons.

Admission of Unrelated Kitchen Evidence

¶13 Over West Frontier's objections, the Bergesons introduced testimony that after cutting holes in the kitchen wall, their experts determined there were missing "nail plates" where they were required behind a section of drywall. There was also some exposed wiring behind the range that was not visible until the range had been moved away from the wall, and it was determined the electric outlet for the range was not "where [it] is supposed to be to comply with [the] Code"; all situations discovered through investigation of the Levengoods' unit following the accident. But there was no evidence that those "code violations" were previously known to West Frontier or had been brought to its attention by any condominium occupants, or that they were related to the wiring in the living room ceiling.[6] Thus, the kitchen deficits were irrelevant to the issue of West Frontier's notice of electrical issues that caused or contributed to the accident, and that testimony was not competent evidence of its alleged negligence regarding the ceiling wiring in the living room. *See* Ariz. R. Evid. 401 (evidence is relevant if it makes fact "more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action"); *cf. Ong v. Pepsi Cola Metro. Bottling Co.*, 18 Ariz. App. 457, 461 (1972) (trial court erred by instructing jury on potential building code violations when no evidence of their relation to the cause of fire had been admitted). And as West Frontier points out, absent any reasons to suspect faulty wiring, it would not be reasonable for it to be expected to cut open some or all ceilings and walls or remove all light fixtures in the privately owned units.[7] *See Piccola v. Woodall*, 186 Ariz. 307,

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[6]In fact, one of the Bergesons' experts expressly acknowledged that the code violations in the kitchen had nothing to do with the cause of the fire.

[7]The Bergesons introduced no evidence, nor do they assert, that opening ceilings or removing light fixtures to inspect related electrical wiring is the standard of care for a building owner or condominium association to discover defective conditions, either routinely or after the

311 (App. 1996) (landlord's duty to inspect arises when "reason to suspect" a defect); *see also Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, ¶ 13 (App. 2007) (no notice of dangerous condition where accident was first reported to occur and no evidence that business owner was aware of any previous injuries).

¶14 We thus agree with West Frontier that the trial court abused its discretion in admitting irrelevant testimony about the kitchen. *See Waddell v. Titan Ins. Co.*, 207 Ariz. 529, ¶ 28 (App. 2004). The existence of code violations that were not discovered until after the accident could not impute notice to West Frontier of the electrical defects that caused Lynn's death, particularly in the absence of any reason to suspect or investigate latent wiring defects. *See Piccola*, 186 Ariz. at 311 (landlord's duty of reasonable care requires inspection if "reason to suspect defects"). The Bergesons assert, "Actual notice of the dangerous condition is not necessary. It is sufficient that the condition existed for a long enough period of time that, in the exercise of reasonable care, the homeowners association should have discovered it." But they do not explain how the passage of time would be germane here and they acknowledge *Piccola*'s requirement of a "reason to suspect" defects, without identifying any such reason. *See id.; see also Sheppard v. Crow-Barker-Paul No. 1 Ltd. P'ship*, 192 Ariz. 539, ¶ 24 (App. 1998) (duty to inspect arises when owner has reason to suspect defect).

¶15 Nor did the Bergesons present any evidence of any previous occurrences or accidents that might have provided such a reason to inspect light fixtures or related wiring. *Cf. Slow Dev. Co. v. Coulter*, 88 Ariz. 122, 125 (1960) (evidence of other similar accident admissible to prove notice of dangerous condition). Unlike the kitchen-violation evidence here, in cases where previous incidents were relevant to proving notice, the defendants actually knew of the incidents before the subsequent injury occurred. *See, e.g., Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 450 (1982) (evidence of previous similar incidents relevant to prove notice of dangerous condition or negligence in allowing condition to continue); *Burgbacher v. Mellor*, 112 Ariz. 481, 483 (1975) (evidence of similar prior accidents tends to prove

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passage of some period of time. *See Preuss*, 130 Ariz. at 290 (no breach of duty absent owner's failure to comply with reasonable standard of care to discover dangerous condition and no showing condition had existed for sufficient length of time); *Walker*, 20 Ariz. App. at 259 (rejecting argument that failure to initiate periodic inspection routine raises jury question of breach of reasonable care).

notice of a condition). Because there was no evidence that West Frontier knew of any similar occurrences or wiring defects in the Levengoods' or any other condominium unit before the unprecedented ceiling fire that occurred here, the Bergesons cannot claim notice to West Frontier on this basis. *See Slow Dev. Co.*, 88 Ariz. at 125-26.

¶16 Further, the admission of the kitchen-code-violation testimony was unfairly prejudicial to West Frontier. That improper evidence allowed the jury to conclude West Frontier was at fault for Lynn's death on the basis of electrical issues that it was entirely unaware of. Absent that testimony, the Bergesons could not have argued in closing, as they did, that West Frontier should have known of hidden problems with the wiring above the ceiling fan—an essential pillar of their theory of breach—because of the code violations in the kitchen. *See Preuss*, 130 Ariz. at 289 (duty to use reasonable care to warn of or remedy unreasonably dangerous condition of which defendant had notice). Because the jury was permitted to rely on this irrelevant evidence in reaching its verdict, its admission cannot be deemed harmless and was reversible error. *See* Ariz. R. Evid. 402 (irrelevant evidence inadmissible); *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 7 (App. 1998); *Elia v. Pifer*, 194 Ariz. 74, ¶ 23 (App. 1998) (admission of evidence prejudicial if it permits jury to decide case on factors other than those related to negligence).

Non-Delegable Duty Theory

¶17 The Bergesons further maintain that even if West Frontier lacked notice of the dangerous condition, it remains liable because it improperly ceded responsibility for its "non-delegable duty," citing *Ft. Lowell-NSS Ltd. P'ship v. Kelly*, 166 Ariz. 96, 104 (1990), and the related instruction provided to the jury at trial. In *Ft. Lowell*, our supreme court held that under Restatement (Second) of Torts (1965), generally followed in Arizona, and specifically under § 422, a landowner could not avoid liability for the negligence of its independent contractor for work entrusted to it, regardless of whether the landowner had notice of the condition. *Id.* at 102-04.

¶18 Over West Frontier's objection,[8] the jury was instructed that West Frontier "can be liable for the negligence of its employees and third

[8]The Bergesons' contention that West Frontier waived any objections to the non-delegable duty instruction is not supported by the record. West Frontier objected to the instruction in a response to the Bergesons' motion

parties or independent contractors even if the HOA itself took every precaution and did not know of the dangerous condition." To the extent the instruction permitted the jury to conclude that West Frontier could be liable for the negligence of "third parties" who were neither its employees nor independent contractors, the instruction was an incorrect statement of law. *See id.* at 104. Moreover, the instruction was not appropriate in the absence of any evidence that any West Frontier employee or independent contractor was even involved, let alone negligent.[9] *See id.* ("Although no fault of the possessor need be shown, the negligence of the independent contractor must be proven before liability may attach to the employer.").

¶19 At trial, the Bergesons claimed negligence by West Frontier maintenance employee Marc Furry. West Frontier had hired Furry as a "manager" to inspect the premises and perform routine maintenance, and he was also "expected to inspect and discover any unsafe conditions." The Bergesons, however, point to nothing that would have prompted Furry to conduct any inspection inside the Levengoods' unit or reasonably know of any problems in the ceiling wiring. *See Preuss*, 130 Ariz. at 289 (premises liability requires actual knowledge of condition or that owner should have known of the condition "in the exercise of ordinary care" (quoting *Walker*, 20 Ariz. App. at 258)). West Frontier's former president testified that he had "no idea" how he would discover the allegedly faulty electrical work "without tearing out walls." As noted above, the Bergesons never introduced any evidence, or even argued, that such an undertaking was reasonably required as a basis for imputing notice of the condition to the HOA. Rather, they suggested inspections could have occurred "when a

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in limine, specifically arguing their "reliance on *Ft. Lowell* is misplaced." West Frontier also objected when settling final instructions with the trial court, contending "I do not believe Fort Lowell says that even if the HOA itself took every precaution and it did not know the dangerous condition [—] that's argument."

[9]West Frontier did not make this argument when settling final jury instructions, nor did it need to when, in context, the instruction referred to West Frontier's ("its") employees, third parties, and subcontractors. In its JMOL motion West Frontier specifically asserted "there are no facts in this case from which any jury could conclude that the HOA hired contractors or subcontractors to install that electrical work, because it was already completed two years before."

unit sells or when tenants move in and out," but did not explain how that would have led to discovery of any electrical deficits in the ceiling.

¶20 In the absence of any evidence of negligence on Furry's part, or that of any other agent delegated by West Frontier, the non-delegable duty instruction was not supported by acts or failure to act on the part of any West Frontier employee or contractor. *See Ft. Lowell*, 166 Ariz. at 104. Moreover, we agree with West Frontier that the instruction also was in conflict with the landowner's liability instruction on a business owner's duty to use reasonable care to warn of or remedy an unreasonably dangerous condition of which it had notice, resulting in confusion, and leading the jury to conclude that West Frontier was negligent despite the legal standard and evidence to the contrary.

¶21 The Bergesons additionally maintain, however, that notwithstanding any lack of evidence regarding West Frontier's employees or contractors, West Frontier should be viewed as "entrust[ing] unit owners with the responsibility of altering the common elements" involving such things as fixtures and ceiling wiring, due to its alleged failure to enforce permission and notice requirements. They point out that Furry was not even aware that West Frontier's permission was required.[10] But the non-delegable duty instruction could not, on the evidence presented, properly refer to any delegation of duties to unit owners. Rather, as noted above, it

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[10]West Frontier's former president testified that unit owners are not permitted to make physical modifications to "common element[s]" such as electrical fixtures without prior permission from West Frontier. Although the Bergesons argue unit owners were not informed of this, it is stated in the condominium Declarations, a copy of which had been provided to and reviewed by David Levengood:

> Each Owner shall be responsible for the maintenance, repair, or replacement of any . . . electrical fixtures . . . that serve that Unit only . . . . Each Owner will be responsible for care [and] maintenance . . . of the Limited Common Elements that are within his exclusive (or joint if [they] serve more than one Unit) control . . . . Owners may not, however, modify . . . or in any way alter . . . Limited Common Elements without prior written approval of the Board . . . .

should only have addressed the delegation of duties to West Frontier's employees and independent contractors. *See Simon v. Safeway, Inc.*, 217 Ariz. 330, ¶ 20 (App. 2007) ("A nondelegable duty is one 'for which the employer must retain responsibility, despite proper delegation'" to an independent contractor. (quoting *Ft. Lowell*, 166 Ariz. at 101)). The policy reasons for imputing the negligence of an independent contractor to a premises owner certainly do not support holding West Frontier liable for any independent negligence of a unit owner. *See Ft. Lowell*, 166 Ariz. at 102 (under Restatement § 422, allocating risk of injury to premises owner justified in part because owner "in a position to prevent or minimize the risk of injury by selecting a competent contractor"). And, in fact, the jury was separately instructed to determine the relative degrees of fault among West Frontier and the unit owners and the unit owners' independent contractor; thus any negligence on the part of the Levengoods, Lynn Bergeson, or *their* contractor was not properly attributable to West Frontier. The non-delegable duty instruction was therefore erroneous and misleading. *See id.* at 104 (non-delegable duty exception "does not impose absolute liability"); *cf. Spur Feeding Co. v. Fernandez*, 106 Ariz. 143, 148 (1970) (trial court commits reversible error to instruct on issue if no evidence to support the instruction because it "invites the jury to speculate as to possible non-existent circumstances"); *Ong*, 18 Ariz. App. at 460 (jury instruction not supported by evidence reversible error).

¶22 Finally, the Bergesons' summations to the jury are telling in that they highlight the lack of notice to West Frontier—there was no argument that the HOA, Furry, or anyone else directly connected to the HOA, was aware of the faulty wiring and failed to take action; the claim was rather, as noted earlier, that it should somehow have been discovered due to the latent wiring deficits in the Levengoods' kitchen, which had not been discovered until after Lynn's death. Not only was there no evidence that West Frontier had any reason to suspect the wiring in the ceiling was not code compliant, but it was denied the opportunity to enforce the notice and permission requirements and to conduct or even consider an inspection of the wiring or proper installation of the fan, due to Lynn's and the Levengoods' undisclosed removal and replacement of the existing fixture. *Cf. Preuss*, 130 Ariz. at 289 (notice imputed where owner should have known of the condition "in the exercise of ordinary care" (quoting *Walker*, 20 Ariz. App. at 258)). In short, the Bergesons failed to present any evidence that West Frontier had notice of a defective condition or delegated its duty of care, and the trial court thus erred in denying its motion for JMOL. *See* Ariz. R. Civ. P. 50(a); *Sheppard*, 192 Ariz. 539, ¶ 24 (duty to inspect arises when owner "has reason to suspect" defect (quoting *Piccola*, 186 Ariz. at 311)); *Ontiveros v. Borak*, 136 Ariz. 500, 505 (1983) (causation requires proof

that defendant's conduct "helped cause the final result" and the result "would not have happened without the defendant's act").[11]

Conclusion

¶23 Because the jury was permitted to rely on irrelevant evidence and an inapplicable jury instruction to impute breach of duty to West Frontier despite its lack of notice, the HOA was effectively held to an improper standard approaching strict liability for the tragic accident that occurred. But that is not the law. *See* A.R.S. § 33-1247(A); *Preuss*, 130 Ariz. at 289 (premises owner liable for dangerous conditions of which it has notice); Restatement § 343; *see also Martinez v. Woodmar IV Condos. Homeowners Ass'n*, 189 Ariz. 206, 210-11 (1997) (association owes duty of *reasonable* care to maintain common areas); *cf. Vineyard v. Empire Mach. Co.*, 119 Ariz. 502, 505 (App. 1978) (strict liability relieves plaintiff from proving defendant's specific acts of negligence and protects plaintiff from defense of notice).

Disposition

¶24 For the foregoing reasons, the judgment is vacated and the case is remanded to the trial court for entry of judgment in favor of West Frontier and any further proceedings consistent with this decision.

[11]Because we conclude the trial court committed reversible error by failing to grant West Frontier's JMOL motion and admitting irrelevant testimony, we need not address West Frontier's remaining arguments.