

**MELISSA A. SIMON AND
CLARENCE L. KENNY, JR.,
INDIVIDUALLY, ON THEIR
OWN BEHALF, AND AS THE
TUTRIX AND UNDER-TUTOR
OF ANTONIO DOMINIQUE
KENNY AND ANTONIO
DOMINIQUE KENNY, AND
WILLIAM L. CRULL, III AND
EDWARD J. LILLY, AS
SPECIALLY-APPOINTED
ATTORNEYS ON BEHALF OF
ANTONIO DOMINIQUE
KENNY**

*** NO. 2012-CA-0087
* COURT OF APPEAL
* FOURTH CIRCUIT
* STATE OF LOUISIANA
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VERSUS

**BERTHA HILLENSBECK AND
HARRY J. HILLENSBECK
INDIVIDUALLY AND D/B/A
THE HUMMINGBIRD HOTEL
AND GRILL AND THE
HUMMINGBIRD HOTEL; AND
HUMMINGBIRD HOTEL,
INC.; AND ALLSTATE
INSURANCE COMPANY, AS
THE INSURER OF THE
FOREGOING DEFENDANTS;
AND, KONG WONG, HARRY
WONG AND CHARLIE W.
TONG, AND ABC INSURANCE
COMPANY**

BELSOME, J., CONCURS WITH REASONS

Considering the troubling circumstances of this case and the applicable statutory requirements, I respectfully concur in the result reached by the majority's opinion.

To overcome summary judgment and establish a liability claim on the part of an owner who has contractually passed on responsibility for the condition of his property to his lessee under La. R.S. 9:3221, as in this case, a plaintiff must establish that (1) he sustained damages; (2) there was a defect in the property; and

(3) the lessor knew or should have known of the defect. *Jamison v. D'Amico*, 06–0842, p. 8 (La. App. 4 Cir. 3/14/07), 955 So.2d 161, 166.

Based on the narrow set of facts and the applicable statute in this case, the plaintiffs have not established a genuine issue of material fact regarding defendant's knowledge of any alleged defect. Mr. Wong specifically denied any knowledge as to defects on the premises. Additionally, the property was under a lease that transferred responsibility and liability for code violations and defects to the lessee. Thus, the record before us fails to establish the necessary existence of a genuine issue of material fact pertaining to this element of the plaintiff's claim. Therefore, the defendant was entitled to judgment as a matter of law.