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Alice Loos v. Mountain Fuel Supply Company and Utah Motor Park Incorporated : Respondent's Supplemental Brief

Utah Supreme Court

I. B. Wight; Attorney for Plaintiff and Respondent;

No. 6211

In

The Supreme Court

of the

State of Utah

ALICE LOOS,
Plaintiff and Respondent.

vs.

MOUNTAIN FUEL SUPPLY COMPANY, a Corporation, and UTAH MOTOR PARK, INCORPORATED, a Corporation,
Defendants and Appellants.

Appeal From Third Judicial District State of Utah
Salt Lake County
Honorable P. C. Evans, Judge.

Respondent's Supplemental Brief

L. B. WIGHT,
Attorney for Plaintiff
and Respondent

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The defendant Gas Company, is a public utility doing business in the State of Utah, and its duty to provide and maintain such service, instrumentalities, equipment and facilities as well as promote the safety, health, comfort and convenience of its patrons, employees and the public, is fixed and imposed by statute.

Sec. 76-3-1, Rev. Stat. of Utah, 1933.

In addition it is the common law duty of gas companies to remedy and correct a specific gas leak of

which it has knowledge, whether from its own pipes or from the pipes on the premises of the consumer, or to shut off the gas until the repair is made.

It has the right to assume, in the absence of notice or knowledge to the contrary, that the customer's pipes are in safe condition, but if it undertakes to inspect such pipes, then it is charged with such knowledge as a careful and thorough inspection would have disclosed, and if it undertakes to find and repair leaks in the customer's pipes, and fails to repair or negligently repairs them, and continues to furnish gas through them and injury results to a person who is himself without fault, the Gas Company is liable. Such liability has no relationship whatsoever to the ownership of the premises or who installed the pipes, but arises from the inherent danger of the commodity and its control by the Gas Company, and its superior knowledge of the dangers to which the public is exposed.

The law is correctly stated in the text of the notes cited by the Gas Company in its brief, (25 A.L.R. 272; 47 A.L.R. 490; 90 A.L.R. 1088), but only those cases are cited wherein the company had no notice or knowledge of a defective condition of the pipes, and cases in which it had not undertaken either to inspect or repair, as in the present case.

> Sec. 32. *Defects in Customer's Pipes.* The general rule requiring the use of ordinary care and diligence on the part of a gas company applies to its delivery of gas into the buildings or residences of consumers.

Generally speaking, however, a gas company which does not install pipes in a customer's building, and which has no control of them, is in no way responsible for the condition in which they are maintained and, consequently is not liable for injuries caused by a leak therein of which it had no knowledge. The company is warranted in assuming that the interior system of pipes is sufficiently secure to permit the gas to be introduced with safety. The question of liability under such circumstances is generally determined by the particular facts of each case and is frequently a question of fact submitted to the jury.

If the gas company knows, at the time it turns on the gas, or, after turning on the gas, becomes aware that there are defects in the pipes, or if the company is in possession of facts that would suggest to a person of ordinary care and prudence that the pipes in the building are leaking or are otherwise unsafe for the transportation of gas, the company is under a duty to make such an inspection or investigation as a person of ordinary care and prudence, similarly situated and handling such dangerous agency, would make to ascertain the safety of the pipes, before it furnishes or continues to furnish gas through them. If the gas company fails to do this and furnishes or continues to furnish gas through the pipes, it does (so) at its own risk and becomes liable for an injury resulting therefrom to any person in the building who is without fault. Similarly, a gas company knowing that the service line, which it is under no duty to repair or maintain, is

> rusted or corroded to such an extent as to permit gas to escape must cause the line to be repaired by the person whose duty it is to do so or must shut off the gas at the street.
>
> Where a gas company, after being informed that the gas pipes in a customer's building are leaking, undertakes, through its agent, to find and repair the leaks, fails to repair or negligently repairs them, and continues to furnish gas through the defective pipes, if injury results to a person who is himself without fault, the company is liable.
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> 24 American Jurisprudence, 686, (Gas Companies, Sec. 32).

This text writer states the law as found in the notes in three volumes cited by the Gas Company, and cites them as authority.

The liability of the Gas Company was made an issue in the complaint upon all grounds. The evidence of Mr. Lindholm that there were frequent leaks for a period of three months or more prior to the explosion, — that in all cases coming to the attention of the Motor Park, its officers or employees, report was made to the Gas Company, — that a service man was sent from that company to make the repair, and that the Gas Company had assumed the duty of making such investigation and repairs as were found necessary, or, if its investigation disclosed a broken pipe which had to be replaced, it so reported to the Motor Park and it hired a plumber; coupled, as it was, with the evidence of occupants of the surrounding apartments

that the odor of gas was "continuous" during that period, is nowhere denied in this record.

Furthermore, the Gas Company made a record of those calls and, presumably, of the character of the repair. There is no presumption that it would destroy those records or that they were lost. We only know that they were not produced or any denial made that it made the inspections and repairs and had a record of them.

Having undertaken to make inspection and repairs creates a liability which is not peculiar to gas companies, it applies to and makes liable any person or company which undertakes to inspect or repair a dangerous agency which may cause injury to any person without fault.

The case of

Sheridan v. Aetna Casualty Company, (Wash.); 100 Pac. (2d) 1024,

(reported since our brief was filed), was an elevator case. The action was against the owner of the elevator, who died after the action was brought and before trial. The defendant Casualty Company was the insurer without any duty to inspect, but which undertook to do so. The opinion cites and quotes from the opinion in

Van Winkle v. American Steam Boiler Co., 52 N. J. L. 240; 19 A. 472,

> ". . . in all cases in which any person undertakes the performance of any act which, if not done with care and skill, will be highly dangerous to the safety of persons, known or unknown, the law, ipso facto, imposes as a public duty the obligation to exercise such care and skill.
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> The law hedges round the lives and persons of men with much more care than it

employs when guarding their property, so that, in this particular, it makes, in a way, every one his brother's keeper. and therefore it may well be doubted whether in any supposable case redress should be withheld from an innocent person who has sustained immediate damage by the neglect of another in doing an act which, if carelessly done, threatens, in a high degree, one or more persons with death or great bodily harm."

The conclusion of the court was that the action was maintainable against the surety company, not in virtue of any obligation imposed by the policy of insurance, but

"Because of the legal responsibility attaching to its voluntary assumption, as the owner's agent, of the duty of proper inspection and reporting to the city.

Sheridan v. Aetna Casualty & S. Co., 100 Pac. (2d) 1024.

See also:

Van Winkle v. Am. Steam Boiler Co., 19 A. 472.

Ward v. Pullman Car Corp. (Ky.), 114 S. W. 754.

Lough v. J. Davis & Co., (Wash.), 70 Pac. 491.

Osborn v. Morgan, 130 Mass. 102.

Respectfully submitted,

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