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Liability of Sublessee and Assignee to Owner for Rent

J. J. Yeager

University of Kentucky

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the position that the interest invaded is mental and therefore the plaintiff must suffer mental anguish at the time he is confined. Disregarding the meaning of the vague term "technical assault," it is clear that if X is in a room and Y turns the key in the door there may be false imprisonment, but there is certainly no assault without something further. False imprisonment is not so much an invasion of a mental interest in security as it is of the right of free locomotion. The instant the key is turned in the door rather than the moment of discovery is the point of time when false imprisonment should begin.

The rule supported by the writers puts a premium on subterfuge. In other words, one may safely enclose another and accomplish some end detrimental to him so long as he is clever enough or lucky enough to hide that fact of imprisonment from the one confined. X knows that Y will be called at a certain time by a prospective employer. The employer needs the job filled quickly. X also wants the job, so he induces Y, who is always home at this time, to come to his home, where he locks him in a room, making the excuse that they are likely to be disturbed. Y's wife calls and X answers the phone and refuses to let her tell Y about the job; Y does not discover the trick until he returns home. He has no action for false imprisonment against X under the rule supported by the text writers.

Such a view is likely to produce bad social results. If the common law is so zealous of personal freedom that it raises a cause of action against a private person who arrests another in good faith if in fact no felony has been committed, why should it permit some one else, for no just cause, to confine another and be free of liability so long as he can keep the fact of restraint from the one confined?

It is submitted that the rule, in its present form, is undesirable. Should personal freedom and its social consequences be so lowly regarded? Should the common law entrust to anyone such opportunity for interfering with another's right to free locomotion, or, in fact, encourage it?

Scott Reed

LIABILITY OF SUBLESSEE AND Assignee TO Owner FOR Rent

In Entroth Shoe Co. v. Johnson¹ the plaintiff, owner, leased a store for a term extending from February 1, 1929, to April 30, 1932. On February 25, 1929, the lessee leased a part of the premises to the defendant for the remainder of the term. Shortly before February 1, 1931, the defendant abandoned the premises. On October 1, 1931, the defendant settled with the lessee and secured

a release from all further liability. The plaintiff received no rent after February 1, 1931, and sued the lessee and the defendant to recover the rent due. The lessee did not defend. In holding the defendant liable for rent from February 1 to October 1, the court said that the defendant was an assignee, not a sublessee, and as such he was in privity of estate with the owner and liable only so long as that privity existed. It was held that this privity was not destroyed by the defendant's abandonment, but that the settlement between the defendant and the lessee was a reassignment of the lease, and this reassignment released the defendant of any further liability.

This case illustrates the law in regard to the liability of the transferee of a lease to the owner. The transfer of a lease may take one of two forms; it may be an assignment or a sublease. The liability of the transferee depends upon which form the transfer takes.

At common law, a sublessee or subtenant was said to be neither in privity of estate nor in privity of contract with the owner. He was not liable to the owner on the terms of the lease nor could there be any recovery from him for use and occupation of the land. In many jurisdictions, including Kentucky a sublessee's liability has been increased by statute. KRS 383.010 (5) provides that "Rent may be recovered from the lessee, or his assignee or undertenant by any of the remedies given in this chapter. But the assignee or subtenant shall be liable only for rent accrued after his interest began." It has been held that this statute gives the owner a right to a lien on the subtenant's chattels, but no cases have been found deciding the question as to whether it makes the subtenant personally liable to the landlord. The language of the statute makes such a construction possible. However, in Missouri it was held that a similar statute gives the owner no right against the subtenant other than the right to enforce a statutory lien against his chattels.

An assignee, on the other hand, is bound by personal obligation to the owner. He is subject to the same liabilities for rent as his assignor in regard to obligations arising out of privity of estate, since rent is considered to be something issuing from

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"Cox v. Fenwick, 7 Ky. (4 Bibb.) 538 (1817), 1 TIFFANY, LANDLORD AND TENANT (1912) sec. 162.

"Bowling v. Garber, 250 Ky. 137, 61 S. W (2d) 1102 (1933)


the land itself, not unlike a profit, rather than a mere contractual obligation. As an abandonment does not destroy the privity of estate, it does not remove the obligation to pay rent. But it is generally held that a further assignment of the whole interest to a third party will destroy the privity of estate and hence will relieve the first assignee of future liability for rent.

This rule allowing an assignee to terminate his liability at any time he wishes by reassigning the lease gives the assignee an advantage. He has all the rights under the lease which the original lessee had, but if the lease proves disadvantageous to him he may relieve himself of further liability by reassigning to a third party. He may do this without consent of the owner or of his assignor. He may assign to an irresponsible person, an insolvent person, or to one about to leave the country, and it makes no difference that the assignment is for the express purpose of ridding himself of liability, or that he pays another to accept the assignment.

If the assignee of a lease assumes the covenants of the original lease a different situation exists. Under the contract rule such an assumption of the contractual obligations will be implied from the mere acceptance of the assignment. This is not true in regard to the assumption of the covenants of a lease. Such an assumption must be expressly made in the assignment. Where such an express assumption is made, a third party beneficiary contract of the payment type exists. Jurisdictions which recognize contracts for the benefit of third persons will hold such an assignee liable to the owner on contract. Because the liability does not depend on privity of estate a reassignment to a third person will not terminate the liability.

The general rule is that a grant of the entire interest remaining in the lessee in the whole or part of the premises constitutes an assignment rather than a sublease as between the owner and the transferee of the lease. From this rule it follows that the court in the present case was right in determining that the defendant was an assignee. Following the general rule governing assignments the court rightly held that the defendant was

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6 3 TIFFANY, REAL PROPERTY (3rd ed. 1939) sec. 876.
9 RESUBSTATEMENT, CONTRACTS (1933) sec. 164; WILLISTON, CONTRACTS (Student Ed. 1926) sec. 412.
10 1 TIFFANY, LANDLORD AND TENANT (1912) sec. 158 (bb).
11 TIFFANY, REAL PROPERTY (Abridged Ed. 1940) sec. 94.
personally liable to the plaintiff for rent, and that the defendant's abandonment did not destroy this liability. Then applying the rule that a reassignment to a third party terminates the assignor's liability, the court properly held that a reassignment to the original lessor would have the same effect, and that from the time of this reassignment the defendant was no longer liable.

J. J. Yeager