

## Appellate Decision – Commercial Landlord

### SERVICES

Premises Liability

### RELATED ATTORNEYS

Mark A. Aronsson  
Thomas J. Fay  
Timothy R. Scannell

**August 24, 2018**

In this action, the Plaintiff, Charles Marino, rented commercial property from the defendants, the Mystic Realty Trust and Elaine Marino, pursuant to a written lease agreement. In 2004, the Plaintiff suffered a serious injury as a result of an alleged defect on the leased property and thus brought a premises liability action against Defendants. Thomas Fay, Timothy Scannell, and Mark Aronsson of Boyle | Shaughnessy Law, represented the Defendants on appeal.

In the trial court, Plaintiff took the position that the Defendants, as commercial landlords, owed a common law duty of care to maintain the leased premises in a reasonably safe condition. Plaintiff also asserted, in the alternative, that a commercial lease agreement between the parties obligated Defendants to perform “routine maintenance” on the leased premises, and that Defendants purported failure to discharge these duties caused Plaintiff’s injuries. In support of his contract-based claim, moreover, Plaintiff presented evidence at trial, over Defendants’ objection, of a longstanding course of dealing, by which Defendants performed regular maintenance on the property, including inside Plaintiff’s tenant space.

In November, 2010, Plaintiff prevailed at trial and obtained a judgment in the amount of \$933,000, inclusive of pre-judgment interest. After filing an unsuccessful post-trial motion, Defendants appealed the jury verdict. Before the Appeals Court, Defendants argued, among other things, that, under the case of *Humphrey v. Byron*, 447 Mass. 322, 328-29 (2006), a commercial landlord can only be liable for defects on leased premises if (1) she contracted to make repairs and made them negligently, or (2) the alleged defect that caused the injury was in a “common area,” or other area appurtenant to the leased premises, over which the lessor retained some control. Defendants took the position that Plaintiff failed to establish sufficient evidence at trial to satisfy either prong of the *Humphrey* standard.

On October 23, 2012, the Appeals Court reversed the jury verdict and directed that judgment enter in Defendants’ favor, on the ground that, as a matter of law, Defendants owed no duty to Plaintiff to discover and remedy the alleged dangerous condition. The Appeals Court first held that, as the defect was not in a common or appurtenant area, Defendants did not owe a common law duty to Plaintiff to discover and remedy it. On this point, the Appeals Court specifically rejected Plaintiff’s argument, seeking to invoke a purported exception to the *Humphrey* rule, based on the degree of control that Defendants had retained over the leased premises.

Second, the Appeals Court agreed with Defendants that the parties’ lease agreement was

unambiguous and, properly read, imposed no maintenance duties on the Defendants. The Appeals Court also rejected Plaintiff's argument that the lease was orally modified, as there was no evidence established at trial that any purported modification was supported by consideration. In addition, the Appeals Court agreed with Defendants that the parties' course of dealing amounted to, at most, Defendants providing "gratuitous maintenance services" to Plaintiff on a periodic basis. On this point, the Appeals Court reaffirmed prior Massachusetts case authority, holding that, under such circumstances, a landlord can only be liable for gross negligence.

On November 2, 2012, the Supreme Judicial Court denied Plaintiff's application for Further Appellate Review, affirming the Appeals Court's decision in all respects.