# STATE OF MICHIGAN

# COURT OF APPEALS

JAMES ALLEN, and CHERYL ALLEN,

Plaintiffs-Appellants,

v

DOWDING INDUSTRIES, INC, MAURICE H. DOWDING, and KAREN S. DOWDING,

Defendants-Appellees.

UNPUBLISHED
August 16, 1996

No. 177651
LC No. 92-000546-NO

Before: Sawyer, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff James Allen was injured when his hand was caught in a press he operated as an employee of defendant Dowding Industries, Inc. Plaintiffs instituted this suit for damages, alleging Allen's injury was a result of an intentional tort by defendant Dowding Industries, and that Karen and Maurice Dowding incurred premises liability as owners and lessors of the building. The trial court granted summary disposition to defendants. Plaintiffs appeal that order by leave granted and we affirm.

I

We first examine plaintiffs' claim that Allen's injuries arose out of Dowding Industries' intentional act, and thus his recovery is not limited by the Worker's Disability Compensation Act. MCL 418.101 *et seq.*; MSA 17.237(101) *et seq*. Section 131 of that act provides the scope of the act with regard to a plaintiff's recovery:

> (1) The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law. [MCL 418.131(1); MSA 17.237(131)(1).]

This Court has repeatedly held that in order to meet the burden imposed by § 131(1), a plaintiff must demonstrate that "the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge." *Smith v Mirror Lite Co*, 196 Mich App 190, 192; 492 NW2d 744 (1992). The intent requirement in the statute is a rigid standard specifically intended by the Legislature to tighten the pre-1987 enactment of this statute, which merely required that the injury be "substantially certain to occur." *Agee v Ford Motor Co*, 208 Mich App 363, 365; 528 NW2d 768 (1995).

Here, simply stated, plaintiffs have failed to demonstrate that Dowding Industries had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. Plaintiffs' proofs merely demonstrated that the press on which he was working had "double cycled" before. Plaintiff did not demonstrate, however, that anyone had previously been injured on the machine, or that anyone had almost been previously injured. Indeed, the evidence presented below demonstrated that the machine was inspected daily and was in proper working condition on the day in question. Further, plaintiff James Allen testified in his deposition that had he been wearing the safety equipment on the machine he would not have been injured. Even if we accept that Dowding Industries was at fault for failing to remind Allen to wear the equipment, we would not find that failure to constitute an intentional tort. Taken at their best, plaintiffs' proofs merely demonstrate Dowding Industries' negligence, and such a showing is insufficient for the purposes of MCL 418.131(1); MSA 17.237(131)(1).

Accordingly, we conclude that the trial court properly granted summary disposition in Dowding Industries' favor.

II

Plaintiffs next argue that Karen and Maurice Dowding incurred personal liability as a result of their ownership of the premises, which was leased to Dowding Industries. We disagree.

As a general rule, a landlord is not liable for injuries that occur within the boundaries of leased premises. See *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). Thus, absent an agreement to the contrary, when a landlord surrenders possession of the leased premises, he has no obligation to maintain the premises in repair. *Williams v Detroit*, 127 Mich App 464, 468; 339 NW2d 215 (1983).

Here, the lease agreement between the parties provided that the tenant enjoyed sole possession of the premises,[1] and that it was the tenant's obligation to maintain and repair the premises. Accordingly, we agree with the trial court that the Dowdings are not liable to plaintiffs under a premises liability theory. Because the Dowdings incurred no premises liability, we need not address plaintiffs' remaining claim that the press was a fixture.

The trial court's order granting summary disposition to defendants is affirmed.

/s/ David H. Sawyer
/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald

[1] The mere fact that the Dowdings, as landlords, were permitted, but not required, to make repairs not made by the tenant, does not alter the fact that the lease provides for sole possession of the premises by the tenant. We find the term in the Dowding's lease even less permissive than the lease term in *Williams, supra* at 470-471, n 12, which this Court determined did not infringe on the tenant's sole possession of the premises.