

Bond Case Briefs

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MUNICIPAL CODE - IOWA

Winger v. CM Holdings, L.L.C.

Supreme Court of Iowa - June 24, 2016 - N.W.2d - 2016 WL 3450370

Visitor's parents brought action against apartment owner for wrongful death, premises liability, and negligence per se, alleging that visitor, who was 21 years old, fell to her death over an apartment balcony railing that was ten inches shorter than required by the municipal housing code.

After a jury verdict in favor of parents, the District Court granted owner's motion for a new trial. Parents appealed, and owner cross-appealed. The Court of Appeals affirmed. Parents and owner sought further review, which was granted.

The Supreme Court of Iowa held that:

- Negligence per se applied to violation of the code, overruling *Griglione v. Martin*, 525 N.W.2d 810; *Montgomery v. Engel*, 179 N.W.2d 478;
- Owner lacked an adequate incentive to appeal housing board's order finding a code violation, and thus offensive issue preclusion did not apply;
- Owner's statement during proceedings before board was not a judicial admission;
- Board's order granting an extension of time to allow installing of code-compliant guardrails was not a legal excuse to liability; and
- Evidence presented jury question regarding whether grandfather provision of code applied.

If a statute or regulation provides a rule of conduct specifically designed for the safety and protection of a certain class of persons, and a person within that class receives injuries as a proximate result of a violation of the statute or regulation, the injuries would be actionable as negligence per se, provided that the harm for which the action is brought must be of the kind which the statute was intended to prevent and the person injured is within the class which the statute was intended to protect. This standard applies equally to municipal housing ordinances, overruling *Griglione v. Martin*, 525 N.W.2d 810; *Montgomery v. Engel*, 179 N.W.2d 478.

Apartment owner lacked an adequate incentive to appeal order of municipal housing board finding that owner violated housing code by having balcony railings that were ten inches shorter than required and that grandfather provision of code did not apply, and thus offensive issue preclusion did not apply in subsequent action brought by parents of 21-year-old visitor, who fell from apartment balcony to her death, alleging that owner was negligent per se as a result of code violation. Apartment only faced a \$1,090 fine at time of board proceedings, owner essentially obtained a compromise settlement through board's order suspending fine and granting its request to install new railings, owner recently acquired multiple distressed properties and had been proactively working with city to correct numerous violations at apartment complexes, and owner had already ordered code-compliant guardrails to install.

Statement made by owner of apartment complex during proceedings before municipal housing board that its balcony railings "were just not the right height" was not a "judicial admission" that could be used in subsequent action brought by parents of 21-year-old visitor, who fell from apartment balcony

to her death, alleging that owner was negligent per se as a result of code violation with respect to balcony railings that were ten inches shorter than required. Owner's statement was not made under oath and did not specifically admit guardrails violated code, and owner also noted that the code had changed.

Municipal housing board's order suspending fine and granting extension of time to apartment owner to allow installation of housing code-compliant balcony guardrails was not a "legal excuse" to liability, in subsequent action brought by parents of 21-year-old visitor, who fell from balcony to her death, alleging that owner was negligent per se as a result of having balcony railings that were ten inches shorter than required by code. Extension did not specifically excuse violation and merely suspended enforcement of administrative penalty, and notice granting extension specifically stated that apartment was in violation of code and that property "was not brought into compliance" with code.

Evidence presented jury question regarding whether grandfather provision of municipal housing code applied to apartment owner, in action brought by parents of 21-year-old visitor, who fell from apartment balcony to her death, alleging that owner was negligent per se as a result of having balcony railings that were ten inches shorter than required by code.