CASE NOTES

LANDLORD-TENANT—ORAL LEASE OF AGRICULTURAL LANDS FOR GRAZING, WITHOUT AN AGREEMENT TO THE CONTRARY, IMPLIES NO WARRANTY OF SUITABILITY FOR A PARTICULAR PURPOSE UPON THE LESSOR BUT MAY IMPOSE LIABILITY BY VIRTUE OF JOINT CONTROL OF THE PREMISES.—*Knapp v. Simmons* (Iowa 1984).

Plaintiff Richard G. Knapp, Jr. entered into an oral lease[1] with defendant David P. Simmons, allowing Knapp's cattle to graze upon the defendant's cornstalks as had been the practice for three preceding years.[2] The terms of the agreement required Knapp to pay $2.50 per acre for only those acres planted in corn; however, the cattle had the run of the entire 320 acre farm.[3] Approximately two weeks following their release upon the leased premises,[4] the cattle were found to be sick and dying.[5] A veterinarian concluded that the cattle had contracted Furadan toxicosis,[6] and a search of the defendant's premises disclosed that the cattle had gathered around an open bag of Furadan with hoof prints on it.[7]

Knapp brought an action in tort against Simmons for damages from the poisoned cattle, alleging negligence in the operation and maintenance of the leased land which resulted in premises that were unsuitable for the purposes

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1. Knapp v. Simmons, 345 N.W.2d 118, 119 (Iowa 1984). "A landlord-tenant relationship can be created orally if the duration of an oral lease does not exceed the period specified in the controlling Statute of Frauds." RESTATEMENT (SECOND) OF PROPERTY, LANDLORD & TENANT § 2.1 (1977). Contracts "for the creation or transfer of any interest in lands, except leases for a term not exceeding one year," must be in writing. IOWA CODE § 622.32(3) (1983).

2. Knapp v. Simmons, 345 N.W.2d at 119.

3. *Id.* The number of acres planted in corn was unspecified. *Id.*

4. *Id.* Knapp inspected the entire fence line before releasing his cattle onto the leased premises; evidently, this was the only inspection conducted. *Id.*

5. Knapp v. Simmons, 345 N.W.2d at 120.

6. *Id.* Carbofuran (Furadan®) is a highly toxic synthetic organic insecticide "with an acute oral Id_{50} in rats of 5mg/kg." FUMIO MATSUMURA, TOXICOLOGY OF INSECTICIDES 84 (1975). "It is effective against soil insects in corn, cotton insects, and pests on potatoes." *Id.* "The length of the interval between exposure and the onset of signs and symptoms is related to the size of the dose and may vary from a few minutes to an hour or so." *Id.* at 413. Symptoms range from weakness, cramps, vomiting, tremors, muscle seizures, and the like, leading to death. *Id.* at 413-14.

7. Knapp v. Simmons, 345 N.W.2d at 120. The location of the bag of Furadan on the defendant's premises was not in the record. *Id.*

leased.[8] Simmons moved for summary judgment,[9] declaring that though he had a duty to warn his tenant of known latent defects, there was no duty on his part to guarantee the premises safe for the purposes leased.[10] The trial court, in granting summary judgment, rejected the plaintiff's theory of an implied warranty of fitness on agricultural lands for a particular purpose.[11] Finding no evidence to explain the existence of the bag of Furadan in terms of where it "came from, who it belonged to or how long it was on the property," the trial court held that such absence precluded the defendant from being put to the expense of a trial.[12]

On appeal, Knapp urged the Supreme Court of Iowa to judicially adopt a rule of implied warranty of suitability for a particular purpose for leases of agricultural lands.[13] Knapp also challenged the trial court's ruling that there was no genuine issue of material fact concerning a latent defect existing at the inception of the lease.[14] Finally, Knapp advanced a theory in which "ad-

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8. *Id.* at 119. "[W]hen a contract imposes a duty upon a person, the neglect of such a duty is a tort, and an action *ex delicto* will lie." Porter v. Iowa Power & Light Co., 217 N.W.2d 221, 228 (Iowa 1974) (citing Giarranto v. Weitz Co., 259 Iowa 1292, 147 N.W.2d 824 (1967)). This duty, arising from the contract, may result from an implied warranty. Mease v. Fox, 200 N.W.2d 791, 796 (Iowa 1972) (referring to a residential lease).

9. Knapp v. Simmons, 345 N.W.2d at 120. A motion for summary judgment may be sustained only where the moving party demonstrates the absence of any genuine issue of material fact. IOWA R. CIV. P. 237(c). *See* Meyer v. Nottger, 241 N.W.2d 911, 916-17 (Iowa 1976) (purpose of the rule is to avoid useless trials).

10. Knapp v. Simmons, 345 N.W.2d at 120.

> [It] is the general rule and the rule in Iowa that the landlord is not liable for injuries to the tenant occurring on the premises . . . [except] in regard to hidden or latent defects which existed at the time the lease was consummated and where the defect was known to the lessor (or through the exercise of reasonable care the lessor should have known of it) and he actively concealed it from the tenant or failed to call it to his attention.

Wright v. Peterson, 259 Iowa 1239, 1242, 146 N.W.2d 617, 620 (1966) (citations omitted). *See generally* Note, *Tort Liability of a Landlord to His Tenant in Iowa*, 10 DRAKE L. REV. 132 (1961) (overview of landlord-tenant responsibilities in Iowa concerning latent defects).

11. Knapp v. Simmons, 345 N.W.2d at 120.

12. *Id.*

13. *Id. See infra* notes 25-38 and accompanying text.

14. Knapp v. Simmons, 345 N.W.2d at 120. The issue of latent defects upon agricultural lands will not be examined at this time; however, a summation of the court's decision concerning summary judgment with respect to the latent defect issue follows.

"Issues of negligence and proximate cause . . . are ordinarily not susceptible of summary adjudication but should be resolved by trial." *Id.* at 122 (citing Daboll v. Hoden, 222 N.W.2d 727, 734 (Iowa 1974)). The *Knapp* court held that the present case was no exception to the above-mentioned rule and stated that reasonable minds could infer: first, that a bag of Furadan "would not suddenly appear in an open field at the end of a growing season and consequently had been there for some time"; second, that a bag of Furadan was "small enough to qualify as a latent defect"; and third, that the lessor "knew or should have known" the toxic insecticide to be on the premises. *Id.* The supreme court, in holding that summary judgment was inappropriate, concluded a genuine issue of material fact existed concerning the lessor's failure to warn the tenant of a latent defect and remanded the matter to the trial court. *Id.* at 122-23.

ditional" duties attach to the lessor where both the lessor and the lessee have *joint control* of the premises.[15] The Supreme Court of Iowa *held*, reversed and remanded.[16] An oral lease of agricultural lands for grazing, without an agreement to the contrary, implies no warranty of suitability for a particular purpose upon the lessor but may impose liability by virtue of joint control of the premises. *Knapp v. Simmons*, 345 N.W.2d 118 (Iowa 1984).

It has been estimated that a significant number of farm leases are oral,[17] or written without the assistance of legal counsel.[18] *Knapp v. Simmons* illustrates Iowa's judicial interpretation of two landlord-tenant theories of recovery, implied warranty of suitability and joint control, as applied to tort actions based on oral grazing leases of agricultural lands.[19] This case note will examine the agricultural lessor and lessee in terms of their respective liabilities and obligations to each other.

At common law, when land was leased to a tenant, property law regarded "the lease as equivalent to a sale of the premises for a term."[20] The tenant became the owner and occupier for the lease term, subject to all the responsibilities of one in possession.[21] "In the absence of [an] agreement to the contrary, the lessor surrenders both possession and control of the land," thus having no obligation to maintain the premises.[22] With respect to the condition of the premises, the lessee that did not exact an express warranty was subject to the doctrine of *caveat emptor*.[23] Modern social policy has given rise to numerous exceptions to these common law concepts of nonliability of the lessor.[24] As will be discussed, however, the exceptions are not applicable in all landlord-tenant relationships.

The *Knapp* court initially examined the landlord-tenant theory of an implied warranty of suitability as applied to oral grazing leases on agricultural lands.[25] The creation and recognition of the implied warranty of suitability or fitness is "the product of judicial decision over the past twenty years."[26] The realities of the industrial revolution, an exploding urban popu-

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15. Knapp v. Simmons, 345 N.W.2d at 120. *See infra* notes 39-51 and accompanying text.
16. Knapp v. Simmons, 345 N.W.2d at 124.
17. *See* Looney, *Legal and Economic Considerations in Drafting Arkansas Farm Leases*, 35 ARK. L. REV. 395, 396 (1981). Discussions with farmers and farm advisors, rather than empirical data, support this conclusion. *Id.* at n.2.
18. *Id.* at 396.
19. Knapp v. Simmons, 345 N.W.2d at 121-24.
20. W. PROSSER, LAW OF TORTS § 63, at 399 (4th ed. 1971); *see also* Mease v. Fox, 200 N.W.2d at 793.
21. W. PROSSER, *supra* note 20, § 63, at 399.
22. *Id.* at 400.
23. Let the buyer beware. BLACK'S LAW DICTIONARY 202 (5th ed. 1979).
24. *See supra* notes 20-21.
25. Knapp v. Simmons, 345 N.W.2d at 121.
26. Note, *Landlord-Tenant - Should a Warranty of Fitness be Implied in Commercial Leases*, 13 RUTGERS L.J. 91, 91 (1981) [hereinafter cited as Note, *Landlord-Tenant*].

lation, and the need for living space have placed an increased importance upon buildings and other improvements on the property itself, with little interest in the land.[27] In the absence of a valid contrary agreement, the judicial and statutory trend, "has been in the direction of increasing the responsibility of the landlord" so that the tenant is provided with property in a condition suitable for the use contemplated by the parties.[28] Except in a limited number of commercial settings, however, property fitness obligations in most every jurisdiction, including Iowa, have only been imposed upon lessors of residential structures.[29] It was upon residential case law that the plaintiff urged imposition of a fitness warranty upon oral grazing leases on agricultural lands.[30]

In reviewing *Osterling v. Sturgeon*[31] and *Kutchera v. Graft*,[32] as well as the agricultural exclusion clause of the Uniform Residential Landlord and Tenant Law of the Iowa Code,[33] the court found no support for imposing a duty upon an agricultural lessor arising from an implied warranty of suitability.[34] The need and social desirability of adequate housing, along with the landlord's superior position in bargaining power, have narrowed and qualified the legal doctrine of *caveat emptor* concerning residential leases.[35] Notwithstanding, the court found no compelling reason or urgency to apply that same standard of strict liability upon the agricultural lessor in terms of an implied warranty of fitness.[36] The type of landlord-tenant relationships found in situations similar to *Knapp* are usually more or less of a voluntary nature, among friends, neighbors, and fellow farmers. Generally, both parties are of equal or near equal bargaining positions, almost exchanging mu-

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27. *Id.* at 93.

28. *See* RESTATEMENT (SECOND) OF PROPERTY, LANDLORD & TENANT § 5 introductory note, at 150 (1977).

29. *See generally* Note, *Landlord-Tenant*, *supra* note 26; Semler v. Knowling, 325 N.W.2d 395 (Iowa 1982) (sewer system installation warranty).

30. Knapp v. Simmons, 345 N.W.2d at 121. *See* Duke v. Clark, 267 N.W.2d 63 (Iowa 1978) (personal injuries resulting from sewer gas explosion in leased house); Mease v. Fox, 200 N.W.2d 791 (Iowa 1972) (residential lease unsafe and unsanitary for habitation).

31. 261 Iowa 836, 156 N.W.2d 344 (1968). Where rent was based upon the premises being used as a bowling alley which was destroyed by a rare flood, the fact that the lease designated the use to which the warehouse was to be put did not imply a warranty that it was or would continue to be fit for such a use. *Id.*

32. 191 Iowa 1200, 184 N.W. 297 (1921). Where a tenant brought suit against a lessor to recover for the cholera-induced death of the tenant's hogs, the lessor was not liable to the lessee for the unsafe condition of the premises for the purposes for which they were intended, in the absence of fraud, or an agreement to such effect. *Id.*

33. IOWA CODE § 562A.5(7) (1983). "Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter: . . . 7. Occupancy under a rental agreement covering premises used by the occupant primarily for agricultural purposes." *Id.*

34. Knapp v. Simmons, 345 N.W.2d at 121.

35. *See supra* notes 20-21.

36. Knapp v. Simmons, 345 N.W.2d at 121.

tual "favors" for each other. Unlike the residential landlord-tenant relationship, the agricultural lessor and lessee of grazing lands are assumed by the courts to be dealing at arm's length, both knowledgeable of the business at hand, each with the ability to remedy any defects prior to occupancy and to prepare express covenants to protect themselves against defects arising during the term.[37] The *Knapp* court, accordingly, refused to expand the theory of implied warranties of suitability to oral agricultural grazing leases, thus confirming the common law doctrine of *caveat emptor*.[38] Consequently, oral grazing lessees of agricultural lands must include express warranties of suitability in order to assure access to legal remedy in the event of a breach of terms.

The court's second concern addressed the landlord-tenant theory of joint control as applied to oral grazing leases of agricultural lands.[39] Joint control potentially exists "where the landlord retains control or the landlord and tenant have joint control over a part of the premises."[40] Liability is imposed upon the lessor where property damage results because the shared premises were negligently maintained or in a defective condition.[41] The lessor has an obligation of reasonable and ordinary care and will be liable only where injury to another party was reasonably expected or the defective condition was discoverable by reasonable inspection.[42]

Analogous to implied warranties of suitability, the additional duties placed upon the lessor under the theory of joint control have been predominately restricted to residential and commercial structures.[43] The plaintiff lessee relied upon Iowa case law concerning residential leases to urge imposition of liability upon the agricultural lessor due to the landlord's alleged retention of control over that part of the premises where the bag of Furadan was found.[44] The court, acknowledging the fact that such a theory of liability had yet to find its way into Iowa agricultural case law, nonetheless held the plaintiff's position to be a reasonable one.[45] To reach this determination, the court relied on its previous holding in *Brown v. City of Sioux City*.[46] In

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37. *Id.*
38. *Id.*
39. *Id.* at 123-24.
40. *Id.* at 123.
41. *Id.*
42. *See* W. PROSSER, *supra* note 20, § 63, at 406-07; *see also* 52 C.J.S. *Landlord and Tenant* § 423(4)(a) (1968).
43. *See, e.g.*, Primus v. Bellevue Apartments, 241 Iowa 1055, 44 N.W.2d 347 (1950) (infant's hand caught in unguarded machinery in laundry room); *see generally* Note, *Landlord-Tenant*, *supra* note 26.
44. Knapp v. Simmons, 345 N.W.2d at 123. *See* Montgomery v. Engel, 179 N.W.2d 478 (Iowa 1978) (joint control of stairway); Coleman v. Hall, 161 N.W.2d 329 (Iowa 1968) (joint control of stairway); Bostian v. Jewell, 254 Iowa 1289, 121 N.W.2d 141 (1963) (joint control of common areas).
45. Knapp v. Simmons, 345 N.W.2d at 123.
46. 242 Iowa 1196, 49 N.W.2d 853 (1951), *discussed in* Knapp v. Simmons, 345 N.W.2d at

Brown, the tenant beekeeper leased property from the landlord city for the purposes of keeping bees.[47] When the city sprayed adjacent property which it also owned the bees were killed and the tenant brought suit based on the city's negligent spraying.[48] The *Brown* court held that a lessor incurs liability if he is found to have negligently used his "retained" premises, as in the circumstances presented, in a manner injurious to the lessee's use of adjacent leased premises.[49]

The extension of joint control liability to lessors of agricultural lands is not at all inconsistent with past applications of the doctrine[50] because the ultimate question arising is one of proof. Whether it be in a residential, commercial, or agricultural setting, the lessor remains responsible for those parts of the premises that remain in his possession and control, barring a valid agreement to the contrary.[51] Due to the nature of an oral lease, the precise terms of the agreement following a tragedy such as in *Knapp* are seldom mutually clear to the parties involved.

Because of the uncertainty as to whether or not the lessor had retained control of the premises where the Furadan was found, the *Knapp* court could not decide the issue of joint control.[52] In remanding the case, the Supreme Court of Iowa instructed the trial court to impose upon the lessor the standard of reasonable and ordinary care if it was determined that he had control over the premises where the toxic insecticide was found.[53]

Knapp has offered the Supreme Court of Iowa the opportunity to consider the doctrines of implied warranty of suitability and joint control as applied to oral grazing leases of agricultural lands.[54] Though the doctrine of *caveat emptor* remains unchanged concerning implied warranties of suitability upon agricultural oral grazing leases,[55] the court found nothing that would prohibit the application of the theory of joint control under the same circumstances.[56] As often is the case, oral grazing leases of agricultural lands are too common and convenient not to be utilized by both lessors and lessees alike. In this decision the court is not denying protection to lessors and lessees of agricultural leases based upon oral agreements. It is, however, is-

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123.

47. Brown v. City of Sioux City, 242 Iowa at 1198, 49 N.W.2d at 854. A conflict regarding whether Brown had renewed a prior lease of the premises was summarily resolved in favor of the plaintiff. *Id.*

48. *Id.*

49. *Id.* at 1200, 49 N.W.2d at 856.

50. *See* W. PROSSER, *supra* note 20, § 63, at 406-07.

51. *Id.*

52. Knapp v. Simmons, 345 N.W.2d at 124. *See supra* note 3.

53. Knapp v. Simmons, 345 N.W.2d at 124.

54. *Id.* at 118-24.

55. *Id.* at 121; *see supra* text accompanying note 38.

56. Knapp v. Simmons, 345 N.W.2d at 123-24.

suing notice to all parties concerned to implement express covenants to protect themselves and their property.

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