NOTE

Becker v. IRM Corp.: The Beginning of Caveat Lessor

I. INTRODUCTION

California has long been recognized as an innovator in the field of strict liability in tort. California Supreme Court decisions serve as persuasive authority in the development of strict liability in other jurisdictions throughout the country.[1] Recently, the California Supreme Court extended, for the first time, strict liability in tort to a landlord for latent defects in a rental premises.

In *Becker v. IRM Corp.*,[2] the California Supreme Court held that a landlord would be strictly liable in tort for personal injuries caused by latent defects present within the premises at the time the tenant leased the premises if the landlord was "engaged in the business of leasing dwellings."[3] The court also decided that a landlord has a duty to exercise due care by properly inspecting rental property prior to its purchase for rental use, and that lack of knowledge of potentially dangerous conditions that a reasonable inspection would have disclosed would not preclude liability for negligence.[4]

This Note will discuss how this decision departs from the previously well established principles of strict liability in tort. In departing from these principles, the court may have relied too closely on the specific facts of *Becker* without addressing other fact situations that face landlords as a class.

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1. Annot., 13 A.L.R.3d 1057, 1061 n.2 (1967).
2. 38 Cal. 3d 454, 698 P.2d 116, 213 Cal. Rptr. 213 (1985).
3. *Id.* at 464, 698 P.2d at 122, 213 Cal. Rptr. at 219.
4. *Id.* at 469, 698 P.2d at 125, 213 Cal. Rptr. at 222.

The facts in *Becker* are relatively straightforward. In 1962 and 1963, a thirty-six unit apartment complex was constructed.[5] The original construction apparently did not include the installation of shower doors made of tempered glass.[6] Defendant acquired this apartment complex in 1974, and two officers, one of whom managed the property from the time of its purchase, inspected the apartments prior to acquisition.[7] After inspection of the majority of the apartments, the officers noted that all of the shower doors they observed appeared to be made of the same type of frosted glass.[8] Defendant was not aware that any of the shower doors were made of untempered glass until after plaintiff's accident.[9]

Plaintiff rented one of the apartments in the thirty-six unit complex from defendant.[10] In 1978, plaintiff slipped and fell against the shower door in the apartment and the frosted, untempered glass shattered, severely lacerating and breaking plaintiff's arm.[11] Prior to plaintiff's accident there were no accidents involving the shower doors.[12]

Defendant inspected the shower doors following plaintiff's accident and discovered "no visible difference between the tempered and untempered glass in terms of visible appearance."[13] The inspection did reveal, however, that thirty-one of the shower doors were made of untempered glass.[14] Defendant's maintenance man examined the doors and indicated that it was not possible for a layperson simply to look at the doors and differentiate between the tempered and untempered glass. The maintenance man noted that the only way he was able to distinguish between the two types of glass was by a " 'small mark in the corner of each piece of glass.' "[15] Defendant replaced the shower doors made of untempered glass after plaintiff's accident.[16]

Following the accident, plaintiff brought a personal injury action against defendant in the Superior Court of Contra Costa County, California asserting causes of action based on strict liability and negligence.[17] Defendant did not dispute that plaintiff's serious injury would have been less likely had the shower door been made of tempered glass, as opposed

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5. *Id.* at 457, 698 P.2d at 117, 213 Cal. Rptr. at 214.
6. *Id.* at 458, 698 P.2d at 117-18, 213 Cal. Rptr. at 214-15.
7. *Id.* at 457-58, 698 P.2d at 117, 213 Cal. Rptr. at 214.
8. *Id.*
9. *Id.* at 458, 698 P.2d at 118, 213 Cal. Rptr. at 215.
10. *Id.* at 457, 698 P.2d at 117, 213 Cal. Rptr. at 214.
11. *Id.* at 458, 698 P.2d at 117, 213 Cal. Rptr. at 214.
12. *Id.*
13. *Id.* at 458, 698 P.2d at 118, 213 Cal. Rptr. at 215.
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.* at 457, 698 P.2d at 117, 213 Cal. Rptr. at 214.

to untempered glass.[18] The superior court entered summary judgment in favor of defendant on both the strict liability and the negligence causes of action, and plaintiff appealed.[19] The California intermediate appellate court reversed the decision of the superior court.[20] The California Supreme Court granted a hearing and held that the superior court had committed reversible error.[21]

This Note will examine the decision in *Becker* and highlight its potential impact on future litigation applying strict liability in tort to a landlord. The majority in *Becker* began their opinion with a thorough review of the development of landlord liability in California from the early common law to the present day. The presentation of the historical development will focus on the following three areas: Common law principles concerning landlord-tenant relations, legislative changes that effected the common law, and strict liability in tort. The court in *Becker* based its holding on the court's recent trend in these three areas to shift the burdens in landlord-tenant relations from the tenant to the landlord.[22] A discussion of the California Supreme Court's treatment of the principle issues in the case follows. This discussion focuses on the court's reasoning for applying the strict liability principles to landlords for latent defects. The remainder of the Note is devoted to analysis of the court's departure from well established principles of strict liability in tort and of this departure's potential impact on landlord-tenant relations.

II. HISTORICAL DEVELOPMENT

Traditionally, the courts in California applied the early common law rule that a landlord had no duty to maintain leased dwellings in a habita-

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18. *Id.*

19. *Id.*

20. Becker v. IRM Corp., 144 Cal. App. 3d 321, 192 Cal. Rptr. 570 (1983), *vacated*, 38 Cal. 3d 454, 698 P.2d 116, 213 Cal. Rptr. 213 (1985).

21. 38 Cal. 3d at 457, 698 P.2d at 117, 213 Cal. Rptr. at 214.

22. 38 Cal. 3d at 463-67, 698 P.2d at 121-24, 213 Cal. Rptr. at 218-21 (discussing each area generally). *See also* RESTATEMENT (SECOND) OF PROPERTY, LANDLORD AND TENANT § 5 introductory note (1977), which provides:

> **Introductory Note:** The common law placed the risk on the tenant as to whether the condition of the leased property made it unsuitable for the use contemplated by the parties. In recent years, the definite judicial trend has been in the direction of increasing the responsibility of the landlord, in the absence of a valid contrary agreement, to provide the tenant with property in a condition suitable for the use contemplated by the parties. This judicial trend has been supported by the statutes that deal with this problem. This judicial and statutory trend reflects a view that no one should be allowed or forced to live in unsafe and unhealthy housing.

Id.

ble condition during the term of the lease.[23] A landlord, therefore, had no duty to locate and repair latent defects.[24] Application of this principle led to the result "that a landlord [was] not liable to the tenant for injuries due to a defective condition or faulty construction of the demised premises in the absence of fraud, concealment, or covenant in the lease."[25]

The common law rule was justified on the basis of the *caveat emptor* doctrine because a lease for a term was considered to be equivalent of a conveyance or sale of the premises.[26] The California courts also recognized that the landlord's lack of possession and control over the leased premises was another basis for the *caveat emptor* rule.[27] Under this reasoning, however, courts have held the landlord liable for injuries to tenants resulting from defects when the landlord maintained possession and control over common areas of the leasehold, but did not exercise ordinary care in keeping those common areas in a safe condition.[28]

These common law principles were discussed and applied in *Daulton v. Williams*.[29] In *Daulton*, a porcelain faucet handle on the bathtub injured plaintiff when it shattered in her grasp, inflicting a deep cut on her hand.[30] Over the years several tenants had broken porcelain handles during normal use in other apartments in the complex. The court held, however, that this reoccurrence did not constitute actual knowledge of the defect,[31] and therefore, the landlord was not liable because he was not an insurer of the premises. The court pointed out that if a landlord had actual knowledge of a defect, then any potential liability imposed would result from the landlord's concealment of the defect, not from the existence of the defect.[32] The court also imposed a duty on the tenant to use reasonable care to inspect the leasehold. If a tenant failed to use reasonable care, the landlord could possibly defeat a claim by the tenant since the tenant breached his duty.[33]

California has gradually withdrawn from the traditional common law

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23. *E.g.*, Green v. Superior Court, 10 Cal. 3d 616, 619, 517 P.2d 1168, 1169, 111 Cal. Rptr. 704, 705 (1974); Stoiber v. Honeychuck, 101 Cal. App. 3d 903, 913, 162 Cal. Rptr. 194, 197 (1980).

24. Daulton v. Williams, 81 Cal. App. 2d 70, 75, 183 P.2d 325, 328 (1947).

25. 38 Cal. 3d at 463, 698 P.2d at 121, 213 Cal. Rptr. at 218.

26. Green v. Superior Court, 10 Cal. 3d 616, 622, 517 P.2d 1168, 1171, 111 Cal. Rptr. 704, 707 (1974).

27. *See, e.g.*, 38 Cal. 3d at 463, 698 P.2d at 121, 213 Cal. Rptr. at 218; Stoiber v. Honeychuck, 101 Cal. App. 3d 903, 913, 162 Cal. Rptr. 194, 197 (1980).

28. *See, e.g.*, Columbia Laboratories v. California Beauty Supply Co., 24 Cal. 2d 114, 118, 148 P.2d 15, 16 (1944); Ellis v. McNeese, 109 Cal. App. 667, 293 P. 854 (1930).

29. 81 Cal. App. 2d 70, 183 P.2d 325 (1947).

30. *Id.* at 71, 183 P.2d at 326.

31. *Id.* at 72-73, 183 P.2d at 328.

32. *Id.*

33. *Id.*

by statute and judicial decision.[34] Section 1941 of the California Civil Code, enacted in 1872, requires the lessor to maintain buildings to be occupied by human beings in a condition fit for such occupation, and to repair subsequent dilapidations that cause the building to be untenantable.[35] Section 1941.1 enumerates the dilapidations that render buildings untenantable.[36] Additionally, when a landlord fails to repair dilapidations within a reasonable time after seasonable notice, section 1942 provides the tenant with a statutory right to make the repair and reduce the rent by the cost of the repair, or it allows the tenant to be discharged from all obligations.[37]

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34. 38 Cal. 3d at 461, 698 P.2d at 120, 213 Cal. Rptr. at 217.

35. CAL. CIVIL CODE § 1941 (West 1985) provides:

> The lessor of a building intended for the occupation of human beings must, in the absence of an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable, except such as are mentioned in [§ 1929].

Id.

36. *Id.* § 1941.1 (West 1985) provides:

> A dwelling shall be deemed untenantable for purposes of Section 1941 if it substantially lacks any of the following affirmative standard characteristics:
>
> (a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
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> (b) Plumbing or gas facilities which conformed to applicable law in effect at the time of installation, maintained in good working order.
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> (c) A water supply approved under applicable law, which is under the control of the tenant, capable of producing hot and cold running water, or a system which is under the control of the landlord, which produces hot and cold running water, furnished to appropriate fixtures, and connected to a sewage disposal system approved under applicable law.
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> (d) Heating facilities which conformed with applicable law at the time of installation, maintained in good working order.
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> (e) Electrical lighting, with wiring and electrical equipment which conformed with applicable law at the time of installation, maintained in good working order.
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> (f) Building, grounds and appurtenances at the time of the commencement of the lease or rental agreement in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents and vermin, and all areas under control of the landlord kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
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> (g) An adequate number of appropriate receptacles for garbage and rubbish, in clean condition and good repair at the time of the commencement of the lease or rental agreement, with the landlord providing appropriate serviceable receptacles thereafter, and being responsible for the clean condition and good repair of such receptacles under his control.
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> (h) Floors, stairways, and railings maintained in good repair.

Id.

37. *Id.* § 1942 (West 1985) provides:

> (a) If within a reasonable time after written or oral notice to the landlord or his agent, as defined in subdivision (a) of Section 1962, of dilapidations rendering the

After sections 1941 and 1942 of the California Civil Code were enacted, tenants confronted the courts with attempts to recover against their landlords for injuries received by reason of the condition of the building.[38] The tenants argued that section 1941 imposed a duty upon landlords and that a breach of this duty would result in a cause of action for negligence.[39] While recognizing that the statutory duty imposed by section 1941 was in addition to the common law duties, the courts limited the tenant's remedy for breach of the statutory duty to the remedy provided in section 1942 and held that the traditional common law rule, which placed no duty to repair on the landlord, was not expanded.[40]

In addition to the above legislative enactments, the California Court of Appeals in *Hinson v. Delis*[41] adopted the rule that an implied warranty of habitability exists in lease agreements between landlords and tenants.[42] In *Hinson*, the court held that the landlord must substantially obey housing codes and make premises habitable before the tenant is obligated to make full rental payments.[43] This decision initiated California's judicial departure from the common law rule that landlords owe no duty to their tenants.[44]

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premises untenantable which the landlord ought to repair, the landlord neglects to do so, the tenant may repair the same himself where the cost of such repairs does not require an expenditure more than one month's rent of the premises and deduct the expenses of such repairs from the rent when due, or the tenant may vacate the premises, in which case the tenant shall be discharged from further payment of rent, or performance of other conditions as of the date of vacating the premises. This remedy shall not be available to the tenant more than twice in any 12-month period.

(b) For the purposes of this section, if a tenant acts to repair and deduct after the 30th day following notice, he is presumed to have acted after a reasonable time. The presumption established by this subdivision is a rebuttable presumption affecting the burden of producing evidence and shall not be construed to prevent a tenant from repairing and deducting after a shorter notice if all the circumstances require shorter notice.

(c) The tenant's remedy under subdivision (a) shall not be available if the condition was caused by the violation of Section 1929 or 1941.2.

(d) The remedy provided by this section is in addition to any other remedy provided by this chapter, the rental agreement, or other applicable statutory or common law.

Id.

38. *See, e.g.*, Sieber v. Blanc, 76 Cal. 173, 173, 18 P. 260, 261 (1888).

39. *Id.*

40. *Id.* (citing Van Every v. Ogg, 59 Cal. 563 (1881)).

41. 26 Cal. App. 3d 62, 102 Cal. Rptr. 661 (1972) (overruled by Knight v. Hallsthammer, 29 Cal. 3d 46, 623 P.2d 268, 171 Cal. Rptr. 707 (1981)).

42. 26 Cal. App. 3d at 69-70, 102 Cal. Rptr. at 666.

43. *Id.* at 71, 102 Cal. Rptr. at 666-67.

44. *See, e.g.*, Stoiber v. Honeychuck, 101 Cal. App. 3d 903, 913, 162 Cal. Rptr. 194, 197 (1980).

The California Supreme Court in *Green v. Superior Court*[45] reiterated that the warranty of habitability established by the court in *Hinson* is implied by law in residential leases and held that a breach of this warranty may be raised as a defense in an unlawful detainer action.[46] In an important part of this decision, the court elaborately described the changes in landlord-tenant relations over the years as being instrumental in justifying the departure from the traditional common law.[47] The court stated that the early tenements were easily inspectable, simple structures whereas today's leaseholds are complex and difficult to inspect.[48] The court declared that not only will the mobility of today's tenants make them less willing to make extensive expenditures for repairs, but also today's tenants probably are not as skilled in maintenance as tenants in years past.[49] The court also explained that the shortage of affordable housing has decreased the tenant's bargaining power to gain express warranties and declared that these reasons certainly place the landlord, not the tenant, in the better position to discover and alleviate defects.[50] The court then determined that tenants, like other modern consumers, reasonably may expect leased premises to be fit for the duration of the lease. The court relied upon the modern housing codes as a demonstration of the public policy that supports the imposition of duties upon the landlord.[51]

California courts also have imposed liability upon landlords for damage caused by defects in personal property supplied by the landlord to the tenant. In one case, *Fisher v. Pennington*,[52] the court held a landlord liable to the tenant of a furnished apartment for damage resulting from defects in furniture supplied by the landlord on the basis of an implied warranty of fitness for use and occupation.[53] A landlord was also held liable in *Shattuck v. Saint Francis Hotel & Apartments*[54] for breach of an express warranty that a wall bed was safe and fit for use.[55] Liability extending from a warranty that furniture is fit for use was "confined to the

45. 10 Cal. 3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974).

46. *Id.* at 632, 517 P.2d at 1178, 111 Cal. Rptr. at 714.

47. *Id.* at 624-27, 517 P.2d at 1171-76, 111 Cal. Rptr. at 707-12.

48. *Id.* at 624, 517 P.2d at 1173, 111 Cal. Rptr. at 709.

49. *Id.*

50. *Id.* at 625, 517 P.2d at 1173-74, 111 Cal. Rptr. at 709-10.

51. *Id.* at 627, 517 P.2d at 1175, 111 Cal. Rptr. at 711.

52. 116 Cal. App. 248, 2 P.2d 518 (1931).

53. *Id.* at 250-51, 2 P.2d at 520 (Plaintiff was injured while lying in bed when the door to which the bed was attached fell on plaintiff. *Id.* at 249, 2 P.2d at 519.)

54. 7 Cal. 2d 358, 60 P.2d 855 (1936) (Plaintiff informed manager she did not feel folding beds were safe, but manager insisted that the bed was safe and that she would have no trouble.)

55. *Id.* at 358-59, 60 P.2d at 856-57.

condition of the premises at the beginning of the term and not to conditions which, unknown to the lessor, subsequently arise."[56]

The courts in California presently recognize that a landlord may be liable in tort for injuries to tenants or damage to their property resulting from the failure of the landlord to use ordinary care in maintaining the property.[57] In *Evans v. Thomason*,[58] a landlord was held liable for a tenant's personal injuries and property damage caused by a defective electrical outlet that the landlord failed to repair despite ample opportunity to make repairs.[59] The court explained that section 1714 of the California Civil Code expresses the state's policy that failure to repair will result in responsibility for consequent injuries.[60] The court pointed out that the criteria for determining whether the landlord used ordinary care are the following: "[L]ikelihood of injury, the probable seriousness of such injury, the burden of reducing or avoiding the risk, and his degree of control over the risk creating defect."[61]

In addition to recovery for personal injuries and property damage, the court in *Stoiber v. Honeychuck*[62] held that a landlord can be sued in tort by a tenant for mental distress resulting from failure to maintain the premises.[63] The court explained that the negligent infliction of emotional distress is compensable without physical injury in cases concerning tortious interference with property rights, even though physical injury is generally required in personal injury cases.[64]

The California Supreme Court first enunciated the strict liability doctrine in 1962, when the court imposed strict liability on manufacturers in *Greenman v. Yuba Power Products*.[65] The California Supreme Court held that "[a] manufacturer is strictly liable in tort when an article he places

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56. Forrester v. Hoover Hotel & Inv. Co., 87 Cal. App. 2d 226, 232, 196 P.2d 825, 828-29 (1948) (Plaintiff was injured while attempting to lower a wall bed when it became detached and fell upon plaintiff. The bed appeared to be safe during the previous fourteen months that plaintiff had occupied the premises.) *Id.* at 227-28, 196 P.2d at 826.

57. *E.g.*, Evans v. Thomason, 72 Cal. App. 3d 978, 140 Cal. Rptr. 525 (1977).

58. 72 Cal. App. 3d 978, 140 Cal. Rptr. 525 (1977).

59. *Id.* at 985, 140 Cal. Rptr. at 528-29.

60. CAL. CIVIL CODE § 1714 (West 1985) provides in pertinent part:

> (a) Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. The extent of liability in such cases is defined by the Title on Compensatory Relief.

Id.

61. 72 Cal. App. 3d at 984-85, 140 Cal. Rptr. at 529.

62. 101 Cal. App. 3d 903, 162 Cal. Rptr. 194 (1980).

63. *Id.* at 922, 162 Cal. Rptr. at 203.

64. *Id.*

65. 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).

on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being."[66] The court reasoned that because the liability is imposed by law, the manufacturer is unable to contractually limit the scope of its responsibility for defective products.[67] The court pointed out that the purpose of such liability is to ensure that the manufacturer who markets the product bears the costs of injuries, rather than imposing these costs on persons who are powerless to protect themselves.[68] The court explained that plaintiff must prove that the injury resulted from a defect of which plaintiff was unaware while plaintiff was using the product for its intended use.[69]

To impose strict liability in tort, the defendant must be a part of the "overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products."[70] Under this 'stream of commerce' approach to strict liability, California has extended strict liability to retailers,[71] property lessors and bailors,[72] licensors of personalty,[73] and wholesale and retail distributors.[74]

In *Vandermark v. Ford Motor Co.*,[75] the California Supreme Court elaborated on the justifications for extending strict liability to nonmanufacturers who are a part of the marketing enterprise. Plaintiffs in *Vandermark* were injured when the hydraulic brake system malfunctioned on a recently purchased automobile, causing the car to swerve into a lightpost.[76] The court held that the retailer is a part of the marketing enterprise that should bear the costs of injuries resulting from defective

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66. *Id.* at 62, 377 P.2d at 900, 27 Cal. Rptr. at 700 (Plaintiff was injured when a power lathe attachment came out of a combination power tool and struck plaintiff in the head. *Id.* at 62, 377 P.2d at 898, 27 Cal. Rptr. at 698.)

67. *Id.* at 63, 377 P.2d at 901, 27 Cal. App. at 701.

68. *Id.*

69. *Id.*

70. Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 262, 391 P.2d 168, 171, 37 Cal. Rptr. 896, 899 (1964); *see infra* notes 75-79 and accompanying text.

71. Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964).

72. Price Shell Oil Co., 2 Cal. 3d 245, 248, 466 P.2d 722, 724, 85 Cal. Rptr. 178, 180 (1970) (The plaintiff-mechanic sued the defendant oil company for personal injuries received when the legs on a movable ladder, which was mounted on a tank, split and mechanic fell.); McClaflin v. Bayshore Equip. Rental Co., 274 Cal. App. 2d 446, 452, 79 Cal. Rptr. 337, 338 (1969) (Defendant-rental company was subject to strict liability in wrongful death action when defendant died from head injuries received when he fell from a defective ladder.)

73. Garcia v. Halsett, 3 Cal. App. 3d 319, 325-26, 82 Cal. Rptr. 420, 423 (1970).

74. Barth v. B.F. Goodrich Tire Co., 265 Cal. App. 2d 228, 251, 71 Cal. Rptr. 306, 321 (1968) (Installer of a defective automobile tire was strictly liable in addition to the manufacturer.)

75. 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964).

76. *Id.* at 258, 391 P.2d at 169, 37 Cal. Rptr. at 897.

products.[77] The court emphasized that strict liability was an incentive to improve the safety of the product, and that the retailer may play a vital role in assuring the safety of the product by taking independent precautionary measures or exerting pressure on the manufacture to improve the product's safety.[78] The court reasoned that the imposition of strict liability was appropriate since those who are a part of the marketing enterprise can adjust the costs of compensation among themselves through their "continuing business relationships."[79]

Although the California courts have extended strict liability to nonmanufacturers, the courts have rejected the opportunity to include used machinery dealers in the group that is subject to strict liability[80] unless the dealer has modified extensively, or rehabilitated the second-hand products.[81] Used machinery dealers are not subject to strict liability in tort because of the absence of the continuing business relationship relied on by the court in *Vandermark*.[82]

The courts have also placed certain realty transactions within the reach of strict liability. In *Kriegler v. Eichler Homes, Inc.*,[83] the court held a builder strictly liable when the heater in a mass-produced home failed.[84] The manufacturer of a residential lot was also held strictly liable in *Avner v. Longridge Estates*[85] for damage resulting from defects in the manufacturing process causing subsidence.[86] In these cases, the courts held that the builders were manufacturers. The strict liability principles developed in *Greenman* were, therefore, applicable.[87]

In two decisions not concerning latent defects in the premises, the California Courts of Appeals held that landlords could be strictly liable in tort for damage caused by defects in furniture or appliances.[88] In *Fakhoury v. Magner*,[89] a landlord was held strictly liable when a couch

77. *Id.* at 263, 391 P.2d at 171, 37 Cal. Rptr. at 899.

78. *Id.* at 262, 391 P.2d at 171-72, 37 Cal. Rptr. at 899-90.

79. *Id.* at 263, 391 P.2d at 172, 37 Cal. Rptr. at 900.

80. *See, e.g.*, La Rosa v. Superior Court, 122 Cal. App. 3d 741, 176 Cal. Rptr. 224 (1981); Wilkinson v. Hicks, 126 Cal. App. 3d 515, 179 Cal. Rptr. 5 (1981); Tauber-Arons Auctioneers Co. v. Superior Court, 101 Cal. App. 3d 268, 161 Cal. Rptr. 789 (1980).

81. Green v. City of Los Angeles, 40 Cal. App. 3d 819, 827, 837-38, 115 Cal. Rptr. 685, 690, 697 (1974).

82. *Becker*, 38 Cal. 3d at 465-66, 698 P.2d at 123, 213 Cal. Rptr. at 220.

83. 269 Cal. App. 2d 224, 74 Cal. Rptr. 749 (1969).

84. *Id.* at 228-29, 74 Cal. Rptr. at 752.

85. 272 Cal. App. 2d 607, 77 Cal. Rptr. 633 (1969).

86. *Id.* at 615, 77 Cal. Rptr. at 639.

87. *Id.* (discussing *Kriegler*, 269 Cal. App. 2d 224, 74 Cal. Rptr. 749 (1969)).

88. Golden v. Conway, 55 Cal. App. 3d 948, 962-63, 128 Cal. Rptr. 69, 78 (1976); Fakhoury v. Magner, 25 Cal. App. 3d 58, 63, 101 Cal. Rptr. 473, 476 (1972).

89. 25 Cal. App. 3d 58, 101 Cal. Rptr. 473 (1972).

collapsed in a tenement furnished by the landlord.[90] The court emphasized that liability resulted from defective personal property, not fixtures or real property.[91] The court in *Golden v. Conway*[92] rejected this distinction between personal property and fixtures. In *Golden*, the court held that a landlord could be strictly liable for fire damage to the tenant's personal property even though a defective fixture caused the damage.[93] The defective fixture was a wall panel heater installed by a contractor who was hired by the landlord.[94] As a prerequisite to liability, the court held that the landlord must be engaged in the business of leasing residential or commercial premises, but he need not have knowledge of the defect when he had the appliance installed.[95] The court also explained that the property must be placed within the stream of commerce before strict liability will be imposed and that an isolated transaction will not satisfy this requirement.[96] *Fakhoury* and *Golden* were the last extensions of strict liability to landlords prior to the decision in *Becker*.

III. Discussion of the Principal Case

This section will present the court's reasoning in *Becker* for extending strict liability principles to a landlord when a latent defect in the premises caused a tenant to suffer personal injury or other damage. The court went to great lengths to review the relevant law[97] as set forth in the previous section on historical development. Following this review, the court decided that, in accord with recognized principles of law, a landlord "engaged in the business of leasing dwellings" is subject to the principles of strict liability.[98] The court went further than previous decisions by extending the application of strict liability to injuries resulting from latent defects present in the premises at the time they were let to the tenant.[99] The court limited the holding, however, to strict liability for latent defects and did not address the issue of strict liability for defects that develop after the beginning of the lease.[100] The California courts' reliance on a 'stream of commerce' approach dictated that landlords be considered a

90. *Id.* at 64-65, 101 Cal. Rptr. at 476.
91. *Id.* at 64, 101 Cal. Rptr. at 476-77.
92. 55 Cal. App. 3d 948, 128 Cal. Rptr. 69 (1976).
93. *Id.* at 962, 128 Cal. Rptr. at 78.
94. *Id.* at 952-53, 128 Cal. Rptr. at 71.
95. *Id.* at 961-62, 128 Cal. Rptr. at 78.
96. *Id.* at 961, 128 Cal. Rptr. at 77 (citing *Fakhoury*, 25 Cal. App. 3d 58, 101 Cal. Rptr. 473 (1982)).
97. 38 Cal. 3d at 458-64, 698 P.2d at 118-22, 213 Cal. Rptr. at 215-19.
98. *Id.* at 464, 698 P.2d at 122, 213 Cal. Rptr. at 219.
99. *Id.* at 467, 698 P.2d at 124, 213 Cal. Rptr. at 221.
100. *Id.* at 467 n.5, 698 P.2d at 124 n.5, 213 Cal. Rptr. at 221 n.5.

part of an ongoing enterprise that provides various housing accommodations to renters.[101] The court pointed out that landlords play a 'substantial role' in the relevant rental housing market, as opposed to engaging only in a few isolated rental transactions.[102]

The court justified its extension of strict liability principles by pointing out that landlords, in renting premises, make implied representations concerning the premises' fitness for ordinary use as a dwelling.[103] These representations lead tenants to rent without inspection of the premises. The court stressed that tenants are not usually in a position to inspect or repair increasingly modern and complex rental dwellings.[104] The landlord, on the other hand, is not only in a better position to inspect and repair, but also is financially able to bear the costs of injuries caused by defects through increasing the amount of insurance, raising the rent, or adjusting the acquisition price of the property.[105] The court relied on the strict liability maxim enunciated in *Greenman* for applying strict liability principles to these facts and held the landlord liable " 'rather than the injured persons who are powerless to protect themselves.' "[106]

The defendant-landlord, a post construction purchaser of the apartment building, attempted to analogize his position to that of a dealer in used personalty, but the court summarily dismissed this argument.[107] Defendant's argument was based on *Vandermark* and that case's apparent reliance on the existence of a continuing business relationship among those engaged in the 'stream of commerce.'[108] Acknowledging that an exception to strict liability did exist for dealers in used personalty, the court stressed that the exception did not apply once the seller addressed the safety of the product.[109] For example, solitary acts such as an extensive modification or reconditioning of a product address the safety of a product and can transform the character of a seller of used property into a manufacturer of new property.[110] Based on its determination that a landlord makes implied representations concerning the safety of the dwelling, the court held that a continuing business relationship was not necessary for the imposition of strict liability on a landlord who leases used

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101. *Id.* at 464, 698 P.2d at 122, 213 Cal. Rptr. at 219.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 465, 698 P.2d at 123, 213 Cal. Rptr. at 220. *See supra* notes 65-69 and accompanying text.

106. *Id.* (quoting *Greenman*, 59 Cal. 2d at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701).

107. *Id.*

108. *Id.* (citing 61 Cal. 2d at 262-63, 391 P.2d at 172, 37 Cal. Rptr. at 900).

109. 38 Cal. 3d at 465, 698 P.2d at 123, 213 Cal. Rptr. at 220.

110. *Id.*

dwellings.[111]

The court intimated that not only was a continuing business relationship not required once the safety of the apartment was addressed by the landlord's implied representations, but that the absence of a manufacturer weighed in favor of landlord liability.[112] The court cited the decision of *Ray v. Alad Corp.*[113] as authority for this proposition, but failed to explain how this decision supported its reasoning.[114] The court based its conclusion, that a continuing business relationship was not necessary to the paramount policy behind the strict liability rule of spreading the cost of compensating defenseless victims, on the fact that manufacturers are, at times, unavailable.[115] The court reasoned that imposition of landlord liability would spread the cost of compensation, acknowledge the integral role that landlords play in producing and marketing rental dwellings, and recognize the cost of protecting tenants as an appropriate cost to be borne by the enterprise.[116] The court based this reasoning on the tenant's inability to protect themselves and the landlord's ability to spread the cost through various means such as acquisition price, insurance, and rental.[117]

The majority also recognized that plaintiff had a cause of action based on defendant's alleged negligence, in addition to the strict liability action. The court initially asserted the fundamental principle that a landlord must exercise reasonable care in providing and maintaining the leased premises in a safe condition.[118] Defendant argued that he had no duty to inspect for defective shower doors since he had no knowledge of the defective condition or of prior accidents.[119] Recognizing that defective glass doors create a substantial risk of injury, the court reasoned that lack of knowledge concerning this risk does not necessarily preclude liability. The fact that a specific type of accident has never occurred does not show that the accident was not reasonably foreseeable.[120]

Justice Kaus, Justice Reynoso, and Justice Grodin joined in the majority opinion, and Chief Justice Bird concurred separately.[121] Justice Lucas

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111. *Id.* (citing Green v. City of Los Angeles, 40 Cal. App. 3d 819, 838, 115 Cal. Rptr. 685, 699 (1974). Since extensive modifications were made to the used crane, the court viewed defendant as being tantamount to a manufacturer.)

112. 38 Cal. 3d at 466, 698 P.2d at 123, 213 Cal. Rptr. at 220.

113. 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977).

114. 38 Cal. 3d at 466, 698 P.2d at 123, 213 Cal. Rptr. at 220 (citing *Ray*, 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574).

115. 38 Cal. 3d at 466, 698 P.2d at 123, 213 Cal. Rptr. at 220.

116. *Id.*

117. *Id.* at 466, 698 P.2d at 124, 213 Cal. Rptr. at 221.

118. *Id.* at 467, 698 P.2d at 124, 213 Cal. Rptr. at 221.

119. *Id.*

120. *Id.* at 468-69, 698 P.2d at 125, 213 Cal. Rptr. at 222.

121. *Id.* at 469-70, 698 P.2d at 126, 213 Cal. Rptr. at 223 (Bird, C.J., concurring) (quot-

concurred on the negligence issue, but he dissented from the strict liability holding of the opinion.[122]

In the dissent, Justice Lucas criticized the majority for imposing strict liability without considering the person who built or installed the defective item.[123] To support the conclusion that those who make the product should be liable for its defects, the dissent quoted Justice Traynor's justification for strict liability: " 'The purpose of such liability is to insure that the costs of injuries resulting from defective products are borne by the manufacturers . . . .' "[124]

Although Justice Lucas agreed that landlords play a continuous role in the rental business, he contended that the majority improperly applied the 'stream of commerce' approach, on which California courts rely as a justification for strict liability in tort, by failing to provide a workable definition of 'being engaged in the business of leasing dwellings' and thus failing to explain who is subject to strict liability.[125] The dissent stressed that the holding was not necessarily limited to landlords of multiple residences, but could include anyone who rents on a regular basis, even those who rent family homes.[126]

While recognizing that previous California decisions had extended strict liability to nonmanufacturers,[127] the dissent declared that these cases reveal another weakness in the majority's 'stream of commerce' interpretation. In the previous cases, the courts demanded the presence of a continuous business relationship between the nonmanufacturer and the manufacturer as a condition precedent to the application of strict liability.[128] Justice Lucas emphasized that the lack of association between landlords who had purchased previously owned property and the original builder is vital because the landlord will not be able to influence the builder in any attempt to improve safety.[129] This lack of influence was one primary reason the courts did not extend strict liability to dealers of used machinery.[130] The dissent also pointed out that, unlike other

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ing *Becker*, 144 Cal. App. 3d, 192 Cal. Rptr. 570 (1983)).

122. 38 Cal. 3d at 479, 698 P.2d at 133, 213 Cal. Rptr. at 230 (Lucas, J., concurring in part & dissenting in part).

123. *Id.* at 479, 698 P.2d at 133, 213 Cal. Rptr. at 230.

124. *Id.* at 480, 698 P.2d at 133, 213 Cal. Rptr. at 230 (quoting *Greenman*, 59 Cal. 2d at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701).

125. 38 Cal. 3d at 483-84, 698 P.2d at 136, 213 Cal. Rptr. at 233.

126. *Id.* at 483, 698 P.2d at 136, 213 Cal. Rptr. at 233 (Lucas, J., concurring in part & dissenting in part).

127. *See supra* notes 75-77 and accompanying text.

128. 38 Cal. 3d at 462, 698 P.2d at 135, 213 Cal. Rptr. at 232 (Lucas, J., concurring in part & dissenting in part).

129. *Id.* at 462, 698 P.2d at 135, 213 Cal. Rptr. at 232.

130. *Id.*

nonmanufacturers who are held strictly liable, landlords are not and cannot be expected to have expert knowledge of the item.[131] Thus, the dissent declared that the imposition of strict liability without the continuous business relationship and without expertise amounts to giving insurance to the tenants.[132]

Justice Lucas also disapproved of the majority's reliance upon *Ray* to justify imposition of strict liability despite the lack of a continuing business relationship with the builder.[133] In *Ray*, a corporation that had acquired and continued the business of a manufacturer was held strictly liable for injuries resulting from defects in products manufactured by the predecessor corporation.[134] The dissent distinguished *Ray*. In *Ray*, the predecessor corporation was completely unavailable to injured consumers seeking legal recourse,[135] whereas in *Becker* plaintiff had negotiated a settlement agreement with the builder, door assembler, and installer for at least $150,000.[136] Justice Lucas did acknowledge that the decision in *Ray* was appropriate since the overlap of corporate entities made the successor corporation " 'an integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products . . . .' "[137] The dissent said that the landlord's purchase of used property did not justify the conclusion that the landlord became a part of the "*marketing* scheme for the shower doors."[138]

Justice Lucas pointed out that most jurisdictions have not held landlords strictly liable for latent defects, Louisiana being the only exception.[139] He concluded by referring to the majority's failure to give due regard to the economic effect the imposition of strict liability will have on landlord-tenant relations. The dissenting justice predicted that the final result of the majority's imposition of strict liability will be an increase in costs to the tenant.[140]

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131. *Id.*

132. *Id.* at 487, 698 P.2d at 139, 123 Cal. Rptr. at 236.

133. 38 Cal. 3d at 484, 698 P.2d at 136, 213 Cal. Rptr. at 233 (Lucas, J., concurring in part & dissenting in part).

134. 19 Cal. 3d at 34, 560 P.2d at 11, 136 Cal. Rptr. at 582.

135. *Id.* at 31-34, 560 P.2d at 9-11, 136 Cal. Rptr. at 580-82.

136. 38 Cal. 3d at 434, 698 P.2d at 137, 213 Cal. Rptr. at 234 (Lucas, J., concurring in part & dissenting in part).

137. *Id.* at 434, 698 P.2d at 137, 213 Cal. Rptr. at 234 (quoting *Ray*, 19 Cal. 3d at 34, 560 P.2d at 11, 136 Cal. Rptr. at 582).

138. 38 Cal. 3d at 484, 698 P.2d at 137, 213 Cal. Rptr. at 234 (emphasis in original).

139. *Id.* at 486 n.5, 698 P.2d at 138 n.5, 213 Cal. Rptr. at 235 n.5; *see* Parr v. Head, 442 So. 2d 1234 (La. App. 1983).

140. 38 Cal. 3d at 487 n.6, 698 P.2d at 139 n.6, 213 Cal. Rptr. at 236 n.6.

IV. Analysis and Criticisms

The rationale of the *Becker* decision is questionable when compared to the original policies behind the growth and extension of strict liability. Several problems are created by the court's treatment of the strict liability issue in *Becker*. First, the question arises concerning what constitutes being engaged in the 'business of leasing dwellings.' The court failed to provide a workable definition of this phrase and failed to consider the isolated transactions exception to strict liability,[141] which had been recognized previously. Second, the court applied strict liability without properly considering the justification for the 'stream of commerce' approach in strict liability. Most importantly, a continuing business relationship, between the landlord, and the manufacturers and marketers of the particular defective product was not required. This leaves open the possibility that strict liability will be imposed upon landlords who are unable to spread the costs to those engaged in the marketing enterprise. Thus, the court, in purporting to protect the injured tenant, may have failed to consider the actual economic impact on tenants as a class.

As previously mentioned, the California Supreme Court has been credited with the development and growth of the strict liability principles that control in most jurisdictions today.[142] The effect of the California Supreme Court's recent decision in *Becker* on landlord-tenant relations will depend on whether *Becker* is regarded as a well-reasoned extension of strict liability in tort. If other jurisdictions adopt this recent extension of strict liability, then landlords will be subjected to an increase in litigation and liability costs. The landlord will be unable to avoid these increased costs through exclusionary provisions in lease agreements because the obligations are imposed by law.[143]

The California Supreme Court limited its holding in *Becker* to those landlords engaged in the 'business of leasing dwellings;'[144] the court failed, however, to define adequately what would constitute being engaged in the 'business of leasing dwellings.' The failure of the majority in *Becker* to provide this definition may have stemmed from reliance on past decisions in California which established that isolated transactions were not subject to strict liability.[145] The California Court of Appeals specifically held in *Fakhoury*, however, that a landlord who furnished couches in five apartments was subject to strict liability since this was not

141. *See infra* notes 145-46 and accompanying text.
142. *See* Annot., 13 A.L.R.3d 1057, 1061 n.2 (1967).
143. *Greenman*, 59 Cal. 2d at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701.
144. 38 Cal. 3d 454, 464, 698 P.2d 116, 122, 213 Cal. Rptr. 213, 219.
145. *E.g.*, 25 Cal. App. 3d at 64, 101 Cal. Rptr. at 476.

a casual or isolated transaction.[146] The court of appeals did not explain why this was not an isolated transaction or what would constitute an isolated transaction. Thus, the California Supreme Court in *Becker* left unanswered the question concerning which landlords are subject to strict liability because the court failed to explain if, or when, the isolated transactions exception would apply and failed to adequately explain what would constitute being engaged in the 'business of leasing dwellings.'

Courts may have great difficulty in producing a workable definition of being in the 'business of leasing dwellings' because there are several complex factors that must be considered in formulating such a definition. Probably the most important consideration is the landlord's actual potential to be an effective cost-spreader. One of the original policies behind the extension of strict liability to certain nonmanufacturers was their ability to spread the cost of damages to others who were engaged in the enterprise that marketed and produced the defective product.[147] The economic effect of the decision in *Becker* will be to spread the cost 'directly' to the tenant, the defenseless victim, through increased rents. This result is contrary to the cost-spreading policy supporting strict liability. Although landlords as a group are not homogeneous, a traditional application of strict liability principles would treat them as such and the actual ability of each landlord to spread the cost would not be considered. Use of strict liability principles in this manner would avoid a difficult and lengthy factual inquiry into each case, but ease of application of these principles and recovery under them is not a rationale that justifies the imposition of strict liability.[148]

The court in *Becker* posited that they were relying on the policy behind strict liability of the "spreading throughout society of the cost of compensating otherwise defenseless victims of manufacturing defects."[149] The court apparently considered landlords as a class without regard to the various types of landlords and accommodations. Those landlords who participate on a minute level in the rental market may, therefore, reconsider their decision to provide rental accommodations in the light of *Becker*. Obviously, some of these landlords could decide to withdraw from the rental market. The cumulative effect of the loss of these landlords and their rental accommodations could reduce the availability of affordable leaseholds and drive up the cost of those remaining leaseholds.

In previous California decisions, the courts had extended strict liability

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146. *Id.* at 64, 101 Cal. Rptr. at 476.

147. *Greenman*, 59 Cal. 2d at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701.

148. La Rosa v. Superior Court, 122 Cal. App. 3d 741, 760, 176 Cal. Rptr. 224, 235 (1981) (Seller of used punch press was not strictly liable for plaintiff's personal injuries because the seller did not inspect, repair, or modify the press.).

149. 38 Cal. 3d at 466, 698 P.2d at 123, 213 Cal. Rptr. at 220.

only to those nonmanufacturers who enjoyed a continuing business relationship with the manufacturer and played an integral role in the marketing chain.[150] These nonmanufacturers were deemed to be a part of the "overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products."[151] They were determined to be a part of the 'stream of commerce.' The importance of this determination is that it "works no injustice to the defendants, for they can adjust the costs of such protection *between them* in the course of their continuing business relationship."[152] The extension of strict liability to these nonmanufacturers, therefore, was in accord with the strict liability policy of spreading the costs among those engaged in the enterprise.

In *Becker*, the court seemed to circumvent the continuous business relationship and cost-spreading factors of the 'stream of commerce' approach that previously had provided justification for extending strict liability to nonmanufacturers. The decision in *Becker* raises the question of whether a determination that landlords are 'engaged in the business of leasing dwellings' is sufficient to consider them a part of the 'stream of commerce.' If so, the court in *Becker* has departed from the previous 'stream of commerce' approach that required a continuing business relationship with the manufacturers and the marketers of the particular defective product as a prerequisite to applying strict liability to manufacturers.

In justifying its extension of strict liability to the landlord in *Becker*, the court alluded to the paramount policy behind strict liability of compensating defenseless victims, but one wonders how the landlord in *Becker* could possibly spread the cost of compensating the injured tenant when the landlord has never enjoyed a business relationship with any party involved in the marketing scheme for shower doors.[153] The landlord will be unable to spread the cost to those involved in the marketing scheme; his only alternative will be to increase rents in order to obtain the additional insurance necessary to guard against his increased liability. Even if one considers the apartment to be a product in itself, this extension of strict liability is inappropriate in light of the policies behind the doctrine, because the landlord neither enjoyed a continuing business relationship with the original builder of the complex nor a continuing business relationship with the manufacturers and marketers of the defective shower door.

The court in *Becker* supported its conclusion that a continuing business relationship was not essential to the application of strict liability by

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150. *See supra* notes 75-79 and accompanying text.
151. *Vandermark*, 61 Cal. 2d at 262, 391 P.2d at 171, 37 Cal. Rptr. at 899.
152. 61 Cal. App. 2d at 262-63, 391 P.2d at 172, 37 Cal. Rptr. at 900 (emphasis added).
153. 38 Cal. 3d at 466, 698 P.2d at 123, 213 Cal. Rptr. at 220-21.

declaring that the absence of a relationship with the manufacturer weighed in favor of imposing strict liability on a landlord who could spread the cost of compensation.[154] The court, however, merely cited *Ray*, and did not elaborate any justification for this proposition.[155] In *Ray*, a successor corporation that purchased the complete manufacturing operation of the predecessor corporation was held liable for injuries to consumers caused by defects in products produced by the predecessor corporation.[156] The successor corporation in *Ray* continued to *manufacture* and distribute Alad ladders, and the court determined the corporation to be an integral part of the marketing scheme for ladders.[157]

The majority's reliance on *Ray* may have been inappropriate because two facts in *Ray*, not considered in detail by the majority opinion, may distinguish it from the circumstances in *Becker*. First, the successor corporation in *Ray* was a *manufacturer* of ladders; therefore, the majority in *Becker* could have been mistaken in relying on *Ray* as support for its determination that the *absence of a manufacturer* weighed in favor of imposing liability on the landlord.[158] Even though the successor landlord in *Becker* purchased the assets of the predecessor landlord, the successor landlord was not a manufacturer. Second, *Ray* is distinguishable from *Becker* because the predecessor corporation in *Ray* was unavailable to consumers seeking legal recourse.[159] In *Becker*, plaintiff did reach a settlement agreement with the builder and the door assembler and installer.[160] Consideration of these two differences gives support to the dissent's view in *Becker* that *Ray* concerned a narrow set of circumstances that are inapplicable to *Becker*.[161]

The majority's holding that a continuing business relationship with the manufacturer was not necessary for the application of strict liability also stands in direct contravention to the original policy behind strict liability of "insur[ing] that the costs of injuries resulting from defective products are borne by the manufacturers that put such products on the market . . . ."[162] Clearly the landlord in *Becker*, who did not enjoy a continuing relationship with the manufacturer, was not in a position to insure that the manufacturer bore the cost.

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154. *Id.* at 466, 698 P.2d at 123, 213 Cal. Rptr. at 220.

155. *Id.*

156. 19 Cal. 3d at 34, 560 P.2d at 11, 136 Cal. Rptr. at 582.

157. *Id.* (emphasis added).

158. 38 Cal. 3d at 466, 698 P.2d at 123, 213 Cal. Rptr. at 220 (emphasis added).

159. 19 Cal. 3d at 31, 560 P.2d at 9, 136 Cal. Rptr. at 580.

160. 38 Cal. 3d at 457 n.1, 698 P.2d at 117 n.1, 213 Cal. Rptr. at 214 n.1.

161. *Id.* at 484, 698 P.2d at 137, 213 Cal. Rptr. at 234 (Lucas, J., concurring in part & dissenting in part).

162. *Id.* at 480, 698 P.2d at 133, 213 Cal. Rptr. at 230 (citing *Greenman*, 59 Cal. 2d at 63, 377 P.2d at 901, 27 Cal. Rptr. at 701).

The majority in *Becker* refused to accept the landlord's argument that he was in an analagous position to a dealer in used personalty.[163] The court noted that an exception to strict liability does apply to dealers in used personalty who do not make any representations concerning quality or durability unless the dealer extensively modifies or reconditions the product. The dealer in used goods who has made extensive modifications to the product has addressed the safety of the product and is treated as a manufacturer.[164] The court rejected defendant's argument that a vendor of used apartments is analogous to a dealer of used personalty because landlords make representations that the dwelling will be fit for use, thereby addressing the safety of the product and creating an expectation of safety in the tenant.[165]

A primary justification for extending strict liability to nonmanufacturers was that the nonmanufacturers participated in the 'stream of commerce' and, therefore, were afforded the opportunity to address the safety of the product with the manufacturer. Defendant could have argued that the rationale for extending strict liability to nonmanufacturers was not applicable to him because he was not in a position, as a vendor of used apartments, to affect the safety of the product since the shower door was installed prior to his purchase, and he was unaware that the glass was untempered. The landlord in *Becker* was not in a position to influence the builder to improve the safety of the tenement, since it was built eleven years prior to the landlord's purchase and since he had never enjoyed a business relationship with the builder.

Several jurisdictions have previously considered whether strict liability should be imposed on a landlord,[166] and only Louisiana has imposed strict liability on a landlord in the absence of actual knowledge of the defect.[167] *Dwyer v. Skyline Apartments*[168] is representative of those decisions that have rejected the extension of strict liability to landlords. The court in *Dwyer* refused to extend strict liability since the landlord was not considered to be a manufacturer who places his product in the 'stream of commerce.' The court also refused to burden the landlord with the liability caused by a defect because the landlord does not have the expertise necessary to recognize and alleviate the defective condition. The court pointed out that a landlord should be liable only when he knows or

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163. 38 Cal. 3d at 465-66, 698 P.2d at 123, 213 Cal. Rptr. at 220.

164. *Id.*

165. *Id.* at 464-65, 698 P.2d at 122, 213 Cal. Rptr. at 219.

166. *E.g.*, Kidd v. Price, 461 S.W.2d 565 (Ky. 1970); Henderson v. W.C. Haas Realty Management, Inc., 561 S.W.2d 382 (Mo. App. 1977); Dwyer v. Skyline Apartments, Inc., 123 N.J. Super. 48, 301 A.2d 463, *aff'd*, 63 N.J. 577, 311 A.2d 1 (1973).

167. Parr v. Head, 442 So. 2d 1234, 1235 (La. App. 1983).

168. 123 N.J. Super. 48, 301 A.2d 463, *aff'd*, 63 N.J. 577, 311 A.2d 1 (1973).

should know of the defect.[169] The decision in *Becker* may cause those jurisdictions that have refused to extend strict liability in the absence of knowledge to reconsider their position.

The court in *Becker* assumed that alternative means of spreading the cost were available to the landlord even though he had no continuing business relationship with the manufacturer and marketers of the defective product. The majority referred to the ability of the landlord in the absence of this continuing business relationship to increase rents and acquire insurance in an attempt to meet the anticipated increase in the costs of protecting tenants.[170] The court, however, failed to consider the availability of insurance for this purpose or the potentially high cost of this type of insurance.[171] Ultimately, tenants will bear directly the costs of their injuries through the increase in rents caused by the imposition of strict liability in the absence of a continuing business relationship with the manufacturer and marketer of the product. This virtually amounts to the landlord serving as an insurer of the premises and the tenant's safety with the tenant bearing the cost of insurance. This result does not comport with the original policies behind strict liability of compensating defenseless victims and distributing the risk among those engaged in the enterprise since this result places the risk of compensation upon the landlord and tenant, not those engaged in the 'stream of commerce' of the defective product.

While the court's concern in *Becker* for compensating defenseless tenants is admirable, its failure to consider the economic impact of this decision on other tenants leaves doubt concerning whether the decision is in the best interest of tenants as a class. Given a choice, would the reasonable tenant choose to have the landlord be deemed an absolute guarantor, thereby increasing the tenant's cost of living, or be satisfied with the landlord's duty to exercise reasonable care in maintaining the prem-

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169. 123 N.J. Super. at 55-56, 301 A.2d at 467.

> Such a landlord is not engaged in mass production whereby he places his product—the apartment—in a stream of commerce exposing it to a large number of consumers. He has not created the product with a defect which is preventable by greater care at the time of manufacture or assembly. He does not have the expertise to know and correct the condition, so as to be saddled with responsibility for a defect regardless of negligence.
>
> An apartment involves several rooms with many facilities constructed by many artisans with differing types of expertise, and subject to constant use and deterioration from many causes. It is a commodity wholly unlike a product which is expected to leave the manufacturer's hands in a safe condition with an implied representation upon which the consumer justifiably relies.

Id.

170. 38 Cal. 3d at 466, 698 P.2d at 124, 213 Cal. Rptr. at 221.

171. *Id.* at 487 n.6, 698 P.2d at 139 n.6, 213 Cal. Rptr. at 236 n.6 (Lucas, J., concurring in part & dissenting in part).

ises? The increase in rent will not only be a financial burden on the normal tenant, but will probably reduce the availability of affordable housing. As Justice Lucas points out in his dissent on the strict liability issue, "[s]omeone will have to pay for the additional litigation today's decision is likely to create."[172]

V. CONCLUSION

After the California Supreme Court's decision in *Becker*, strict liability in tort will be applied to landlords who are engaged in the 'business of leasing dwellings' in California for latent defects in the premises.[173] The court based this holding on the policy of insuring that tenants will not be forced to bear the cost of their injuries resulting from defects that existed at the time of letting.[174] The court abandoned the requirement of a continuing business relationship with the manufacturer, but still relied on the 'stream of commerce' approach.[175]

This reliance on the 'stream of commerce' approach may be justified. The court, however, left unanswered several important questions. Principally, the court's failure to provide an adequate definition of being engaged in the 'business of leasing dwellings' leaves open the possibility that *anyone* who leases on a regular basis will be subject to strict liability. Subsequent litigation, therefore, will be necessary to qualify this decision.

JOHN C. DANIEL, III
KENNETH W. KING, JR.

172. *Id.*
173. *Id.* at 464, 698 P.2d at 122, 213 Cal. Rptr. at 219.
174. *Id.* at 467, 698 P.2d at 124, 213 Cal. Rptr. at 221.
175. *Id.* at 466, 698 P.2d at 123-24, 213 Cal. Rptr. at 220-21.