

**LANDLORD / TENANT LAW—CODE VIOLATIONS
UNDER NEGLIGENCE PER SE AND COMMON LAW
NEGLIGENCE THEORIES: *GRADJELICK V. HANCE***

The Honorable Francis J. Connolly[†]

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I. INTRODUCTION

The Minnesota Supreme Court recently clarified what negligence claims are available to an injured tenant against a landlord. A tenant may now pursue a claim against a landlord under *both* negligence per se and common law negligence theories when he or she alleges housing code violations.¹ Previously, if an accident occurred as a result of a housing code violation, a landlord could rely upon an official housing inspection report that did not reveal any violations to argue a lack of constructive notice of the condition.² The landlord’s lack of constructive knowledge allowed the landlord to avoid liability under both theories for injuries resulting from fire or housing code violations if the

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1. *Gradjelic v. Hance*, 646 N.W.2d 225, 232 (Minn. 2002).

2. *Id.* at 234.

landlord relied upon the official inspector's report.³

In *Gradjelick v. Hance*, a fire destroyed an apartment building and tenants brought a negligence action against the landlord based upon alleged housing code violations and common law negligence.⁴ The Minnesota Supreme Court's decision in the case now requires courts to conduct separate analyses under both negligence per se and common law negligence theories to determine landlord liability when a housing code violation is alleged.⁵ The practical effect of the decision could impose a duty upon landlords to re-inspect the premises, even if a building inspector or fire marshal had previously conducted an inspection and had found no code violations. The decision also ensures that landlords cannot avoid liability for a dangerous condition on the premises that they may have created.

II. BACKGROUND

The general rule under Minnesota common law is that a landlord is not liable (owes no legal duty of care) to a tenant for damage caused by defective conditions existing on the premises at the time of the lease.⁶ Courts recognize four exceptions to the general rule.⁷ The continuing evolution of these exceptions has some arguing that the breadth of the exceptions has contributed to the "erosion of the entire common-law rule, as part of the decline of the concept of a lease as a conveyance"⁸

The first exception applies where there is a hidden and

3. *Id.*

4. *Id.* at 227.

5. *Id.* at 234.

6. *Johnson v. O'Brien*, 258 Minn. 502, 504-06, 105 N.W.2d 244, 246-47 (1960); *Briemhorst v. Beckman*, 227 Minn. 409, 417, 35 N.W.2d 719, 726 (1949); *Oakland v. Stenlund*, 420 N.W.2d 248, 251 (Minn. Ct. App. 1988); *Broughton v. Maes*, 378 N.W.2d 134, 135 (Minn. Ct. App. 1985), *petition for rev. denied* (Minn. Feb. 14, 1986). "The rule was rationalized by the theory that a lease is a conveyance, a sale for the term, to which caveat emptor applied." MILTON R. FRIEDMAN, *FRIEDMAN ON LEASES*, § 10.101, at 607 (4th ed. 1997).

7. *Broughton*, 378 N.W.2d at 135. *See also Oakland*, 420 N.W.2d at 248.

8. FRIEDMAN, *supra* note 6, § 10.101, at 610. Friedman also states that the basic rule is "under assault led by an emerging 'poverty law,' which gives indication of spreading into the entire field of lease law." *Id.* The rule initially began from a lease of agricultural land in which the landlord was absent and the tenant was the only one on the land. *Id.* Since tenants are now often in short-term leases in non-agricultural buildings, the tenant is not the sole tenant and cannot afford to repair the premises. *Id.* Now, neither the tenant nor the landlord expects the tenant to repair the premises, despite a written lease to the contrary. *Id.*

dangerous condition on the premises. This exception imposes a duty of care on the landlord when the landlord is aware, or should be aware, of the hidden and dangerous condition, but the tenant remains unaware.⁹ The landlord need not have actual knowledge of the condition. Instead, if he or she should have known of the danger and a tenant exercising due care would not have discovered it, then the landlord may be held liable.¹⁰ A landlord is not responsible, however, if the tenant is made aware of the dangerous and defective condition.¹¹ Second, courts may impose liability on landlords for what is referred to as the common area exception.¹² This exception states that the landlord owes a duty to see that the premises remaining in the control of the landlord are maintained in a safe condition for the tenant's use.¹³ A third exception exists if the landlord leases the premises for purposes involving admission to the public.¹⁴ If so, then the landlord is liable for any defective conditions.¹⁵ Finally, an exception exists for any negligent repairs

9. *Broughton*, 378 N.W.2d at 135. Some of these exceptions also originated with the RESTATEMENT (SECOND) OF TORTS §343, which states that:

[A] possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land, if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger.

RESTATEMENT (SECOND) OF TORTS § 343 (1965). The Restatement further states what the tenant may expect from the landlord.

[A]n invitee enters upon an implied representation or assurance that the land has been prepared and made ready and safe for his reception. He is therefore entitled to expect that the possessor will exercise reasonable care to make the land safe for his entry, or for his use for the purposes of the invitation. He is entitled to expect such care not only in the original construction of the premises, and any activities of the possessor or his employees which may affect their condition, but also in inspection to discover their actual condition and any latent defects, followed by such repair, safeguards or warning as may be reasonably necessary for his protection under the circumstances.

Id. at §343, cmt. b.

10. *Johnson*, 258 Minn. at 504-06, 105 N.W.2d at 246.

11. *Broughton*, 378 N.W.2d at 136.

12. *Nubbe v. Hardy Cont'l Hotel Sys. of Minn.*, 225 Minn. 496, 499, 31 N.W.2d 332, 334 (1948) (discussing landlord liability for the failure to maintain areas of common use).

13. *Id.* See also *Gradjelick*, 646 N.W.2d at 231.

14. *Broughton*, 378 N.W.2d at 136.

15. *Id.* at 135.

that the landlord performed on the premises.¹⁶

If any of these four exceptions to the general common law rule apply, a landlord may be liable to a tenant for damage caused as a result of a violation of a duty created under these exceptions.¹⁷ The Minnesota Supreme Court found the first two exceptions, for hidden and dangerous conditions and common areas, most applicable in the *Gradjelick* case.¹⁸

Even if an exception to the general rule of landlord liability does not apply, the applicable statute or ordinance imposes a fixed duty of care, so its breach constitutes conclusive evidence of negligence.¹⁹ Prior to the supreme court's 2002 ruling, if there was an alleged violation of a housing or fire code, the case was typically decided under a negligence per se analysis "if the persons harmed by the violation were within the intended protection of the code and if the harm suffered was of the type the code was intended to prevent."²⁰ Under the negligence per se analysis, Minnesota requires four elements be present:

- (1) the landlord or owner knew or should have known of the code violation;
- (2) the landlord or owner failed to take reasonable steps to remedy the violation;
- (3) the injury suffered was the kind the Code was meant to prevent; and
- (4) the violation was the proximate cause of the injury or damage.²¹

The district court in *Gradjelick* applied the negligence per se analysis as articulated by the Minnesota Supreme Court in *Bills v. Willow Run I Apartments*.²²

In *Bills*, the plaintiff was injured when he fell on an exterior landing outside his apartment building.²³ The plaintiff sued the building owner alleging the handrails were in violation of the Uniform Building Code and this violation was a proximate cause of

16. *Id.*

17. *Gradjelick*, 646 N.W.2d at 232 n.4.

18. *Id.* at 231.

19. *Id.* (citing *Alderman's, Inc. v. Shanks*, 536 N.W.2d 4, 8 (Minn. 1995)). *See also Pac. Indem. Co. v. Thompson-Yaeger, Inc.*, 260 N.W.2d 548, 558-59 (Minn. 1977).

20. *Alderman's*, 536 N.W.2d at 8.

21. *Bills v. Willow Run I Apartments*, 547 N.W.2d 693, 695 (Minn. 1996).

22. *Gradjelick*, 646 N.W.2d at 234.

23. *Bills*, 547 N.W.2d at 693-94.

his injuries.²⁴ A building inspector had inspected the landing prior to the accident, and did not report any violations, which led the district court to rule that the plaintiff had failed to show that the defendant had actual or constructive knowledge of the alleged defective condition.²⁵ The Minnesota Supreme Court concluded that landlords lack actual notice of a code violation when they reasonably rely on an inspection report and, therefore, cannot be held negligent per se for code violations that the inspector did not include in his report.²⁶

The *Bills* decision was one of several that limited instances of landlord liability. The courts have narrowly interpreted negligence theories as they relate to landlord liability and the duties owed to a tenant. In *Funchess v. Cecil Newman Corp.*, the court found that no special relationship existed between a landlord and tenant that would give rise to a duty to protect the tenant from the criminal acts of third parties.²⁷ The court of appeals had earlier stated that at common law, absent fraud, misrepresentation or an agreement to the contrary, “a landlord was not responsible to his tenant for injuries resulting from a defective condition on the premises.”²⁸ In fact, Minnesota law does not permit the imposition of strict liability against a landlord for a breach of the implied warranty of habitability.²⁹ Thus, Minnesota courts have generally taken a narrow approach to landlord liability in numerous contexts.

III. THE *GRADJELICK* CASE

A. *The Facts*

In 1982, Leland Hance purchased a mixed-use building in Excelsior, Minnesota.³⁰ During the period relevant to this case, a hardware store occupied the first floor of the apartment complex

24. *Id.* at 694.

25. *Id.*

26. *Id.* at 695.

27. 632 N.W.2d 666, 674 (Minn. 2001). *See generally* Melissa Baer, *Notes and Trends Real Property*, Bench & Bar Minn. 34, 42 (Nov. 2001).

28. *Meyer v. Parkin*, 350 N.W.2d 435, 437 (Minn. Ct. App. 1984) (referencing *Normandine v. Friedson*, 181 Minn. 471, 474, 233 N.W. 14, 15 (1930), which was overruled in part by *Johnson v. O'Brien*, 258 Minn. 502, 507, 105 N.W.2d 244 (1960)); LOUIS LEHR, PREMISES LIABILITY 3D PART II. CHAPTER 41 (2002).

29. MINN. STAT. § 504B.161; LEHR, *supra* note 28.

30. *Gradjelick v. Hance*, 646 N.W.2d 225, 227 (Minn. 2002)

and nine residential apartments were located on the second floor.³¹ Leland and Patricia Hance, who owned the building, lived in Colorado and employed a manager to care for the property.³² The Gradjelicks and Connie Jo Klosterman were tenants in the building and occupied two separate units located directly across a common hallway from each other.³³

On April 24, 1999, Ms. Klosterman worked late and stopped at a bar on her way home where she consumed several alcoholic drinks.³⁴ After leaving the bar, she returned to her building and attended a party in a nearby apartment, where she consumed several more drinks.³⁵ Ms. Klosterman eventually left the party and returned to her apartment.³⁶ Early in the morning of April 25, 1999, Ms. Klosterman discovered a fire inside her apartment and she fled the building.³⁷

The Gradjelicks awoke to the smell of smoke in their apartment.³⁸ Mrs. Gradjelick called 911, opened her bedroom window and waited for firefighters to arrive at the scene.³⁹ Upon the arrival of the fire department, Mrs. Gradjelick escaped from the apartment first, by means of a rescue ladder.⁴⁰ After watching his wife reach the ground safely, Mr. Gradjelick felt intense heat on his back and fell from the second floor window.⁴¹ He suffered a compound fracture of his leg and first degree burns to his back and legs.⁴² At the time of trial, his medical bills were in excess of \$250,000 and the injuries affected his ability to work.⁴³

A deputy state fire marshal concluded that the fire originated in Ms. Klosterman's apartment on the sofa/sleeper where she had apparently fallen asleep while smoking.⁴⁴ It was later determined that Ms. Klosterman's blood alcohol concentration level was 0.34

31. *Id.*

32. *Id.*

33. *Id.*

34. Gradjelick v. Hance, No. PI00-004430, slip op. at 4 (4th Dist. Ct. Minn., Sept. 18, 2000).

35. *Id.*

36. *Id.*

37. *Id.*

38. *Gradjelick*, 646 N.W.2d at 228.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Gradjelick v. Hance, No. PI00-004430, slip op. at 5 (4th Dist. Ct. Minn., Sept. 18, 2000).

44. *Gradjelick*, 646 N.W.2d at 228.

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and she was subsequently charged with negligent fire, a felony in Minnesota.⁴⁵ The resulting property damage to the apartment building was assessed at approximately \$700,000.⁴⁶

The Gradjelicks brought a negligence claim against both Mr. and Mrs. Hance and Ms. Klosterman.⁴⁷ The claim against the Hances, as owners of the building, alleged that they had maintained the building in a negligent and careless manner and that their negligence, along with Ms. Klosterman's actions, proximately caused Mr. Gradjelick's injuries.⁴⁸

Plaintiffs also alleged numerous violations of the fire and building code within the apartment building which had created dangerous conditions.⁴⁹ Specifically, Plaintiffs alleged that Defendants failed to create a secure hallway during the conversion from commercial space to residential units.⁵⁰ Experts hired by Plaintiffs and Defendant Klosterman noted several code violations, and both experts concluded that, but for the violations, the fire could have been contained to Ms. Klosterman's apartment.⁵¹

Plaintiffs, based on evidence obtained during discovery, argued that Defendants were aware of the unsafe conditions because they had performed repairs on the property.⁵² The Gradjelicks argued that the Hances should have known about the conditions "because the defects were numerous and obvious and that the Hances were directly involved with some of the defects, including the installation of the electrical system for the smoke detectors and repairing a window in the Gradjelicks' apartment."⁵³

45. *Id.*

46. *Gradjelick*, No. PI00-004430, slip op. at 4.

47. *Gradjelick*, 646 N.W.2d at 228.

48. *Id.*

49. *Id.* at 228-29.

50. *Id.* at 229.

51. *Id.* at 228; *Gradjelick v. Hance*, 627 N.W.2d 708, 710 (Minn. Ct. App. 2001).

52. *Gradjelick*, 646 N.W.2d at 229. Among other improvements, the Hances had the electrical system hardwired in 1997 and fire detectors installed in the common hallway. *See* Appellants' Brief, at 3.

53. *Gradjelick*, 646 N.W.2d at 230. The Appellants claimed that attaching the smoke detectors eighteen inches below the ceiling, instead of at the ceiling level, caused the detectors to untimely detect the smoke. *See* Appellants' Brief at 7. It was this improper installation that gave notice to the Hances of a dangerous condition, thereby giving them constructive knowledge of the condition. *Id.* (citing *Wolvert v. Gustafson*, 146 N.W.2d 172, 173 (Minn. 1966) for the proposition that a landowner has constructive knowledge if the dangerous condition is the result of the landowner's actions).

Moreover, Plaintiffs argued that Defendants knew or should have known of these dangerous and hidden conditions because Defendants owned the building both before and after the conversion from office space to apartments.⁵⁴

In response, Defendants moved for summary judgment.⁵⁵ The Hances claimed that they lacked actual or constructive knowledge that the rental property was unsafe or that any building or fire code violations existed at the time of the fire.⁵⁶ In support of their position, the landlords cited a fire marshal's annual report, dated three months prior to the fire, which reported that the fire marshal did not observe any code violations or hazards on the premises.⁵⁷ The landlords further argued that they lacked independent knowledge of any hazards on the premises because they lived out of state at the time of the fire and that residents never notified them of any existing hazards.⁵⁸ The Gradjelicks challenged summary judgment by claiming, "the Hances could not rely on the inspection report revealing no violations because the Hances were directly involved with the defective conditions."⁵⁹

B. The District Court's Analysis

The landlords sought summary judgment in this case, arguing that they had no actual or constructive knowledge of the fire code violations.⁶⁰ The issue before the court centered on whether there were disputed issues of fact as to whether Defendant landlords breached a duty owed to Plaintiffs that was the proximate cause of Mr. Gradjelick's injuries.⁶¹ The court ultimately found no genuine

54. Gradjelick v. Hance, No. PI00-004430, slip op. at 5 (4th Dist. Ct. Minn., Sept. 18, 2000).

55. *Gradjelick*, 646 N.W.2d at 229.

56. *Id.*

57. *Id.* at 229-30. The city of Excelsior adopted the 1997 Uniform Fire Code in 1998. *Id.* The fire marshal stated that the "city interprets the code to require that nonconforming structural conditions in buildings that existed when the code was adopted be corrected only upon commencement of new construction." *Id.* The marshal also stated that "he looks for conditions that can be corrected without construction activity." *Id.* When the fire marshal inspected the landlord's building three months before the fire, he found "no code violations that could be corrected without construction activity and issued the multiple dwellings permit." *Id.* Additionally, the fire marshal "prepared a one-page summary of his inspection in which he indicated 'No Hazards Observed.'" *Id.*

58. *Id.*

59. *Id.*

60. *Id.* at 229.

61. *Id.* at 230.

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issue of material fact existed as to whether Defendants knew or should have known of any code violations that may have existed on their property.⁶² Even if the conditions existed as Plaintiffs alleged, the fire marshal's report failed to denote them.⁶³ Defendants' reliance on this report was construed to demonstrate a lack of constructive knowledge of the code violations or any hazardous conditions.⁶⁴ The district court therefore granted summary judgment on the grounds that the landlord had reasonably relied on an official building inspector's report.⁶⁵ Since the most recent report stated there were no fire code violations at the apartment building, the court found that the landlords lacked the requisite notice to impose liability.⁶⁶

The district court ruling reiterated the general rule that landlords are "not liable to tenants for damage caused by defective conditions existing on the premises at the time of the lease"⁶⁷ absent one of the four exceptions of negligence per se.⁶⁸

The district court concluded that Plaintiffs failed to show that Defendants knew or should have known of any fire code violations, which was a "crucial element to the plaintiff's claim under Minnesota law."⁶⁹

The district court's decision relied heavily on *Bills v. Willow Run I Apartments*, which held that if a landlord or owner reasonably relies on a state building inspection report, the landlord cannot be held negligent per se for an uncited violation of that code.⁷⁰ The

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Gradjelick v. Hance*, No. PI00-004430, slip op. at 8 (4th Dist. Ct. Minn., Sept. 18, 2000) (citing *Oakland v. Stenlund*, 420 N.W.2d 248 (Minn. Ct. App. 1988) and *Broughton v. Maes*, 378 N.W.2d 134 (Minn. Ct. App. 1986)).

68. *Gradjelick*, No. PI00-004430, slip op. at 9 (citing *Broughton*, 378 N.W.2d at 135); see *supra* note 21 and accompanying text.

69. *Gradjelick v. Hance*, No. PI00-004430, slip op. at 10.

70. *Bills v. Willow Run I Apartments*, 547 N.W.2d 693, 695 (Minn. 1996). Bills was injured when he fell on an exterior landing outside his apartment building. *Id.* at 693-94. Plaintiff sued the building owner alleging the handrails were in violation of the Uniform Building Code and this violation was a proximate cause of his injuries. *Id.* at 694. The building inspector had inspected the landing prior to the accident, which led the district court to rule that Plaintiff had failed to show that the defendant had actual or constructive knowledge of the alleged defective condition. *Id.* The Minnesota Supreme Court found that the landlord

district court found the *Bills* case factually similar to the case before it.⁷¹ The Minnesota Supreme Court concluded in *Bills* that landlords lack actual notice of a code violation when they reasonably rely on an inspection report.⁷² The district court followed the precedent established by *Bills* and found that the landlords did not have a duty to re-inspect the building after the fire marshal's inspection report and the issuance of the multiple dwellings permit.⁷³ The district court granted summary judgment based on Plaintiff's failure to demonstrate that Defendants knew or should have known of the alleged violations as required by the *Bills* decision.⁷⁴

C. *The Court of Appeals' Analysis*

The Minnesota Court of Appeals affirmed the ruling of the district court.⁷⁵ According to the decision, a landowner relying on an official inspection report lacks constructive knowledge of code violations and, therefore, cannot be liable in an ordinary negligence action or in an action based on a negligence per se theory.⁷⁶

The heart of Plaintiffs' appeal was that the district court applied the wrong legal standard in granting Defendants' motion for summary judgment.⁷⁷ Plaintiffs argued that while *Bills* may relieve the landlords from liability under a negligence per se theory, it did not preclude a separate analysis under ordinary negligence.⁷⁸ The court of appeals disagreed.⁷⁹

The court interpreted the *Bills* decision as a modification of the negligence per se doctrine in relation to landlord/tenant law.⁸⁰ The court of appeals stated that the supreme court had adopted a standard that linked negligence per se and "common law landlord/tenant standards [finding liability when the landlord/landowner knew or should have known of a danger] into

reasonably relied upon the inspection report. *Id.*

71. *Compare id.* at 694-95, with Gradjelick, No. PI00-004430, slip op. at 11.

72. *Bills*, 547 N.W.2d at 695.

73. *Gradjelick*, No. PI00-004430, slip op. at 11.

74. *Id.* at 7.

75. *Gradjelick v. Hance*, 627 N.W.2d 708, 713 (Minn. Ct. App. 2001).

76. *Id.*

77. *Id.* at 712.

78. *Id.*

79. *Id.* at 713.

80. *Id.*

one that defines a fair and just result.”⁸¹ In addition, the court rejected Plaintiff’s argument that a separate analysis must occur stating: “[w]e are unable to articulate a principled distinction between per se and common law negligence theories for the purposes of this analysis.”⁸² In other words, according to the Minnesota Court of Appeals, if “the facts alleged failed to fulfill the knowledge requirement under negligence per se theory, identical facts asserted as common law negligence likewise fail.”⁸³

IV. THE MINNESOTA SUPREME COURT DECISION

The Gradjelicks appealed to the Minnesota Supreme Court, stating that the lower courts applied an erroneous legal standard and that genuine issues of fact were in dispute with respect to the landlords’ knowledge of defective conditions.⁸⁴ Apparently agreeing, the Minnesota Supreme Court reversed and remanded the case.⁸⁵ Although the supreme court did not find fault with the lower courts’ analysis with respect to negligence per se, the justices remanded the case given the failure to apply the correct legal standard to the separate ordinary negligence claim.⁸⁶

The supreme court took issue with the trial court’s interpretation of *Bills* and its failure to consider the elements of common law negligence in a separate analysis.⁸⁷ According to the *Bills* decision, actual or constructive knowledge of the code violation is still a required element in a negligence per se claim based on such violations, but this knowledge is not a required element in a common law negligence claim.⁸⁸ Instead, under the hidden and dangerous condition exception to the general standard of landlord liability, plaintiffs must show a landlord’s actual or constructive knowledge of the *hidden and dangerous condition*, which may or may not be a code violation.⁸⁹ The practical effect of this ruling is that the liability standards for ordinary negligence and for negligence per se should be kept separate in the analysis of a case.⁹⁰

81. *Id.*

82. *Id.*

83. *Id.*

84. Gradjelick v. Hance, 646 N.W.2d 225, 230 (Minn. 2002).

85. *Id.* at 234.

86. *Id.*

87. *Id.* at 232-33.

88. *Id.* at 233.

89. *Id.*

90. *Id.* at 234.

Indeed, the court noted, "separate analysis is necessary under each theory because the elements are different."⁹¹

The Minnesota Supreme Court also found that the district court "failed to consider other exceptions upon which landlord liability can be founded in ordinary negligence, including the 'common area' and 'negligent repair' exceptions."⁹² Neither of these exceptions requires actual or constructive knowledge of a code violation.⁹³ Additionally, a claim for ordinary negligence requires only the elements of duty, breach, causation and damages.⁹⁴ The supreme court emphasized that a defendant is entitled to summary judgment "when the record reflects a complete lack of proof on any of the four essential elements of the claim: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of the duty being the proximate cause of the injury."⁹⁵ Actual or constructive notice of a code violation does not enter into the analysis.⁹⁶

The court's opinion found that the lower courts had erred in interpreting and applying the *Bills* decision.⁹⁷ The court concluded that the *Bills* case should be applied to code violations only under a negligence per se analysis.⁹⁸ However, the court noted that the *Bills* case did not mandate that code violations must only be analyzed under a negligence per se theory.⁹⁹ Instead, analyses under

91. *Id.* Compare *Bills v. Willow Run I Apartments*, 547 N.W.2d 693, 695 (Minn. 1996) (articulating that a landlord will not be held liable for negligence per se unless the plaintiff can show:

- (1) the landlord or owner knew or should have known of the code violation;
- (2) the landlord or owner failed to take reasonable steps to remedy the violation;
- (3) the injury suffered was the kind the Code was meant to prevent; and
- (4) the violation was the proximate cause of the injury or damage.)

with *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995) (stating the requisite elements of negligence as the existence of a duty of care, a breach of that duty, an injury, and the breach of duty being the proximate cause of the injury).

92. *Gradjelick*, 646 N.W.2d at 233.

93. *Id.*

94. *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 157 (Minn. 1982).

95. *Gradjelick*, 646 N.W.2d at 230 (citing *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)).

96. *Gradjelick*, 646 N.W.2d at 233.

97. *Id.* at 232.

98. *Id.* at 234. *Bills v. Willow Run I Apartments*, 547 N.W.2d 693, 693 (Minn. 1996).

99. *Gradjelick*, 646 N.W.2d at 234; *Bills*, 547 N.W.2d at 693.

negligence per se according to *Bills* and ordinary common law negligence are both available in landlord liability cases when code violations are alleged.¹⁰⁰

V. ANALYSIS OF THE *GRADJELICK* DECISION

The Minnesota Supreme Court correctly reversed both the district court and the court of appeals in a decision that could affect the future of landlord/tenant law in at least two ways. First, it is now clear that two theories of landlord liability exist in a negligence action when code violations are alleged. Second, depending upon the interpretation given, the decision could either signal a new direction for the Minnesota Supreme Court in landlord liability cases, one which expands recovery options for tenants, or as merely clarifying existing causes of action.

The clarification of the required analysis in negligence actions involving housing code violations is perhaps the most important result of the *Gradjelick* case. The supreme court was careful to delineate the knowledge requirements under negligence per se and common law negligence as that seemed to be an area of confusion for the lower courts. While actual or constructive knowledge of code violations is required under a negligence per se claim based on building code violations under *Bills*,¹⁰¹ actual or constructive knowledge of a code violation is not a required element in an ordinary negligence claim.¹⁰² Rather, under the hidden dangerous condition exception to general standards of landlord liability set forth in *Breimhorst v. Beckman*, plaintiffs are required to show a landlord's actual or constructive knowledge of a hidden, dangerous condition.¹⁰³ As the Minnesota Supreme Court noted, hidden and dangerous conditions may include, but are not limited to, code violations.¹⁰⁴

In contrast to the finding of the court of appeals, the supreme court made a principled distinction between per se and common law negligence theories. Knowledge of code violations only applies in negligence per se cases, which was clearly the situation in *Bills*.¹⁰⁵ When code violations are alleged, the negligence per se analysis

100. *Gradjelick*, 646 N.W.2d at 234.

101. *Bills*, 547 N.W.2d at 695.

102. *Hudson v. Snyder Body, Inc.*, 326 N.W.2d 149, 157 (Minn. 1982).

103. 227 Minn. 409, 419, 35 N.W.2d 719, 726 (1949).

104. *Gradjelick*, 646 N.W.2d at 233.

105. *Bills*, 547 N.W.2d at 693.

cannot supplant the separate analysis required under ordinary negligence law in evaluating claims by tenants against landlords.¹⁰⁶

In short, the *Gradjelick* decision allowed the Minnesota Supreme Court to clarify the necessary analytical process in negligence cases where housing code violations are alleged. Furthermore, the decision also enabled the court to prevent the continued misapplication of the *Bills* decision.¹⁰⁷

The Minnesota Supreme Court ruling follows the general trend of other states as well.¹⁰⁸ The Supreme Court of Delaware

106. *Gradjelick*, 646 N.W.2d at 232.

107. *See, e.g., In re Shigellosis Litigation*, 647 N.W.2d 1, 10 (Minn. Ct. App. 2002).

108. *See generally* *Newton v. Magill*, 872 P.2d 1213, 1214 (Alaska 1994) (holding that the traditional common law rule that a landlord is generally not liable for dangerous conditions in leased premises no longer applies in view of the legislature's enactment of the Uniform Residential Landlord and Tenant Act); *Gore v. People's Sav. Bank*, 665 A.2d 1341, 1348 (Conn. 1995) (“[a]lthough the common law imposes on landlords only a duty to maintain in a reasonably safe condition those areas of their premises over which they exercise control, statutes may impose on landlords additional duties or obligations.”); *Mansur v. Eubanks*, 401 So.2d 1328, 1330 (Fla. 1981) (holding that after the tenant takes possession, the landlord has a continuing duty to exercise reasonable care to repair dangerous defective conditions upon notice of their existence by the tenant, unless waived by the tenant); *Stephens v. Stearns*, 678 P.2d 41, 50 (Idaho 1984) (adopting the rule that a landlord is under a duty to exercise reasonable care in light of all the circumstances); *Young v. Garwacki*, 402 N.E.2d 1045, 1049 (Mass. 1980) (holding that landlords must exercise reasonable care not to subject others to an unreasonable risk of harm); *Houston v. York*, 755 So.2d 495, 501 (Miss. Ct. App. 1999) (making a landlord subject to tort liability merely requires him to act as a reasonable landlord under the circumstances of the case, but the tenant would still be required to show duty, breach, causation, and damages, and the landlord would be entitled to raise the standard tort defenses, such as contributory negligence, unforeseeability or intervening cause); *Lenz v. Ridgewood Assocs.*, 284 S.E.2d 702, 705 (N.C. Ct. App. 1981) (holding that a violation of statute determining rights, obligations, and remedies under rental agreement for dwelling unit does not constitute negligence per se, and the common law standards of ordinary and reasonable care in such cases, violation of statute being only evidence of negligence, are left intact); *Turpel v. Sayles*, 692 P.2d 1290, 1292 (Nev. 1985) (holding that landlords, as other persons, must exercise reasonable care not to subject others to an unreasonable risk of harm); *Shump v. First Continental-Robinwood Assoc.*, 644 N.E.2d 291, 295 (Ohio 1994) (“[t]he legal duty that a landlord owes a tenant is not determined by the common-law classifications of invitee, licensee, and trespasser under the law of premises liability; instead, a landlord's liability to a tenant is determined by a landlord's common-law immunity from liability and any exceptions to that immunity that a court or a legislative body has created.”); *Favreau v. Miller*, 591 A.2d 68, 72 (Vt. 1991) (holding that landlords may be held liable for exposing their tenants to unreasonable risks of harm in the leased premises, whether or not they retain “control” of the dangerous condition); *Pagelsdorf v. Safeco Ins. Co. of Am.*, 284

ruled that a plaintiff may pursue their claims under both ordinary negligence and negligence per se.¹⁰⁹ The Delaware court stated that the landlord in its case was “mistaken in its argument that the Landlord Tenant Code precludes claims for ordinary negligence.”¹¹⁰

This decision may be viewed as a departure from the Minnesota Supreme Court’s generally conservative approach to landlord liability. Unlike their decisions in *Funchess*¹¹¹ and *Meyer*,¹¹² this opinion appears to be moving toward providing additional theories under which an injured tenant may recover. Some may interpret the decision as marking a new direction in landlord liability because it expands (rather than retracts) the theories of recovery available to an injured tenant. On the other hand, the decision could be interpreted as a mere corrective measure, which prevented further misapplication of the *Bills* decision and clarified the standards for negligence cases involving housing code violations.

The decision should be viewed as a corrective measure and a necessary outcome to clarify the current state of landlord liability in Minnesota. The supreme court did not add a new cause of action to the area of landlord liability; it merely articulated the difference between existing claims. Indeed, were the Minnesota Supreme Court to have ruled the other way, it would have only further muddied the waters in landlord liability law by confusing cases involving code violations with cases where hidden, dangerous conditions are alleged.

VI. CONCLUSION

While at first glance, *Gradjelick v. Hance*¹¹³ may seem to provide tenants with a new way to defeat a landlord’s defense of reliance on inspection reports in a negligence case, it does not. Rather, the

N.W.2d 55, 61 (Wis. 1979) (holding when a person lawfully on the premises is injured as a result of the landlord’s negligence in maintaining the premises, he is entitled to recover from the landlord under general negligence principles). Compare *Webster v. Heim*, 399 N.E.2d 690, 692 (Ill. App. Ct. 1980) (refusing to adopt the rule of reasonable care in place of the common law rule of non-liability of landlords for injuries to tenants).

109. *New Haverford P’ship v. Stroot*, 772 A.2d 792, 797 (Del. 2001).

110. *Id.* at 798.

111. *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666 (Minn. 2001).

112. *Meyer v. Parkin*, 350 N.W.2d 435 (Minn. 1984).

113. 646 N.W.2d 225.

case is more likely to be viewed as a mere clarification of the causes of action that already existed. Though the Minnesota Supreme Court remanded the case to the district court for further findings, it suggested that the court had applied the correct legal standard with respect to the negligence per se theory.¹¹⁴ However, it wanted the district court to conduct a separate analysis under common law negligence.¹¹⁵

Landlords may still argue they lack constructive knowledge of any code violation by relying on fire marshal inspection reports that do not turn up any such code violations and thus defeat a negligence per se claim. However, the supreme court has made clear that they could not successfully use the same argument to defeat a separate common law negligence claim if the tenants can point to a separate duty that was breached.

114. *Id.* at 235.

115. *Id.*