

If You Play with Fire You Will get Burned



the facts

XYZ Management is a 60-year-old family owned commercial real estate brokerage serving Fort Wayne, Indiana. They also offer tenant representation and property management services.

Risk Factor #1

A large amount of renters who sublet can cause a confusing chain of command. This can lead to risks for the management company.

XYZ Management managed a property located in Manhattan and owned by Saints Church. The property was rented to BCD, Inc. who in turn sublet part of it to GoGo Stores and Glam Stores. GoGo Stores then sublet one half of their unit to UMI and the other half to Bobbie's Ice Cream.

A fire broke out in the building severely damaging the property and several of the stores. The fire was caused by combustible materials consisting of rubbish, wood and paper, that were stored too close to the oil furnace in the basement of the building below the space rented to GoGo Stores and Bobbie's Ice Cream. In order to reach the fire in the basement storage area of Bobbie's Ice Cream, the fire department had to cut through the walls of Glam Stores basement storage area resulting in damage to their merchandise and their retail space above.

Glam Stores was closed for five days because of damage to the store. They had to redo their fixtures and inventory in order to reopen the store which cost an estimated \$165,000.

Risk Factor #2

XYZ Management should have inspected the property per terms of the management agreement. They should have performed common management practices and made sure to check for certain risks such as advising tenants and subtenants to remove the trash. They should have kept proof of their practices in the event of a discrepancy.

the result

Glam Stores filed a lawsuit alleging that the damage was a result of negligence and/or gross negligence of Saints Church and XYZ Management. Saints Church denied XYZ Management's request for defense and indemnification because of XYZ Management's own negligence. XYZ believed that the 'liability waivers' contained within their management agreement with Saints Church was sufficient to shield them from direct liability. The case settled for \$200,000 in Glam Stores favor and cost the defendants \$20,000 in legal fees.

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