WALKER WILCOX
WALKER WILCOX MATOUSEK LLP

HOW TO SAVE ON LITIGATION COSTS WHEN THE OWNER OF THE PROPERTY DOES NOT CONTROL THE AREA WHERE THE INJURY OCCURRED.

The usual suspects are always named in a premise liability lawsuit. Plaintiff's counsel routinely names the owner of the property and any tenants who are leasing the property. The first questions that should be asked is, "who is responsible for the location where the injury occurred."

I was recently confronted with this issue when my client was sued by a tenant who was injured at property it owned, but subject to a repurchase agreement. The repurchase agreement gave control of the location where the injury occurred to the tenant, and not my client. We filed a motion to dismiss, arguing that my client did not have control of the location where the plaintiff was injured and relied on the following case law:

- In *Gilley v. Kiddel*, the plaintiff sustained injuries when she fell down the stairs inside an apartment owned by the defendant and leased to the plaintiff's boyfriend, Shipman. 372 Ill.App.3d 271, 272 (2nd Dist. 2007). Plaintiff brought suit against Shipman and the landlord under a theory of premises liability. Id. The landlord moved for summary judgment on the basis that the landlord was not liable for injuries caused by a defective condition on the premises leased to the tenant and under the tenant's control. Id. 273. The trial court granted the motion for summary judgment and plaintiff appealed. *Id.* On appeal, the court found that "[i]t is well settled in Illinois that a landlord is not liable for injuries caused by a defective or dangerous condition on premises leased to a tenant and under the tenant's control." Id. at 275. See also *Klitzka v. Hellios*, 348 Ill.App.3d 594, 597 (2004). "Therefore, a lessor who relinquishes control of property to a lessee owes no duty to a third party who is injured while on the leased property." Id. The appellate court found that the lease agreement provided that the tenant was responsible to maintain the premises in good condition. Id. at 276. Further, the appellate court found that even though the lease reserved the landlord's right to enter the apartment and make repairs, that it did not impose a duty on the landlord to make repairs. Id. The appellate court affirmed that trial court's ruling granting the landlord's dismissal of plaintiff's amended complaint, because there was no basis on which the landlord could be liable for plaintiff's injuries. Id. at 278.

In their response brief, Plaintiff's counsel made the typical argument, by attempting to find a question of fact as to whether the area in question was under my client's control. Despite Plaintiff's attempts to circumvent this clear principle of Illinois law, our motion to dismiss was granted and our client was dismissed from the lawsuit with prejudice. This is a perfect example of why detailed and thorough investigation of a claim at the very early stages of a case are so important, because finding these details early may win your case and save on litigation costs.