The Evolution Of MGL Ch. 143, Sec. 51: Strict Liability For Whom, When, And Why

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MGL Ch. 143, Sec. 51, (hereinafter Sec. 51) in its various forms, has over the years, imposed strict liability to certain owners of certain types of structures for violations of statutes or codes which result in personal injury.

The statute has been the subject of significant litigation, including multiple constitutional challenges. Despite this, it remains in effect and continues to produce cases and controversies. The statute gives rise to two major issues. One, to what type of structure does it apply? Two, does how the injury occurred matter?

This article will describe the history of the statute and, hopefully, provide insight into its future applicability. To analyze the first issue, given its legislative and judicial history, the statute should be studied in three chronological sections.

Type of Structure

Inception Through 1992

The statute, in one form or another, has been in effect since the late 1800s, (St. 1877, c. 214 sec 8.) It has consistently provided that the owner of structures such as places of assembly, theaters, factories, and workshops shall comply with all applicable codes and regulations relative thereto and that such owners shall be liable to any person injured by violations of any such code or regulation.

The statute received little or no substantive amendment through 1992, (MGLA Ch. 143, Sec. 51, Historical Notes.) It also remained consistent in its applicability i.e., it held the owner of a public place liable to persons injured in that public place due to a violation of a code or regulation. Through this period, that concept seemed relatively clear and resulted in no major litigation. In other words, everyone seemed to understand that the statute's strict liability was to apply to owners of public, rather than semipublic or private structures.

Through 1992, the statute read, in pertinent part, "The owner, lessee, mortgagee in possession or occupant, being the party in control, of a place of assembly, theater, special hall, public hall, factory, workshop, manufacturing establishment or building shall comply with the provisions of this chapter and the state building code relative thereto, and such person shall be liable to any person injured for all damages caused by a violation of any said provisions."

1992 Through 1994

Despite its seemingly clear intent, given the stakes involved, plaintiff's attorneys have gone to great lengths broaden Sec. 51's applicability. This was most clearly illustrated by the cases of St. Germaine v. Pendergast, 411 Mass. 615 (1992) (St. Germaine I), and St. Germaine v. Pendergast, 416 Mass. 698 (1993) (St. Germaine II). These cases involved the Legislature responding to an attempt to apply Sec. 51 to the construction of a single family home. The Legislature's conduct was truly remarkable. The facts were as follows.

In 1989, Francis X. St. Germaine III (Kip), a laborer, suffered severe injuries when a wall of a house being constructed for Michael Pendergast fell on him. Kip and his parents filed suit against Pendergast, claiming that he, "by acting as his own contractor and obtaining a building permit and other documents in his own name to construct the home, voluntarily assumed the role of a licensed construction supervisor and general contractor, which made him responsible for any violations of the State Building Code and related regulations," including those of the independent contractor hired to frame the house.

The St. Germaine's sought relief under Sec. 51 (which read as it does today), claiming that Pendergast was strictly liable for Kip's injuries. In 1992, the SJC, interpreting Sec. 51, held that it did not apply a single-family home under construction, upholding Summary Judgment for Pendergast. St. Germaine I, at 619.

Directly in response to that decision, the Legislature, in a poorly attended emergency session and with the blessing of the then acting Governor,

amended the statute to include the following language, "any person who obtains a building permit pursuant to the State Building Code to erect, construct, or demolish a building or structure shall be liable to any worker or other person for all injuries and damages that result from a failure to provide a safe workplace, or caused by a violation of the State Building Code or other codes, bylaws, rules and regulations applicable to the construction site". (St. 1992, Ch. 66, Sec 1.)

This legislation was approved three days before the three-year statute of limitations would have barred a second St. Germaine lawsuit. The St. Germaines subsequently filed an action under the provisions of the amended version of Sec 51, the same day the legislation was approved. The complaint attempted to apply the amended statute against Pendergast retroactively. A Superior Court Judge dismissed the complaint.

On appeal from that dismissal, the SJC held that the retroactive application of the amended statute to Pendergast was constitutionally unreasonable because it held him to an obligation which the law did not require of him at the time of the incident. St. Germaine II, at 703. Given the then valid amendment, however, the Court held that Sec. 51 would now apply to single-family homes under construction.

One week after the decision was released, however, the Legislature added a section to a supplemental appropriations bill striking the 1992 amendment, and restoring the statute to, more or less, its present form.

As result, for a limited period of time (June 12, 1992 through January 14, 1994), one who merely obtained a building permit could be strictly liable for injuries received due to code violations. Parello v. McKinney, 46 Mass.App.Ct 785 (1999).

1996 Though Present

With the statute restored to its pre-amendment status, the type of structure to which it applied remained unclear. St. Germaine II said that Sec. 51 applied to single family homes under construction, but that court was interpreting the statute with the now deleted "building permit" language included. The question was addressed a squarely in Santos v. Bettancourt, 40 Mass.App.Ct 90 (1996).

There, the plaintiff was injured when a scaffold on which he was working collapsed. The scaffold had been erected at a single-family house owned by the defendant. The plaintiff, relying on St. Germaine II, attempted to hold the defendant strictly liable for his injuries. The court, affirming Summary Judgment for the defendant, concluded that Sec. 51 did not apply to a single-family house.

In arriving at its conclusion, the court engaged in statutory analysis which appears throughout many of the cases dealing with these issues. The court took note that Sec. 51 listed specific types of structures i.e., "places of assembly, theaters, special halls, public calls, factories, workshops and manufacturing establishments" first, followed by the general term "building".

The court indicated that each of the elements of that series, other than "building" specifically describes a public or commercial use. As "building" is a more general term, which takes a literal meaning that is substantially more expansive than the specific elements preceding it, under the doctrine of "ejusdem generis" the court treated the specific words as identifying a class of commercial and public uses and restricted the general word building to structures within that class.

The Santos court did not define the class of structures to which Sec. 51 would apply precisely, except to note that it is characterized by public and commercial structures and that contextually it does not encompass a single-family home. Santos, at 92. See also, Commonwealth v. Eakin, 427 Mass. 590 (1998). Accordingly, it now seems well settled that accidents at single-family homes will not fall within the parameters of Sec. 51. This is consistent with the interpretation held before the 1992/1994 legislative actions.

Notwithstanding this, there have been fairly recent attempts to categorize other arguably non-public structures as those to which Sec. 51 would apply. In Glidden v. Maglio, 430 Mass. 694 (2000), the SJC, for unrelated reasons, did not be disturb a Motion Judge's determination that a three family house was not the kind of commercial or public use structure contemplated by Sec. 51.

Similarly, in Osorno v. Simone, 56 Mass.App.Ct.612 (2002), the Appeals Court held that Sec. 51 did not

apply to trustees of a thirteen unit condominium association, even for injuries sustained in common areas and where three of the units were rented for profit. The court repeated the "ejusdem generis" analysis. Additionally, court stated that that the structures contemplated by Sec. 51 involve invitation of a significant number of the public to come on the premises for relatively short durations of time, although perhaps on a repetitive basis. The court concluded that appropriate Sec. 51 structures have an intrinsic commercial character.

Again, in Banushi v. Dorfman, 438 Mass. 242 (2002), Sec 51 did not apply to an owner occupied two family house. The Banushi court engaged in the same analysis in reaching its conclusion. It further stated that renting one portion of one's own home does not bring the homeowner within the terms of the statute.

It appears, therefore, that the trend is to apply Sec. 51 strict liability only to truly commercial structures.

How Injury Occurred

Until very recently, the manner in which a person seeking redress under Sec. 51 was injured appeared irrelevant. The cases dealing with Sec. 51 involved persons injured in many ways.

Fox v. The Little People's School, Inc., 54 Mass.App.Ct. 578 (2002), may have changed that. In Fox, the plaintiff was injured when she opened a set of double doors at the end of a corridor in a building operated by the defendant. After unsuccessfully moving to amend her complaint to assert a claim for damages under Sec. 51, the plaintiff sought an instruction at trial to the effect that a violation of the building code causing damage to her would require a verdict in her favor.

On appeal, the court acknowledged that Sec. 51 "can, in appropriate circumstances, provide a basis for civil liability in damages." (emphasis supplied). The court stated strongly, however, that such civil liability was not for damages sustained in any manner. Rather, Sec. 51 recognized liability for violations of MGL Ch. 143 Sec. 21, which requires building owners to keep fire escapes and other means of escape from fire in good repair and ready for use. Citing older cases, the court held that none of the benefits of MGL Ch. 143 Sec. 21 or Sec. 51 are "available to persons using stairways egresses for purposes other than escape from danger from fire."

The court therefore concluded that the "appropriate circumstances" for recovery under Sec. 51 are those only in which a violation of the state building code results in an injury to someone fleeing a fire.

The cases decided later than Fox, for example, Banushi, supra, simply do not address this significant limitation. The Fox decision was published prior to Banushi, which does not mention it. Thus it appears that the SJC was not presented with the issue at all. While it seem at odds with the litany of cases dealing with Sec. 51, an argument can be made that the Fox limitation is good law. One would suspect, however that raising such a defense would give rise to yet another appellate case involving Sec. 51.

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