

Thus, from our overview, we hold, according to the mentioned authorities, that Ms. Barton was constructively evicted from the premises at the time of her departure and, therefore, has no responsibility for rent thereafter. Here, the landlord was advised of the difficulty. The landlord acknowledged responsibility and agreed to remedy the situation and had the means to do so. The terms of the lease with reference to noise could have been enforced against Body Electric. The walls could have been insulated. Yet the landlord did nothing. Despite the damage to her business, Ms. Barton waited a reasonable time for the landlord to act.

The judgment on appeal is REVERSED.

ANSTEAD and DELL, JJ., concur.

### SAMPLE CASE BRIEF

#### Barton v. Mitchell Co.

507 So. 2d 148 (Fla. Dist. Ct. App. 1987)

4<sup>th</sup> Dist. Court of Appeal—Fla.

#### Facts: (The facts are undisputed.)

Tenant (Barton) signed a five-year lease of commercial space for a patio furniture store. The lease included a term promising that tenant "shall peaceably and quietly enjoy the Demised Premises ...."

Subsequently, landlord (Mitchell Co.) leased adjacent space to Body Electric (an exercise studio). Loud music, screams, shouts, and yells regularly came from the exercise studio. The noise vibrated the walls and made conducting tenant's business difficult or impossible. Tenant lost customers and employees as a result. Tenant complained to landlord repeatedly. Landlord promised to remedy the problem, including by insulating the walls if necessary, but landlord did nothing. Tenant vacated with a little over two years remaining on the lease. That day, the landlord took some action. The case doesn't say what the landlord did.

#### Procedural History:

Landlord sued Tenant for rent due for the rest of the lease term.

Trial Court: Landlord won \$18,929.57 plus interest, representing past and future rent for rest of lease term (non-jury trial). Tenant appealed.

#### Issue(s):

Does a landlord's failure to control vibration and noise made by other tenants constitute constructive eviction?

#### Rule(s) of Law:

- "A constructive eviction occurs when a tenant is essentially deprived of the beneficial enjoyment of the leased premises where they are rendered unsuitable for occupancy for the purposes for which they are leased."

• A constructive eviction breaches the covenant of quiet enjoyment.

6. Holding(s):

Excessive vibration and noise caused by another tenant constitutes constructive eviction when it interferes with a commercial tenant's business and when the landlord had notice of the problem and had the ability to remedy the problem but did not act within a reasonable time.

7. The Court's Order:

Trial court's judgment was reversed.

8. Reasoning:

The court did not expressly explain its reasoning except by pointing to these key facts: (1) the tenant notified the landlord and waited a reasonable time; (2) the landlord had the ability to stop the problem (by requiring the other tenant to stop the noise and vibration or by insulating the walls); and (3) the landlord did not take any action. The result would seem, however, to protect the ability of commercial tenants to conduct their businesses without unreasonable interference (a positive economic benefit).

9. New Information:

Here the problem was caused by actions of another tenant, not the landlord. The court held the landlord responsible anyway, as the landlord could have corrected the problem but did not.

10. Questions, Comments, and Speculations:

- Interesting that the court speculated that the lease for Body Electric was the same as the lease for the tenant and based its holding on the assumption that the Body Electric lease permitted the landlord to regulate Body Electric's noise ("nor shall tenant maintain any loud speaker device or any noise making device in such manner as to be audible to anyone not within the premises"). Tenant's lawyer must not have made this argument or provided the court with Body Electric's lease. Why not?
- Would the result have been the same if tenant's lease had not included a provision promising quiet enjoyment? Would the court have held that a covenant of quiet enjoyment is implied in commercial leases? Maybe not because the court calls the lease provision "the dispositive lease proviso" and because the court does not mention an implied covenant.

**GOLDMAN V. KANE**

3 Mass. App. Ct. 336, 329 N.E.2d 770 (1975)

*Massachusetts Appeals Court*

HALE, Chief Justice.

[Barry Kane represented Lawrence Hill, a law school graduate but not a lawyer. Kane had represented Hill for several years on various matters. In