

COMMERCIAL BUILDING TENANTS DO NOT OWE A DUTY TO ENTRANTS UPON THE ROOF OF THE PREMISES ABSENT CONTROL OVER THE ROOF

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Dabush v. Prizma Capital LLC, et al.

Arizona Supreme Court | January 8, 2021

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The Arizona Supreme Court held that two commercial building tenants with no control over the building's roof had no duty to safeguard people on the roof from falling. Plaintiff Ephraim Dabush was injured when he fell through a skylight on the roof of this multi-tenant commercial building. Dabush asserted that Seacret Direct, LLC and Prizma Capital, LLC, who sublet portions of the building at the time of the accident, were possessors of the roof, and therefore owed him a duty to maintain the roof in a safe condition.

The circumstances leading up to Dabush's presence on the roof were complicated. In short, Prizma, Direct, and two other separate entities used the commercial building to operate an interconnected family business. The building manager hired Prizma to repair roof leaks, and Prizma sent two workers to complete this task. Dabush was visiting his friend and relative, David, who was Seacret Direct's manager. David asked Dabush to go onto the roof to photograph Prizma's work. Dabush photographed Prizma's two workers as they were replacing a skylight, and then walked eighty feet away to photograph another skylight, which is where he fell.

Dabush sued Prizma, Direct, and others. Prizma and Direct moved for summary judgment arguing they had no duty to Dabush. The trial court granted both motions and Dabush appealed. The Court of Appeals affirmed judgment for Prizma but reversed the judgment for Direct after finding a factual dispute regarding Direct's control over the roof. Dabush and Direct both petitioned for review in the Supreme Court.

The Supreme Court affirmed summary judgment for Prizma and Direct. It observed that defendants owed a duty to Dabush only if they had legal control of the premises or exercised actual, physical control over it. Because neither Prizma nor Direct had a right to control the roof under their subleases, and did not exercise actual control over the roof, they were not possessors and therefore owed no duty to Dabush. The court further held that Prizma, by making repairs to the roof, did not become a possessor; did not create the risk of falling through the skylight where Dabush was injured; and did not assume a duty to protect Dabush from the risk of falling through a skylight.

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[Jonathan Barnes](#) concentrates his practice on federal and state appeals in all types of civil litigation, including medical malpractice, governmental liability, employment, family law and torts. He also assists trial counsel in preserving the record for appeal, preparing dispositive and post-trial motions, and crafting proposed final judgments.