**IN THE COURT OF APPEALS OF IOWA**

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No. 6-740 / 96-1020

**THOMAS J. REILLY LAW FIRM, P.C., and THOMAS J. REILLY,** Individually,
Appellants,

vs.

**RICHARD MOTZKO,**
Appellee.

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Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge.

Lessees of storage space appeal grant of summary judgment in favor of lessor.

**AFFIRMED.**

Thomas J. Reilly of Thomas J. Reilly Law Firm, P.C., Des Moines, for appellants.

Gregory A. Witke and Gordon R. Fischer of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by Habhab, C.J., Streit, J., and Perkins, S.J.*

*Senior judge from the Fifth Judicial District serving on this court by order of the Iowa Supreme Court.

**PERKINS, S.J.**

Plaintiffs Thomas J. Reilly Law Firm, P.C., and Thomas J. Reilly (hereafter collectively referred to as Reilly) orally leased a storage unit from defendant Richard Motzko. Reilly was given the only key to the storage unit. In early July 1993 Motzko was warned by city officials flooding was likely to occur in the area where the storage unit was located. Motzko did not inform Reilly about the flood warning. Reilly's unit was flooded and plaintiffs filed suit against Motzko claiming he owed them a duty to warn about the expected flooding. The district court granted Motzko's motion for summary judgment.

On appeal, Reilly argues Motzko owed a duty to warn given his superior knowledge about the expected flooding. Reilly claims this duty is predicated on theories of: 1) premises liability; 2) contract (latent defect and duty to maintain); and 3) a special relationship (bailment). In response, Motzko contends Reilly has not preserved error with respect to the bailment theory because it was not raised before the district court.

The appeal presents three issues for review. Each will be discussed in turn. To begin, the scope of review is at law for the correction of errors of law. Iowa R. App. P.4.

**I.** As to the first issue, Reilly's claim of premises liability, we find that Motzko owed no legal duty to Reilly to warn of flooding under the law of premises liability. The district court, in sustaining the motion for summary judgment, held

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neither Iowa case law nor Restatement (Second) of Torts recognize the liability of a landlord for injuries to a tenant or the tenants property. *See Allison by Fox v. Page*, 545 N.W.2d 281, 283 (Iowa 1996); Restatement (Second) of Torts § 63 (5th ed. 1984). Neither of the two exceptions urged by Reilly to the general rule apply.

**II.** As to the next issue, that of contract (latent defect and duty to maintain), we conclude the flood of 1993 was not a latent defect nor a hidden defect known at the time the lease was consummated. Reilly has admitted he knew of the flood when it occurred. There is no duty to warn when risks of harm are known or obvious, *Carr v. San-Tan, Inc.*, 543 N.W.2d 303, 306 (Iowa App. 1995).

We further conclude that a landlord's duty to maintain the premises in a reasonably safe condition does not apply in this case because Reilly and not the landlord, Motzko, had exclusive control of the storage unit.

**III.** The final issue presented by the appeal urges a special relationship (bailment) which we do not consider because Reilly has not preserved error due to the fact it was not raised before the district court.

The district court's ruling sustaining the motion for summary judgment is affirmed.

**AFFIRMED.**