remaindermen are not at this time getting any benefit from the property at all and will not come into any enjoyment until the life estate is ended. The mortgagee has only to look to one source for payment and if the sums are not paid, it would appear the mortgagee can proceed to mortgage foreclosure or other appropriate remedy to protect its interest.

DECREE NISI

March 6, 1985, it is ordered that Patricia A. Slayton, life tenant, shall pay the principal and interest during the period of her tenancy on the bond and mortgage given by James M. Shaw, deceased, to the Chambersburg Trust Company.

Since these payments inure to the benefit of the remaindermen, James M. Shaw, Jr., David E. Shaw, Patricia Bradley and Carol Atherton, such sums paid by the life tenant shall be a lien on the property against the remaindermen for their proportionate part of the said payments, such proportionate part to be calculated at the time of the termination of the life estate by the life tenant's death or by her violating the provisions of the will which would divest her of of her life interest. These values shall be determined by employing the normal methods used in valuing life estates.

The costs of these proceedings shall be paid by the estate of James M. Shaw, Sr.

This decree nisi shall become absolute unless exceptions are filed thereto within ten (10) days.

BAYER, ET. AL. V. GREENCASTLE-ANTRIM FOUNDATION, C.P. Franklin County Branch, A.D. 1983-15

Summary Judgment - Landlord Tenant - Security of Common Area - Merger of Negotiation

1. Summary judgment is only granted in the clearest of cases, when the moving party proves there is no genuine issue of material fact and is entitled to judgment as a matter of law.

2. In areas under the control of the landlord, there is a duty to protect tenants from forseeable criminal actions of third persons.

3. Merger of prior negotiations into a lease is a defense where fraud is alleged.

David S. Keller, Esquire, Counsel for plaintiffs

Virginia W. Hersperger, Esquire, Counsel for defendants

David C. Cleaver, Esquire, Counsel for defendants

OPINION AND ORDER

George C. Eppinger, P.J., March 14, 1985:

Jay D. Bayer and Larry F. Witmer, plaintiffs, were practicing medicine and dentistry, respectively, in the building owned by the defendant, Greencastle Antrim Foundation, called the John L. Grove Medical Center, when the medical center was destroyed by fire in 1981. Both claim that the individual defendant, Robert Crunkleton, an officer of the foundation, represented to them that the medical center's insurance policy would cover their personal property in the event of a fire. This assertion is denied.

The suit brought by the two doctors is for the loss of equipment, supplies, and for the cost of reconstructing patient charts. The doctors allege misrepresentation and breach of implied warranty in failing to provide fire insurance on their personal property and negligence in failing to provide for the physical security of their property.

The defendants have filed a motion for summary judgment which is only to be granted in the clearest of cases. *Dunn v. Teti*, 280 Pa. Super. 399, 402, 421 A.2d 782, 783 (1980), when the moving party proves there is no genuine issue of material fact and is entitled to judgment as a matter of law. *Pa. P. U. C. Bar Association v. Thornburgh,* 62 Pa. Cmwlth. 88, 93, 434 A.2d 1327, affd. 498 Pa. 589, 450 A.2d 613 (1981). The record is viewed in a light most favorable to the nonmoving party. *Id.* Under this standard, we think the defendants are not entitled to summary judgment.

Defendants first aruge that defendant Crunkleton may not be held individually liable for any representations made regarding fire insurance because he was acting at all times as president of the foundation. An agent is normally not liable on a contract between

the principal and a third party. *Vernon D. Cox & Co., Inc. v. Giles,* 267 Pa. Super. 411, 415, 406 A.2d 1107, 1110 (1979). However, personal liability can be found against a corporate officer who actually participates in a wrongful act. Under such circumstances, it is immaterial that the officer is acting as an agent of the corporation if it is the officer's negligence which contributes to the injury. *Amabile v. Auto Kleen Car Wash*, 249 Pa. Super. 240, 250, 376 A.2d 247, 252 (1977). Whether defendant Crunkleton actually made statements regarding fire insurance upon which plaintiffs relied is a question of material fact which must be left for trial. See *Pa. P.U.C. Bar Association v. Thornburgh,* supra, at 93.

Defendants next argue that as a matter of law they may not be held negligent in failing to provide for the physical security of plaintiffs' property, saying a landlord is only liable for security if it retained control over the building, contracted to provide for the security of the building, or had knowledge of a particular hazard. Plaintiffs allege discussions with several foundation officers the week before the fire regarding the presence of unauthorized persons in the building and the request for a new lock system. Generally, a landlord is not considered an insurer of his tenants. But at least in the areas under the control of the landlord, such as common areas and those accessible to the public, *Morgan v. Bucks Associates,* 428 F.Supp. 546, 549 (E.D.Pa. 1977); *Burns v. Gordon,* 100 P.L.J. 195, 196 (1952), the landlord is under a duty to protect his tenants from the foreseeable criminal actions of third persons. *Feld v. Merriam,* Pa. Super. , 461 A.2d 225, 231 (1983). The conduct of the landlord must be evaluated in light of all the facts of a particular case to determine whether reasonable care was exercised regarding security. *Id.,* at 232. At trial, it must be determined whether there was an obligation on the part of the foundation to provide security and if so, whether its actions were reasonable. On the record before us and in a light most favorable to the plaintiffs, see *Pa. P.U.C. Bar Association v. Thornburgh,* supra, at 93, we cannot say as a matter of law that there was no obligation to provide security and that the security provided was adequate. Those are matters for trial.

Finally, defendants argue that summary judgment is appropriate because there was no misrepresentation to the plaintiffs that their personal property would be covered by the foundation's fire insurance and that any prior conversations concerning this were merged into the leases signed by the plaintiffs.

BAR NEWS ITEM

Best wishes to Myra C. Fields, on her retirement, this past Friday, December 6, 1985, as Registrar of Voters, for Franklin County, Pennsylvania. Among other things, your editor remembers the cold winter days when Myra would transport him to work, back in his impoverished, fledgling years of law practice, from her residence, close by his own. He remembers Myra, too, for defending his wife, when the latter chose to stay registered, so long, in a political party affiliation different from his own. Myra said, "Some of the best families have both kinds." Always the staunch proponent of voting, and registration of voters, one could find Myra in remote corners of the county, signing them up, on special registration days, always. Her ability at predicting voter turnout for elections, too, was uncanny. Perhaps, the most remarkable talent of Myra, as your editor sees it, was her ability to fix geographical locations within the county, from memory, instantaneously. Many a real estate transaction found this lawyer and others, in Myra's office, asking her about a rural route number, or the location of some remote mountain village. We'll miss you, Myra. Enjoy your retirement.

BAR NEWS ITEM

Congratulations to John McD. Sharpe, V, Esq., Beth Ann C. Gabler, Esq., and Bradford R. Bollinger, Esq., on their admissions to the Registry of Attorneys who intend to practice law primarily in Franklin County, Pennsylvania, at ceremony held on the morning of December 11, 1985, in Courtroom No. 1 of the Franklin County Courthouse, in Chambersburg, Pennsylvania. We wish them many years of productive and successful practice of the law.

Regarding the issue of merger, plaintiffs allege that both doctors had conversations with defendant Crunkleton before entering into their respective leases concerning insurance coverage. Plaintiffs contend that it was represented to them that the contents were insured. Defendants argue that whatever those conversations may have been, they were merged into and superceded by the written leases. See *Allam v. Johns*, 36 Leh.L.J. 228, 230 (1975). The only reference in the leases to insurance are statements that the rent will not increase except for "increased costs of utilities, taxes, insurance, repairs, and operating expenses" and that the lessees shall do nothing "contrary to the conditions of the policies of insurance upon the Medical center building".

Merger of prior negotiations is not appropriate where, as here, fraud is alleged. *Goldstein Co. v. Greenberg, Inc.,* 352 Pa. 259, 268, 42 A.2d 551, 555, (1945). Futhermore, when the contract terms are ambiguous, the jury may consider prior negotiations and expressions of intent, to determine what the agreement was. *Philadelphia v. N. Snellenburg & Co.,* 163 Pa. Super. 507, 512, 63 A.2d 480, 483 (1949). Here, since the language regarding insurance in the lease is ambiguous and fraud is alleged, merger would not be appropriate.

Defendants also argue that no fraudulent misrepresentation was made that the personal property of plaintiffs would be covered under the foundation's policy. Plaintiffs allege that such representations were made. Again, this presents a matter of fact for trial because of the dispute. Since it is usually not possible to show a fraudulent intent by direct evidence, *Warren Balderston Co. v. Integrity Trust Co.,* 314 Pa. 58, 61, 170 A. 282, 283 (1934), at trial the plaintiffs must show that the representation was made either knowingly or recklessly without caring whether it be true or false. *Id.,* at 60, 283. Such a determination should only be made in light of all the circumstances surrounding the conversation and negotiations. *Id.,* at 61, 283.

Plaintiffs also move for summary judgment because defendants admit that no insurance coverage was provided despite the warranty or implied warranty in the leases. But whether the leases provided for insurance is a question of fact.

Plaintiffs also contend they are entitled to summary judgment because the defendants had a duty to keep the premises safe, knew of the situation regarding the keys and strangers on the premises,

and failed to remedy the situation. As discussed earlier, while it is true that a landlord has a duty to protect tenants from the foreseeable criminal actions of third persons, *Feld v. Merriam,* supra, at 231, the extent of that duty and whether it was breached is a question of fact to be considered in light of all the circumstances. *Id.,* at 232.

ORDER OF COURT

March 14, 1985, the defendants' and plaintiffs' motions for summary judgment are denied.

GARLOCK V. KERLIN, C.P., Fulton County Branch, No. 154 of 1983-C

Equity - Collateral Estoppel

1. Collateral estoppel is applied to situations where matters have been previously decided but have remained substantially static, factually and legally.

2. Collateral estoppel may still be applied as long as the party against whom the defense is invoked is the same, even though the plaintiff is a different person.

James M. Schall, Esquire, counsel for plaintiff

Richard L. Bushman, Esquire, counsel for defendants

OPINION AND DECREE NISI

EPPINGER, P.J., March 25, 1985:

At the time her husband died, Helen Garlock became the sole owner of a jointly held parcel of land. From 1954 to 1974 they farmed the land. After that it was leased to others for farming.

On June 6, 1983, workers employed by defendant, David Kerlin, began to drill a hole about twenty feet over the western boundary of what plaintiff claims is her land. The interesting thing about this is that defendants have to, in effect, jump over land which the court decreed on October 3, 1967, to be lands of