

Dated: October 22, 2025
The following is ORDERED:



M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Frazetta Ventures, LLC
Debtor

Case No. 24-23946
Chapter 11, Subchapter V

MEMORANDUM OPINION AND ORDER

This matter came before the Court upon the Motion for Relief from Stay (the “Motion”) [DE 56] filed April 4, 2025 by Omni Property Management (“Omni” or “Movant”) and Frazetta Ventures, LLC’s (“Frazetta” or “Debtor”) Objection to the Motion [DE 66] filed April 22, 2025. The Court previously entered a consent order conditionally denying Omni’s Motion for Relief from Stay and permitting Debtor under 11 U.S.C. § 365 to assume and continue the lease with ongoing monthly lease payments beginning May 2025, conditioned upon Debtor curing any default as to be determined by the Court [DE 70]. A hearing was held on September 8, 2025, and

upon reviewing the relevant supporting documentation and hearing arguments of counsel, the Court took the matter under advisement.

This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (B) and (G). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby rules in favor of Debtor.

I. BACKGROUND AND PROCEDURAL HISTORY

Tom Farley d/b/a Wally Hatchets, a restaurant and catering business, entered into a Commercial Lease Agreement (“Lease”) for commercial property known as 6439 Summer Ave, Memphis, Tennessee 38134 (“Premises”) with Rohan Properties LLC (“Owner” or “Landlord”) on March 20, 2023 [Trial Ex. 7]. Debtor later bought this business from Mr. Farley and assumed the Lease with Landlord. At all relevant times to this case, including the period covering Landlord’s acquisition of the Premises, Omni served as property manager for Landlord.¹ The Lease allocates responsibility for repairs and maintenance as follows:

Repairs and Maintenance: Tenant agrees that no representations regarding the Premises or the condition thereof and no promises to alter, decorate, improve, or repair have been made by Landlord, Broker, or their agents unless specified in this Lease.

A. Duties of Landlord. Landlord shall keep the Common Areas and all Major Systems serving the Premises and/or the Common Areas in good working order and repair, normal wear and tear excepted. Upon receipt of written notice from Tenant, Landlord shall, within a reasonable time period thereafter, repair all defects in the Common Areas and those Major Systems that are the responsibility of Landlord to

¹ Owner/Landlord did not participate in this matter, but rather Omni did so on its behalf. At the hearing, attorney Nicholas Tansey, who represents Owner/Landlord, observed the proceedings.

maintain in good working order and repair. Landlord may change the size, use, shape, or nature of the Common Areas, so long as such change does not materially deprive Tenant of the use of the Premises. *Landlord shall not be liable to Tenant for any damage caused by any of the Major Systems referenced herein or by water coming through or around the roof or any door, flashing, skylight, vent, window, or the like in or about the Premises, except if such damage is due to the gross negligence or willful misconduct of Landlord. . . .*

B. Duties of Tenant. Tenant agrees to maintain the Premises in good order and repair, normal wear and tear excepted. If Tenant does not promptly perform Tenant's maintenance and repair obligations as set forth herein, Landlord may make such repairs and/or replacement and Tenant shall promptly pay the costs of the same. Tenant shall additionally be responsible for the reasonable costs of repairs made necessary by the negligence or willful misconduct of Tenant (including Tenant's employees, agents, invitees, guests, or licensees).

[Trial Ex. 7, § 6] (emphasis added). The Lease allocates responsibility for "Major Systems," including, where designated, Sidewalls/Structure and Roof, to Landlord, while responsibility for other systems, such as HVAC/Mechanical, Plumbing, and Electrical, is allocated to Debtor [Trial Ex. 7, § 6]. These allocations are based on the boxes checked or unchecked in the Lease and the Lease does not further define each "Major System" nor its scope. The exculpatory clause, as emphasized above, is silent on whether it extends to pre-existing latent defects.

The premises include a meter box connected to the Memphis Light, Gas & Water ("MLGW") utility grid that works to provide electrical service to the restaurant. On Friday, November 1, 2024, the meter box failed and ignited, causing a fire that resulted in damages and extended loss of power to the premises. Dustin Dixon ("Mr. Dixon"), a managing member of Frazetta Ventures, LLC and former employee but now owner/operator of Wally Hatchets, testified on behalf of Debtor. Mr. Dixon stated that he promptly contacted MLGW who informed Mr. Dixon that the meter box was Landlord's property and responsibility to replace. Wanting to remedy the defect as quickly as possible, Mr. Dixon contacted an electrician the same day. The electrician was

unable to work on the meter box in its condition, so Mr. Dixon contacted MLGW again who sent out an employee that shut down the power.

On the Monday following the fire, November 4, 2024, Mr. Dixon went to Omni's office to discuss the condition of the meter box and, upon request, informed Omni of what was wrong with it. Mr. Dixon also sent that information to Omni via e-mail that same day: "Line and load wires, line wires in the trough, . . . load wires from main breaker box [and] the meter itself needs replace" [Trial Ex. 1]. Omni's Maintenance Supervisor Christopher Miller ("Mr. Miller"), who had been with Omni for fifteen years, then contacted Phelps Electric, Inc. to repair the meter box. An invoice of \$5,000 from Omni to Landlord describing the repairs stated: "Obtain work order from MLGW for meter. *Replace disconnect that is illegally double tapped* and replace with 2 new junction boxes. Install new panel to feed the air conditioner & lease space. Price does not include permit fees. Not responsible for any fees associated with MLGW." [Trial Ex. 8] (emphasis added).²

Although Phelps Electric completed the repairs in just a few days, MLGW could not turn the power back on to the restaurant until an inspection was conducted determining whether the new meter box was up to code. Debtor's business was without power for approximately eighteen (18) days. During this period, Debtor was unable to operate its business, and the extended outage resulted in the loss of perishable food products, significant disruption to catering contracts, and lost daily sales. Phelps Electric ultimately repaired the meter box on behalf of Omni, and Debtor did not dispute the adequacy of the repair once it was performed.

The dispute before the Court concerns liability for the damages resulting from the fire and subsequent eighteen-day power outage at the restaurant. Debtor claims approximately \$48,000 in

² The Lease also contains a provision stating that any failure by Landlord to insist upon strict and prompt compliance of any conditions of the Lease shall not operate as a waiver of any such violation or right to insist on a prompt compliance in the future of such condition, and that it shall not prevent a subsequent action for any such violation unless waived in writing and signed by Landlord [Trial Ex. 7, § 26(B)].

damages resulting from the outage. This figure was calculated from losses in catering contracts that could not be fulfilled, average weekly income based on regular business operations, and historical revenue figures for the same period in the prior year. Of this total, Debtor's insurance company reimbursed \$16,000, leaving a net loss of roughly \$32,000 borne by Debtor. [Trial Exs. 2–3].

In response to Omni/Landlord's refusal to accept liability for the damages resulting from the fire, Debtor withheld post-petition rent payments for the months December 2024 through April 2025. Prior to the fire, Debtor was current on payments under the Lease. The arrearage that accumulated is the subject of Omni's Motion seeking termination of the automatic stay. Debtor contends the rent arrearage should be reduced—if not eliminated or exceeded—by its claim for damages arising from the fire and resulting loss of business.³

At the hearing, the central dispute between the parties focused on whether responsibility for the meter box rested with Omni/Landlord or Debtor. Omni argued that the meter box fell within Debtor's responsibility under the Lease as part of the electrical "Major System." Omni also argued that, as such, the exculpatory clause barred Debtor from recovery. Debtor contended that because the meter box was outside the actual building, it was not part of the Premises and the Lease did not cover it; therefore, it is Omni's responsibility.

Mr. Miller testified that neither he nor any of Omni's employees had actual knowledge of the illegal double tap noted by MLGW; however, in response to a question about the defect, he testified that a previous owner of the Premises did "some kind of electrical [work], sounded like they may have bypassed a circuit or something." He also noted that at the time of the work, the

³ Section 19(b) of the Lease concerns the destruction of premises and states, "If the Premises is damaged but not rendered wholly untenable and/or unusable for its intended purpose by . . . fire, . . . rent shall abate in such proportion as the Premises has been damaged as determined by casualty insurance carrier (or in the absence of casualty insurance carrier, by Landlord)" [Trial Ex. 7].

double tap may have complied with the code standards existing at the time it was initially installed. Mr. Miller also stated that Omni had been managing this particular property since about 2017. Mr. Dixon testified similarly that he had no knowledge of the defect prior to the fire and that nothing in the normal course of operations would have revealed the unsafe connection. Moreover, Debtor submitted pictures of the meter box taken after the fire which show damaged, burned wires marked with blue tape [Trial Ex. 4]. Mr. Dixon testified that to his knowledge, neither he nor any employee of Wally Hatchets or Frazetta had done anything to the meter box, under neither his ownership nor Mr. Farley's. Omni did not challenge or contradict Debtor's evidence. Mr. Miller also testified, "I would imagine . . . before [Owner] bought [the Property], they probably had an inspection" but he did not know for certain. He then stated that if there were deficiencies with a newly-acquired property, he would be the first call, and he was not informed of any such deficiencies at the time this Property was acquired. Following the hearing, the Court took the matter under advisement.

II. DISCUSSION

The remaining dispute before the Court is whether Debtor has a valid claim for damages arising from the fire against Omni/Landlord under Tennessee law, and, if so, in what amount. The threshold question is whether the Lease's exculpatory clause controls the parties' rights and obligations or whether the common-law rule stated in *Maxwell v. Davco Corp. of Tennessee*, 776 S.W.2d 528 (Tenn. Ct. App. 1989) supplies the governing standard. Only after resolving that threshold question can the Court turn to applying the proper standard to the facts.

A. Scope of the Lease's Exculpatory Clause and Applicability of *Maxwell*.

Under Tennessee law, the general rule is that "a landlord is not liable to a tenant or a third party for harm caused by a dangerous condition on the leased premises." *Lewis v. Fletcher*, No. W2022-00939-COA-R3-CV, 2023 WL 8258340, at *3 (Tenn. Ct. App. Nov. 29, 2023) (quoting

Lethcoe v. Holden, 31 S.W.3d 254, 256 (Tenn. Ct. App. 2000)); *see also Willis v. Eureka Multifamily Group, L.P.*, No. 2:20-cv-02145-MSN-cgc, 2021 WL 3519462, at *2 (W.D. Tenn. Aug. 10, 2021). As an exception to that general rule, however, a landlord is liable to a tenant on the ground of negligence for an injury resulting from an unsafe or dangerous condition of leased premises if:

- (1) the dangerous condition was in existence at the time the lease was executed;
- (2) the landlord knew or should have known of the dangerous condition; and
- (3) the tenant did not know of the condition and could not have learned about it through the exercise of reasonable care.

Lethcoe, 31 S.W.3d at 256 (citing *Maxwell*, 776 S.W.2d at 531–32). The exculpatory clause in the Lease reads as follows:

Landlord shall not be liable to Tenant for any damage caused by any of the Major Systems referenced herein or by water coming through or around the roof or any door, flashing, skylight, vent, window, or the like in or about the Premises, except if such damage is due to the gross negligence or willful misconduct of Landlord.

[Trial Ex. 7, § 6]. Per the Lease, the major systems that are Landlord’s responsibility are the sidewalls, structure, and roof. *Id.* The major systems that are Tenant’s responsibility are HVAC/mechanical, plumbing, and electrical. *Id.*⁴ Whether the *Maxwell* exception applies here is intertwined with the Lease’s exculpatory clause and its silence on pre-existing latent defects—an issue on which, to the best of this Court’s knowledge, Tennessee courts have not squarely spoken.

Under Tennessee law, the “legal effect of the terms of a lease are governed by the general rules of contract construction.” *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 889 (Tenn. 2002) (citation omitted). Thus, this Court’s “initial task . . . is to determine whether

⁴ At the hearing, the parties primarily disputed which party bore responsibility for the meter box (because it is located on an external wall). For purposes of the analysis in this section (without making any specific finding that Debtor is responsible for the meter box), and in the absence of persuasive evidence to the contrary, the Court will proceed on the basis that Debtor bore responsibility for any newly arising defects from the meter box as part of the electrical major system after the Lease’s inception.

the language of the [Lease] is ambiguous.” *Id.* at 890. If the language is “clear and unambiguous, the literal meaning of the language controls the outcome of contract disputes.” *Id.* If a literal interpretation of the contract does not reveal the intention of the parties, this Court must resort to other rules of construction. *Id.*

In *Planters Gin*, the Tennessee Supreme Court held that an exculpatory clause shielding a commercial landlord from liability for its own ordinary negligence is valid and enforceable. *Id.* at 893. While the Tennessee Supreme Court has concluded that the “public policy in Tennessee has historically favored freedom of contract” and “contracts exempting one party from liability for negligence are not disfavored,” it has also held “that the enforceability of an exculpatory agreement should be determined by considering the totality of the circumstances.” *Copeland v. Healthsouth/Methodist Rehab. Hosp., LP*, 565 S.W.3d 260, 273–4 (Tenn. 2018) (citing *Olson v. Molzen*, 558 S.W.2d 429, 430 (Tenn. 1977)). In *Copeland*, the Tennessee Supreme Court restated its approach to determining the validity of exculpatory agreements and held that courts should weigh the following non-exclusive factors: “(1) relative bargaining power of the parties; (2) clarity of the exculpatory language, which should be clear, unambiguous, and unmistakable about what the party who signs the agreement is giving up; and (3) public policy and public interest implications.” *Id.* (“The factors need not be weighed equally in any given case—rather, the analysis should involve balancing each of these considerations given the facts and circumstances surrounding the formation of the agreement.”).

Relative Bargaining Power

The first *Copeland* factor concerns the disparity in bargaining power between the parties. Under Tennessee law, courts look at two key criteria to assess a potential disparity: “the importance of the service at issue for the physical or economic well-being of the party signing the agreement

and the amount of free choice that party has in seeking alternate services.” *Id.* (citing *Schmidt v. United States*, 912 P.2d 871, 874 (Okla. 1996)). In the commercial leasing context, where both parties are sophisticated actors and the agreement does not involve a necessity of life such as residential housing or medical care, this factor carries little weight in limiting enforcement of the exculpatory clause. *See id.* (citing *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920 (Minn. 1982)) (explaining a standardized contract form offered on a take-it-or-leave-it basis may be unenforceable if there was a large disparity in bargaining power, no opportunity for negotiation, and the services could not be reasonably obtained elsewhere); *see also Hyatt v. Mini Storage on the Green*, 763 S.E.2d 166, 171 (N.C. Ct. App. 2014) (explaining that sufficient disparity in bargaining power exists when the releasing party must either accept the agreement or forgo an important service that is not practically obtainable elsewhere); *Crowell v. Hous. Auth. of Dallas*, 495 S.W.2d 887, 889 (Tex. 1973) (explaining that an exculpatory clause is unenforceable if one party is at such a disadvantage in bargaining power that it is practically compelled to sign the release). Accordingly, the Court finds no major disparity in bargaining power, no evidence that Debtor lacked the opportunity to negotiate,⁵ and no indication that comparable premises could not have been leased elsewhere. This factor therefore does not weigh against enforcement of the exculpatory clause.

Clarity of Language

The second factor is the clarity and precision of the exculpatory language. As the Tennessee Supreme Court explained in *Copeland v. Healthsouth*, an exculpatory clause must state clearly and unequivocally the intent to relieve a party from liability, and the “wording must be ‘so clear and

⁵ In fact, the Lease contains a Construction Clause stating, “This Agreement or any uncertainty or ambiguity herein shall not be construed against any party but shall be construed as if all parties to this Agreement jointly prepared this Agreement.” [Trial Ex. 7, § 26(N)].

understandable that an ordinary and knowledgeable person will know what he or she is contracting away.” 565 S.W.3d at 274 (quoting *Sanislo v. Give Kids the World, Inc.*, 157 So. 3d 256, 260–61 (Fla. 2015)). The Tennessee Supreme Court further explained that this intention to release one party from liability for negligence must be expressed in “‘clear and unmistakable language’ and ‘should express as clearly and precisely as possible the *extent* to which a party intends to be absolved from liability.’” *Id.* at 274 n.19 (emphasis in original) (quoting *Turnbough v. Ladner*, 754 So. 2d 467, 469 (Miss. 1999)). The exculpatory provision should also make the agreeing party aware that it concerns a substantial right. *Id.* at 274 – 75 (citing *Sirek v. Fairfield Snowbowl, Inc.*, 800 P.2d 1291, 1295 (Ariz. Ct. App. 1990)). The language should also “not be so broad as to relieve the exculpated party from liability for any injury for any reason.” *Id.* at 275 (citations omitted). Finally, “[a]mbiguous language will be construed against the party that drafted the agreement” and “against the party asserting [broad, general, exculpatory provisions] as a defense.” *Id.* at 275 n.20 (first citing *Burks v. Belz-Wilson Props.*, 958 S.W.2d 773, 777 (Tenn Ct. App. 1997); and then quoting *Turnbough*, 754 So. 2d at 469).⁶

The Lease must be interpreted in light of Tennessee law requiring that exculpatory clauses clearly and precisely define the *extent* to which a party intends to be absolved from liability. The Lease here allocates responsibility for electrical systems to Debtor and relieves Landlord of liability for “any damage” caused by those electrical systems unless that damage is due to Landlord’s “gross negligence or willful misconduct.” Still, the Lease is silent on whether it *extends* to cover latent defects that pre-existed its inception, a category distinct from the *ongoing operational* failures the Lease expressly addresses. While the provision is not so broad as to relieve

⁶ See *supra* text accompanying note 5. While the Lease states it shall be construed as if both parties drafted it, Tennessee law still requires courts to construe exculpatory clauses against a party asserting such a clause as a defense.

Landlord for any injury for any reason, under *Copeland*, silence on so fundamental a question cannot be stretched to favor Landlord when the clause does not specify the full extent of exculpation. Had the Lease included language extending it to cover latent or unknown pre-existing conditions, Landlord's position might be more favorable. Because it does not, if the Court were to read such language into the Lease, it would consequently allow silence to expand the scope of exculpation. The Court must instead construe the silence against Landlord. *See Copeland*, 565 S.W.3d at 275 n.20 (quoting *Turnbough*, 754 So. 2d at 469) ("We do not sanction broad, general, 'waiver of negligence' provisions, and strictly construe them against the party asserting them as a defense."). As a result, the Court declines to find that the exculpatory provision applies to latent defects that pre-existed the inception of the Lease. Accordingly, this factor weighs in favor of Debtor. *See Raymond James & Assocs., Inc. v. 50 North Front St. TN, LLC*, No. 2:18-cv-02104-JTF-tmp, 2020 WL 4366091, at *7 (W.D. Tenn. July 30, 2020) (citing *Copeland*, 565 S.W.3d at 273–74) ("[I]n light of *Copeland*, . . . a contract must be unambiguous in its language if the parties wish to stray from general principles and public policies of tort liability.").

Public Policy and the Public Interest

The third factor considers whether enforcement of an exculpatory clause would violate public policy. The *Copeland* Court defined public policy as "that principle of law under which freedom of contract or private dealings is restricted by law for the good of the community." 565 S.W.3d at 275 (quoting *Roberts v. T.H.E. Ins. Co.*, 879 N.W.2d 492, 501–02 (Wis. 2016)). In Tennessee, public policy favors allowing parties the freedom to contract as they see fit, including allocating risk by exculpatory agreement in the commercial setting. *Id.* at 273. This freedom, however, competes with the "public policy that disfavors allowing a party to escape the consequences of the party's negligence." *Id.* at 265. Acknowledging this tension, the Tennessee

Supreme Court concluded “contracts exempting one party from liability for negligence are not disfavored and are generally enforceable.” *Id.* at 273.

Although exculpatory provisions remain generally enforceable, the Tennessee Supreme Court’s restated approach maintains that a “private contract violates public policy if it conflicts with the constitution, statutes, or *judicial decisions* of this state or tends to be harmful to the public good, public interest, or public welfare.” *Id.* at 275 (emphasis added) (citing *Spiegel v. Thomas, Mann & Smith, P.C.*, 811 S.W.2d 528, 530 (Tenn. 1991)); *see also Crawford v. Buckner*, 839 S.W.2d 754, 759 (Tenn. 1992) (citing *Hanover v. Ruch*, 809 S.W.2d 893, 896 (Tenn. 1991)) (“[W]here there is no declaration in the Constitution or the statutes, and the area is governed by common law doctrines, it is the province of the courts to consider the public policy of the state as reflected in old, court-made rules.”). Clauses that purport to shield a party from liability for gross negligence, reckless conduct, or intentional wrongdoing are likewise invalid for public policy reasons. *Copeland*, 565 S.W.3d at 270; *Planters*, 78 S.W.3d at 893 (citing *Adams v. Roark*, 686 S.W.2d 73, 75–76 (Tenn. 1985)). The inquiry here is therefore whether enforcing the exculpatory clause would improperly insulate Landlord from responsibility for a duty that public policy requires it to bear.

As the Tennessee Court of Appeals explained in *Maxwell v. Davco Corp.*, liability may be imposed on a landlord “on the ground of negligence” when a dangerous condition exists at the inception of the lease, the landlord knew or should have known of it, and the tenant could not have reasonably discovered it. 776 S.W.2d at 531–32. It follows then, as the first element of negligence is the existence of a duty, that *Maxwell* recognizes a common-law duty to disclose or remedy pre-existing latent defects.⁷ As stated, under *Copeland v. Healthsouth*, “[a] private contract violates

⁷ “To prove negligence, a plaintiff must establish ‘(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty; and (3) a causal relation between the injury to the plaintiff and the defendant’s

public policy if it conflicts with the constitution, statutes, or *judicial decisions* of this state or tends to be harmful to the public good, public interest, or public welfare.” 565 S.W.3d at 275 (emphasis added) (citation omitted). Reading these principles together, any interpretation of an exculpatory clause that would absolve a landlord from this common-law duty would conflict with Tennessee judicial precedent and, under *Copeland*, violate public policy. *Id.*; see *Raymond James & Assocs.*, 2020 WL 4366091, at *7. Further, this duty stemming from principles of tort liability—distinct from contractual risk allocation—embodies public policy because it safeguards tenants, both residential and commercial,⁸ against concealed hazards that threaten health, safety, and the basic viability of the leased premises, and its enforcement prevents outcomes that would be harmful to the public good, public interest, or public welfare. See *Copeland*, 565 S.W.3d at 275–76, 278 (citations omitted). Because the Lease here is silent on pre-existing latent defects, it cannot be construed to relieve Landlord of this common-law duty, and any broader reading of the exculpatory clause would be unenforceable as contrary to public policy. As a result, this factor weighs in favor of Debtor.

Conclusion on Applicability of Exculpatory Clause

Considering the *Copeland* factors in sequence, the Court finds no significant disparity in bargaining power between these commercial parties but concludes that the exculpatory clause lacks the clarity and precision required to extend to pre-existing latent defects. Interpreting the clause to cover such conditions would also conflict with Tennessee precedent recognizing a

breach of his duty of care.” *Lawson v. Hawkins County*, 661 S.W.3d 54, 61 (Tenn. 2023) (quoting *Shouse v. Otis*, 448 S.W.2d 673, 676 (Tenn. 1969)).

⁸ While residential tenants enjoy more public policy protections than commercial tenants in Tennessee, see *Crawford*, 839 S.W.2d 754, 758–60 (Tenn. 1992), the common-law duty to disclose pre-existing defects applies in both the residential and commercial context. See *Maxwell*, 776 S.W.2d at 529, 531–32 (applying common law of landlord liability to a commercial lease between two corporations).

landlord's common-law duty to disclose or remedy inception-stage hazardous conditions not reasonably discoverable by a tenant, and enforcement of any such exculpatory clause would violate public policy. The Court therefore holds that the Lease does not bar Debtor's claim for damages arising from the fire.⁹

B. Application of *Maxwell*.

Under Tennessee law, a landlord may be held liable for negligence when: (1) a dangerous condition exists at the inception of the lease; (2) the landlord knew or should have known of the condition; and (3) the tenant neither knew nor reasonably could have discovered it. *Maxwell v. Davco Corp. of Tennessee*, 776 S.W.2d 528, 531–32 (Tenn. Ct. App. 1989). When a landlord and a tenant have co-extensive knowledge of the dangerous condition, the landlord is not liable to the tenant. *Lethcoe v. Holden*, 31 S.W.3d 254, 256 (Tenn. Ct. App. 2000) (citing *Maxwell*, 776 S.W.2d at 532). “However, the landlord is not liable in tort for dangerous conditions on premises leased to [a] tenant arising after the delivery of possession to the tenant.” *Maxwell*, 776 S.W.2d at 532 (first citing *Wilcox v. Hines*, 46 S.W. 297, 301–02 (Tenn. 1898); and then citing *Tedder v. Raskin*, 728 S.W.2d 343, 347 (Tenn. Ct. App. 1987)).

First, the evidence at trial establishes that the dangerous condition—an “illegal” double tap in the meter box—existed at the inception of lease. Omni presented evidence of its own work order following the fire stating, “Replace disconnect that is illegally double tapped and replace with 2 new junction boxes” [Trial Ex. 8]. At the hearing, Mr. Dixon testified that he had no knowledge of the condition and that he had never had cause to observe nor investigate the electrical box until

⁹ This conclusion is limited to the circumstances presented here, where the lease is silent as to pre-existing latent defects. The Court does not reach the broader question of whether an express exculpatory clause purporting to relieve a landlord from the duty to disclose such defects is invalid under *Copeland* and *Maxwell*. That issue is not directly before the Court and is more appropriately reserved for the Tennessee courts.

after the fire. Omni did not contradict Debtor's testimony. In fact, Mr. Miller testified that a previous owner of the premises did "some kind of electrical [work], sounded like they may have bypassed a circuit or something." The Court therefore finds that the dangerous condition existed before the Lease at issue began.

Second, the record supports that Landlord knew or should have known of the defect. Mr. Miller testified that Omni had never repaired the meter box, nor did it have any record of making repairs to the meter box. As established, this suggests that the defect predated Landlord's ownership of the Premises. While Omni maintains that it did not have actual knowledge of the defect, when it took on management of the property, Mr. Miller testified "I would imagine . . . before [Landlord] bought [the Property], they probably had an inspection." This inspection, in turn, *should have* uncovered the illegal double tap. Thus, Landlord knew or should have known of the dangerous condition at the inception of the lease.

Third, Debtor neither knew nor reasonably could have discovered the defect. Debtor credibly testified to having no knowledge of the hazardous condition before the fire, and Landlord offered no contrary proof. Nothing in the record indicates Debtor had the expertise or opportunity to uncover the double tap through ordinary diligence.

In sum, the defect existed at the inception of the lease, Landlord knew or should have known of it under any reasonable view of the record, and Debtor neither knew nor reasonably could have discovered it. Accordingly, the *Maxwell* elements are satisfied, and Landlord may be held liable for damages caused by its negligence in breaching the common-law duty to disclose or remedy pre-existing latent defects. 776 S.W.2d at 531–32.

C. Damages.

As previously stated, Debtor claims approximately \$48,000 in damages resulting from the outage. This figure was calculated in part from \$2,000 in a lost catering contract with Bartlett High School, \$4,800 in a lost catering contract with U.S. Army Reserves, and \$2,700 in a lost catering contract with Fedex Corporation [DE 66]. The figure also includes the loss of goods and perishable foods valued at \$3,600. *Id.* The rest of the claim amount consists of estimates of average weekly income based on regular business operations, and net sales of approximately \$38,000 for the same period in the prior year. Of this total, Debtor's insurance company reimbursed approximately \$16,000, leaving a net loss of roughly \$32,000 borne by Debtor [Trial Exs. 2–3]. Debtor is also entitled to abatement of rent paid for the 18 days the property was unusable in November 2024 pursuant to paragraph 19(b) of the Lease in the amount of \$1,500.¹⁰

Tennessee law requires a party to “present sufficient evidence to enable the trier of fact to make a fair and reasonable assessment of damages.” *Prewitt v. Brown*, 525 S.W.3d 616, 623 (Tenn. Ct. App. 2017) (citations and internal quotation marks omitted). A prevailing party is not required to prove the exact amount of its damages; the party must only provide proof with a reasonable degree of certainty. *Id.* (citations omitted). The Court finds that Debtor has sufficiently proved its damages with reasonable certainty through contemporaneous and historical records. Further, the Court finds that Debtor had no meaningful opportunity to mitigate its losses given the eighteen-day utility outage. However, as Debtor withheld rent for the months of December 2024 through April 2025, Debtor's recovery is offset by the arrearage amount of \$12,500 (five months of rent).¹¹ Accordingly, Debtor is awarded compensatory damages in the amount of \$21,000.

¹⁰ See *supra* text accompanying note 3.

¹¹ No late charge should be recouped by Landlord given the circumstances of this case.

Based on the facts and circumstances of this case, it is appropriate for the Court to award attorney's fees and expenses associated with this matter to Debtor as the prevailing party. [Trial Ex. 7, ¶¶ 14 and 26] Debtor's counsel shall submit an itemized request for her attorney's fees and expenses associated with this matter within fourteen (14) days of this Order. A separate order will then be entered by the Court regarding the granting of reasonable expenses and attorney's fees.

III. CONCLUSION

For the reasons stated above, the Court finds that Debtor holds a valid claim for fire-related damages against Landlord under Tennessee law and therefore rules in favor of Debtor, awarding Debtor compensatory damages to be paid by Landlord in the amount of \$21,000 with post-judgment interest as provided in 28 U.S.C. § 1961 until paid in full, plus attorney fees and expenses to be determined at a later date. *See* 28 U.S.C. § 1961 and www.federalreserve.gov/releases/h15 (last visited October 21, 2025).

IT IS SO ORDERED.

The Bankruptcy Court Clerk shall serve a copy of this Memorandum Opinion and Order on the following interested parties:

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