STATE OF MINNESOTA
IN COURT OF APPEALS
A12-2237
A12-2238

Richard T. Lyzhoft, individually,
and Richard T. Lyzhoft,
as father and natural guardian of Jeremiah R. Lyzhoft,
Appellant (A12-2237),
Respondent (A12-2238),

vs.

Waconia Farm Supply,
Respondent (A12-2237),
Appellant (A12-2238),

Brian T. Donahue, individually and d/b/a Donahue Mechanical, Inc.,
Respondent,

Thomas M. Donahue, individually and d/b/a Donahue Mechanical, Inc.,
Respondent.

Filed July 8, 2013
Affirmed in part, reversed in part, and remanded
Schellhas, Judge

Carver County District Court
File No. 10-CV-11-951

Curtis D. Smith, Moss & Barnett P.A., Minneapolis, Minnesota (for appellant Richard T. Lyzhoft)

Mark R. Bradford, David M. Dahlmeier, Bassford Remele, P.A., Minneapolis, Minnesota (for appellant Waconia Farm Supply)

Timothy J. Fetterly, Cheryl Hood Langel, McCollum, Crowley, Moschet, Miller & Laak, Ltd., Minneapolis, Minnesota (for respondent Brian T. Donahue)

Kevin F. Gray, Matthew W. Moehrle, Rajkowski Hansmeier Ltd., St. Cloud, Minnesota (for respondent Thomas A. Donahue)

Considered and decided by Smith, Presiding Judge; Schellhas, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

In this consolidated appeal, appellants challenge the district court's summary-judgment dismissal of their strict products-liability and negligence claims against respondents. We affirm the court's dismissal of the products-liability claim but reverse its dismissal of appellants' negligence claims and remand for further proceedings consistent with this opinion.

FACTS

Appellant Richard Lyzhoft contracted with respondent Brian Donahue to perform work at Lyzhoft's home including installation of a heating, ventilation, and air-conditioning unit in or around May 2009. During the course of Brian Donahue's work, his father, respondent Thomas Donahue, stopped by the home several times to check on the progress and, on one occasion, purchased two items for installation in the home. Lyzhoft reimbursed Thomas Donahue for the items but did not pay him for his time.

On June 10, 2009, knowing that Lyzhoft needed propane to obtain a certificate of occupancy, the Donahues told Lyzhoft that they had a propane cylinder that he could use, and that it was located at Brian Donahue's home. The Donahues also told Lyzhoft that appellant Waconia Farm Supply "would be the place to fill" the cylinder with propane.

Lyzhoft and Brian Donahue went to Brian Donahue's home, where Lyzhoft's son and Brian Donahue's son obtained the available propane cylinder and placed it in the bed of Lyzhoft's truck. At that time, Brian Donahue cracked open the valve on the propane cylinder for a few seconds, sniffed, and said that it smelled like propane. Lyzhoft and his son then drove to Waconia Farm Supply to fill the tank with propane. After they arrived, Lyzhoft went to Waconia Farm Supply's shed, while his son remained in the truck. At the shed, Lyzhoft met Waconia Farm supply employee, Ryan Samuelson, who began to fill the cylinder with propane. Lyzhoft left the shed to pay for the propane. Approximately five seconds later, before Lyzhoft reached the store, the propane cylinder exploded, killing Samuelson, allegedly causing Lyzhoft's son to sustain first-degree burns on his arms and neck and initial symptoms of posttraumatic stress disorder, and allegedly causing Lyzhoft to suffer moderately severe hearing loss, depression, and posttraumatic stress disorder. Subsequent chemical tests of the propane cylinder revealed that it had contained acetylene, which can be extremely unstable. In this case, the cylinder detonated when it received pressure while being filled with propane.

The Donahues came into possession of the propane cylinder more than a year before the accident, after Thomas Donahue's tenant committed suicide, leaving the cylinder on the leased premises. During the tenant's possession of the leased premises, at least one person regularly sold "meth" on the premises, and someone on the premises had been "transferring oxygen and acetylene into propane tanks."

For injuries suffered by himself and his son, Lyzhoft asserted claims of strict liability and negligence against the Donahues and claims of strict liability for

ultrahazardous activities, negligence, negligence per se, and res ipsa loquitur against Waconia Farm Supply, and sought damages in excess of $100,000 against respondents, jointly and severally. Waconia Farm Supply cross-claimed against the Donahues, alleging negligence and entitlement to contribution and/or indemnity.

The district court denied the Donahues' motions to dismiss, reasoning that facts could be introduced to support Lyzhoft's claims against the Donahues. The court granted partial summary judgment in the case, dismissing all of Lyzhoft's claims against the Donahues, and therefore dismissing Waconia Farm Supply's cross-claims against the Donahues. At the request of Waconia Farm Supply, the court ordered the immediate entry of judgment without a stay under Minn. R. Civ. P. 54.02.

These consolidated appeals follow.[1]

D E C I S I O N

An appellate court "review[s] the district court's grant of summary judgment to determine (1) if there are genuine issues of material fact and (2) if the district court erred in its application of the law." *Langston v. Wilson McShane Corp.*, 828 N.W.2d 109, 113 (Minn. 2013) (quotation omitted). An appellate court "view[s] the evidence in the light most favorable to the party against whom summary judgment was granted." *McKee v. Laurion*, 825 N.W.2d 725, 729 (Minn. 2013). "No genuine issue for trial exists when the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party." *Id.* (quotations omitted).

[1] In A12-2237, Lyzhoft is the appellant and Waconia Farm Supply is the respondent. In A12-2238, Waconia Farm Supply is the appellant and Lyzhoft is the respondent.

Strict -Liability Claim against Donahues

Lyzhoft challenges the district court's dismissal of his strict-products-liability claim against the Donahues. He argues that the Donahues should be held strictly liable for damages caused by the propane-cylinder explosion because the Donahues were commercial bailors, who distributed the cylinder in connection with Brian Donahue's heating, ventilation, and air-conditioning business.

"Products liability is a manufacturer's or seller's tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product." *Glorvigen v. Cirrus Design Corp.*, 816 N.W.2d 572, 581 (Minn. 2012) (quotation omitted). A plaintiff may premise a products-liability claim on a strict-liability theory. *Id.* In *McCormack v. Hankscraft Company*, 278 Minn. 322, 340, 154 N.W.2d 488, 501 (1967), the supreme court "declare[d its] agreement with the principles underlying the rule of strict tort liability and . . . record[ed its] intention of applying that rule" in products-liability cases. Those principles are embodied in the Restatement (Second) of Torts section 402A (1965), which provides that a person is liable for "*sell[ing]* any product in a defective condition unreasonably dangerous to the user or consumer . . . for physical harm thereby caused to the ultimate user or consumer." (Emphasis added.); *see Minn. Min. & Mfg. Co. v. Nishika Ltd.*, 565 N.W.2d 16, 21 (Minn. 1997) (citing *McCormack* as authority for the court's adoption of the Restatement (Second) of Torts section 402A (1965)); *Lee v. Crookston Coca-Cola Bottling Co.*, 290 Minn. 321, 327, 188 N.W.2d 426, 431 (1971) (observing that the purposes of imposing strict liability on defective-product manufactures and sellers include promoting "[t]he public interest in

safety . . . by discouraging the marketing of defective products"). The Minnesota Supreme Court has extended a manufacturer's strict liability to "retailers and distributors" because "[t]he same policy considerations apply, since both retailers and manufacturers are engaged in the business of distributing goods to the public." *Farr v. Armstrong Rubber Co.*, 288 Minn. 83, 97 n.1, 179 N.W.2d 64, 72 n.1 (1970).

A "[b]ailment" is a "legal relation arising upon delivery of goods without transference of ownership under an express or implied agreement that the goods be returned," *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 437 (Minn. 1990) (quotation omitted), in which the "bailor" delivers the goods and the "bailee" receives the goods, *Nat'l Fire Ins. Co. v. Commodore Hotel, Inc.*, 259 Minn. 349, 351, 107 N.W.2d 708, 709 (1961). Thomas Donahue challenges the existence of a bailment as to him, arguing that he never owned the propane cylinder or delivered it to Lyzhoft. Thomas Donahue testified at his deposition that, after he and Brian Donahue found the propane cylinder on his rental property, Brian Donahue took it to his home as "a reserve." Brian Donahue testified that he retained the propane cylinder for approximately one year until his son and Lyzhoft's son placed it in Lyzhoft's truck, and Lyzhoft testified that he did not know who owned the cylinder and that Thomas Donahue was not present when Lyzhoft received the cylinder from Brian Donahue. Lyzhoft testified that, on the day of the explosion, he learned that a propane cylinder existed that he could borrow and get filled with propane at Waconia Farm Supply when Brian *and* Thomas Donahue told him, "*[W]e* got a[] [propane cylinder] at Brian's place." (Emphasis added.) As to delivery of the propane cylinder to Lyzhoft, "[t]he law relating to delivery

and change of possession is flexible, accommodating itself to the nature of the property and the situation and circumstances of each case." *Coulter v. Meining*, 143 Minn. 104, 107–08, 172 N.W. 910, 911–12 (1919) (discussing bailment and stating that a "delivery through a third person is sufficient if such person holds the property for the donee"); *cf. Fenrick v. Olson*, 269 Minn. 412, 422, 131 N.W.2d 235, 241–42 (1964) (discussing deed delivery, stating that "[d]elivery is a question of fact" (quotation omitted)).

Viewing the record in the light most favorable to Lyzhoft, we conclude that the evidence shows that, although Thomas was not present during the delivery, Thomas and Brian co-delivered the cylinder to Lyzhoft and a bailment existed between the Donahues and Lyzhoft as to the propane cylinder.

Other jurisdictions have extended strict products liability to commercial bailors, lessors, or both, due to the same policy considerations that support strict products liability for commercial sellers. *See Bachner v. Pearson*, 479 P.2d 319, 327–28 (Alaska 1970) (both); *Price v. Shell Oil Co.*, 466 P.2d 722, 727 (Cal. 1970) (both); *Samuel Friedland Family Enters. v. Amoroso*, 630 So. 2d 1067, 1070–71 (Fla. 1994) (lessor); *Crowe v. Pub. Bldg. Comm'n of Chicago*, 370 N.E.2d 32, 34–35 (Ill. App. Ct. 1977) (lessor), *aff'd and remanded*, 383 N.E.2d 951 (Ill. 1978); *Allenberg v. Bentley Hedges Travel Serv., Inc.*, 22 P.3d 223, 228–29 (Okla. 2001) (lessor); *Kemp v. Miller*, 453 N.W.2d 872, 878–79 (Wis. 1990) (lessor); *see also Martin v. Ryder Truck Rental, Inc.*, 353 A.2d 581, 582 (Del. 1976) (bailment-lease of a motor vehicle). Although the extension of strict products liability to commercial bailors appears to be consistent with Minnesota law, the law in other jurisdictions, and the Restatement (Third) of Torts, no Minnesota appellate court

has extended strict liability to commercial bailors, lessors, or both.[2] *See Wagner v. Int'l Harvester Co.*, 611 F.2d 224, 232 n.10 (8th Cir. 1979) (stating that the Eighth Circuit Court of Appeals "believe[d] the Minnesota Supreme Court *would hold* that [section 402A] encompasses an equipment lessor" (emphasis added)); *cf. Wegscheider v. Plastics, Inc.*, 289 N.W.2d 167, 170 (Minn. 1980) (declining to address "whether strict liability as stated in § 402A should be applied to cases . . . where the defective product was not sold but merely supplied by defendant to plaintiff" because doing so would not have affected that case's outcome); *Buckey v. Indianhead Truck Line*, 234 Minn. 379, 384 n.4, 48 N.W.2d 534, 537 n.3 (1951) (noting that "[s]ometimes it makes no difference whether the relationship be treated as a lease or a bailment"); *but cf. Duxbury v. Spex Feeds, Inc.*, 681 N.W.2d 380, 387–88 (Minn. App. 2004) (concluding that "a manufacturer and supplier" was subject to products liability, reasoning in part that "Restatement (Third) of Torts § 1 (1998) takes a broad approach, imposing liability on any party who is 'engaged in the business of selling or otherwise distributing products'" (quoting Restatement (Third) of

[2] The Restatement (Third) of Torts: Products Liability sections 1 and 20(b) (1998) expressly extends strict products liability to commercial bailors and lessors, stating that "[o]ne otherwise distributes a product when, in a commercial transaction other than a sale, one provides the product to another for use" and that "[c]ommercial nonsale product distributers include, but are not limited to, lessors[and] bailors." In *Duxbury v. Spex Feeds, Inc.*, this court observed that, "[s]ince its publication, we have relied on Restatement (Third) of Torts when considering the law of products liability." 681 N.W.2d 380, 387 (Minn. App. 2004), *review denied* (Minn. Aug. 25, 2004); *see, e.g.*, *Glorvigen v. Cirrus Design Corp.*, 796 N.W.2d 541, 551 (Minn. App. 2011) (relying on product-liability comment in third torts restatement), *aff'd*, 816 N.W.2d 572 (Minn. 2012); *see also Harrison ex rel. Harrison v. Harrison*, 733 N.W.2d 451, 455 (Minn. 2007) (relying on section 1 in third torts restatement on products liability); *see Duxbury*, 681 N.W.2d at 387 (quoting section 20(a) of third torts restatement).

Torts: Products Liability § 1)), *review denied* (Minn. Aug. 25, 2004);[3] *compare Federated Mut.*, 456 N.W.2d at 437 (defining "[b]ailment" as "the legal relation arising upon delivery of goods without transference of ownership under an express or implied agreement that the goods be returned" (quotation omitted)), *with Black's Law Dictionary* 970 (9th ed. 2009) (defining "lease" as a "contract by which the rightful possessor of personal property conveys the right to use that property in exchange for consideration").

Because "[t]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court," we decline to extend strict liability to commercial bailors. *State v. Grigsby*, 806 N.W.2d 101, 110 (Minn. App. 2011) (quotation omitted), *aff'd*, 818 N.W.2d 511 (Minn. 2012); *see also Jane Doe 43C v. Diocese of New Ulm*, 787 N.W.2d 680, 690 (Minn. App. 2010) (declining to recognize "broadly stated fraud theory"); *Tester v. Am. Standard, Inc.*, 590 N.W.2d 679, 681 (Minn. App. 1999) (declining to extend aggregation-of-fault doctrine), *review denied* (Minn. June 16, 1999).

Brian Donahue argues that, even if this court were to extend strict products liability to commercial bailors, the Donahues would not be subject to such liability because a "one-time bailment by a non-distributor can[not] result in the imposition of strict liability." We agree. Under the third torts restatement on products liability, strict products liability extends to commercial bailors and lessors who are "*engaged in the*

[3] Other jurisdictions have extended strict products liability to commercial bailors or lessors based, at least in part, on the Restatement (Second) of Torts section 402A. *See Stewart v. Budget Rent-A-Car Corp.*, 470 P.2d 240, 243 (Haw. 1970) (lessors); *Cintrone v. Hertz Truck Leasing & Rental Serv.*, 212 A.2d 769, 777–78 (N.J. 1965) (bailors); *Livingston v. Begay*, 652 P.2d 734, 737 (N.M. 1982) (lessors); *Francioni v. Gibsonia Truck Corp.*, 372 A.2d 736, 739–40 (Pa. 1977) (lessors).

business of selling or otherwise distributing products who sell[] or distribute[] a defective product." Restatement (Third) of Torts: Products Liability § 1 (emphasis added). A comment to that restatement explains that "[i]t is not necessary that a commercial seller or distributor be engaged exclusively or even primarily in selling or otherwise distributing the type of product that injured the plaintiff, so long as the sale of the product is *other than occasional or casual*." Restatement (Third) of Torts: Products Liability § 1, cmt. c (1998) (emphasis added). Other jurisdictions have likewise limited strict products liability. *See Bachner*, 479 P.2d at 328 ("Just as strict liability has not been imposed in cases of single transaction, non-commercial sales, no such liability will result where the lease in question is an isolated occurrence outside the usual course of the lessor's business."); *Price*, 466 P.2d at 728 ("[F]or the doctrine of strict liability in tort to apply to a lessor of personalty, the lessor should be found to be in the business of leasing, in the same general sense as the seller of personalty is found to be in the business of manufacturing or retailing."); *Amoroso*, 630 So. 2d at 1071 ("The strict liability cause of action is not applicable to those leases which are isolated or infrequent transactions not related to the principal business of the lessor.").

No record evidence indicates that the Donahues ever distributed a propane cylinder other than loaning the subject cylinder to Lyzhoft, who agrees that the Donahues are not sellers or retailers of propane and that no evidence exists to show that they professionally delivered or transported propane or offered themselves to the public as propane cylinder retailers. Therefore, although we conclude that the Donahues and Lyzhoft had a bailment as to the propane cylinder, even if we were to extend strict

products liability to bailments, we would conclude that the Donahues would not be strictly liable to Lyzhoft or his son because the Donahues were not engaged in the business of distributing propane cylinders. The district court did not err by dismissing Lyzhoft's strict-products-liability claim against the Donahues.

Negligence Claims Against Donahues

"To recover for a claim of negligence, a plaintiff must prove (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) that the breach of the duty of care was a proximate cause of the injury." *Domagala v. Rolland*, 805 N.W.2d 14, 22 (Minn. 2011). Lyzhoft argues that the district court erred by dismissing Lyzhoft's negligence claims against the Donahues on the basis that the Donahues had no duties to inspect the propane cylinder or warn Lyzhoft and his son about the propane cylinder. Lyzhoft argues that genuine issues of material fact exist as to whether the Donahues bailed the propane cylinder to Lyzhoft and his son within the scope of their work and for consideration and therefore owed the Lyzhofts a duty of care. We agree.

A bailor-bailee relationship is a special relationship from which duties may arise. *See Ferraro v. Taylor*, 197 Minn. 5, 9, 265 N.W. 829, 831 (1936) (observing that a "special relation" arose from a lessor's leasing of a car to a lessee, giving rise to duties including a duty "to furnish [the lessee] a safe and manageable car"); *see also Bjerke v. Johnson*, 742 N.W.2d 660, 665 (Minn. 2007) (including in examples of special relationships relationships that "arise[] from the status of the parties, such as . . . masters and servants"); *Black's Law Dictionary* 1402 (9th ed. 2009) (defining "special relationship" as a "nonfiduciary relationship having an element of trust, arising

esp[ecially] when one person trusts another to exercise a reasonable degree of care and the other knows or ought to know about the reliance" (emphasis omitted)); *cf. Buckey*, 234 Minn. at 384 n.4, 48 N.W.2d at 537 n.3 (noting that "[s]ometimes it makes no difference whether the relationship be treated as a lease or a bailment" in case in which "[i]t [was] obvious that the relationship between the parties here has the elements of both a bailment and a lease").

Duty to Inspect

A gratuitous bailor owes to the bailee no duty to inspect a bailed good whereas a bailor for consideration owes to the bailee a duty to reasonably inspect the bailed good. *See Ruth v. Hutchinson Gas Co.*, 209 Minn. 248, 256, 296 N.W. 136, 140 (1941) (stating that a gratuitous bailor owes to the bailee no duty to "take . . . measures to see that the chattel is free from danger," "guard[] and protect[]" the bailee, or "communicate [to the bailee] anything which he did not in fact know, whether he ought to have known it or not"); *Butler v. Nw. Hosp. of Minneapolis*, 202 Minn. 282, 285, 287, 278 N.W. 37, 38–39 (1938) (stating that bailor must conduct reasonable inspection of bailment to ensure it is "reasonably fit and suitable for the purpose for which it is expressly let out" and that bailor "is liable for injuries to the bailee or third persons for injuries proximately resulting from any defect due to his want of due care"); *see also Thill v. Modern Erecting Co.*, 272 Minn. 217, 225, 136 N.W.2d 677, 683 (1965) ("Modern had breached its duty as a bailor for hire—which was to supply equipment reasonably safe for its intended use and competent operators . . . ."); *Miller v. Macalester Coll.*, 262 Minn. 418, 429, 115 N.W.2d 666, 673 (1962) (stating that scaffold bailor had "duty . . . to exercise reasonable care to

furnish equipment which could be used with safety in the work for which it was intended"); 131 A.L.R. 845–46, § 24 (1941) (citing *Butler* as supporting rule that "bailor for hire . . . is liable for personal injuries to, or the death of, the bailee or third persons proximately resulting from the dangerous or defective condition of the chattel while it is being used for the purpose known by the bailor to be intended, where the bailor has not used reasonable care to see that the chattel, as of the time of its letting, was free from any defects or weaknesses rendering it unfit for its known intended use").

Duty to Warn

A gratuitous bailor owes to the bailee "the duty of warning him of only those defects to which the [bailor] is aware and which might imperil the [bailee] by the intended use of the chattel," *Ruth*, 209 Minn. at 256, 296 N.W. at 140, in contrast to the general rule that "a supplier has a duty to warn end users of a dangerous product if it is reasonably foreseeable that an injury could occur in its use," *Gray v. Badger Min. Corp.*, 676 N.W.2d 268, 274 (Minn. 2004). *See Ruth*, 209 Minn. at 257–58, 296 N.W. at 141 (holding that the rule that "a supplier is responsible for facts which he ought to know by the exercise of reasonable care" did not apply to a gratuitous bailor and that Restatement (First) of Torts § 388 (1934) "sustains [that] rule"); *see also Gray*, 676 N.W.2d at 274 (stating that, in context of supplier's duty to warn, "we have endorsed the broad statement of principles contained in the Restatement (Second) of Torts § 388"); *but see* Restatement (Second) of Torts § 388, cmt. c (1965) (defining suppliers as including all kinds of bailors, "irrespective of whether the bailment is for a reward or gratuitous").

An appellate court "[g]enerally . . . regard[s] the existence of the duty as a question of law, which [the appellate court] review[s] de novo." *Bjerke*, 742 N.W.2d at 664. But "this would not foreclose the possibility that there may be situations in which the facts necessary to establish a special relationship are in dispute and should be submitted to the jury." *Id.* at 667 n.4. Similarly, "[f]oreseeability of injury is a threshold issue related to duty that is ordinarily properly decided by the court prior to submitting the case to the jury," but, "[i]n close cases, the issue . . . should be submitted to the jury." *Domagala*, 805 N.W.2d at 27. And whether a bailment is gratuitous or for consideration is a fact question. *Jungclaus v. Great N. Ry.*, 99 Minn. 515, 516, 108 N.W. 1118, 1118 (1906); *see also Marchello v. Perfect Little Prods., Inc.*, 941 N.Y.S.2d 846, 846 (App. Div. 2012) (stating that defendants, in summary-judgment proceeding, "raised triable issues of fact as to . . . whether the bailment in question was gratuitous or for hire").

Here, material to whether the Donahues had a duty to inspect the propane cylinder, a genuine issue of fact exists about whether the Donahues bailed the propane cylinder to Lyzhoft and his son gratuitously or for consideration. Evidence that supports a finding that the Donahues gratuitously bailed the propane cylinder includes Lyzhoft's denial of paying the Donahues for the cylinder and that the cylinder is not listed on the service and materials invoices that Lyzhoft received from Brian Donahue. Evidence that supports a finding that the Donahues bailed the propane tank to Lyzhoft and his son for consideration includes Lyzhoft's assertion that Brian Donahue provided the propane cylinder as "part of [Brian Donahue's] work" and that Brian Donahue bailed the propane cylinder to Lyzhoft and his son for the purpose of expediting Lyzhoft's receipt of a

certificate of occupancy and therefore expediting Lyzhoft's payment to Brian Donahue for his work.

And material to whether the Donahues had a duty to warn the Lyzhofts about the dangerous condition of the propane cylinder or facts that made the cylinder likely to be dangerous—because it contained acetylene—a genuine issue of fact exists as to whether the Donahues should have known of the dangerous condition of the propane cylinder or facts that suggested that the cylinder might be dangerous. *See Gray*, 676 N.W.2d at 274 (noting that the Restatement (Second) of Torts section 388 predicates supplier liability for "fail[ure] to exercise reasonable care to inform [chattel recipient] of [chattel']s dangerous condition or of the facts, which make it likely to be so" on supplier "know[ing], or from facts known to him should realize, that the chattel is or is likely to be dangerous for the use for which it is supplied" and "hav[ing] no reason to believe that those for whose use the chattel is supplied will realize its dangerous condition" (quotation marks omitted)); *see also Anderson by Anderson v. Shaughnessy*, 519 N.W.2d 229, 232 (Minn. App. 1994) ("Whether the seller knew or should have known of the product's defect is typically a question for the jury."), *rev'd on other grounds*, 526 N.W.2d 625 (Minn. 1995).

Evidence that may support a finding that the Donahues had no duty to warn the Lyzhofts includes Lyzhoft's testimony that he did not know what the Donahues knew about the history of the propane cylinder, did not believe that Thomas Donahue knew that the cylinder contained acetylene, and did not know whether "Brian knew that there had been explosions or mixing of fuels going on out at Tom's rental property prior to the

Waconia Farm Supply incident." Additionally, the Donahues deny that they knew the propane cylinder contained acetylene.

Evidence that may support a finding that the Donahues should have known that the propane cylinder was likely dangerous include Brian Donahue's testimony that he knew that the deceased tenant from whom the Donahues acquired the propane cylinder had committed suicide and Thomas Donahue's testimony that he knew that, before the tenant's death, a different propane tank had exploded on the leased premises, injuring the tenant's ear, causing the tenant some hearing loss, and damaging a tractor bucket. A significant other of the deceased tenant testified about her understanding that the deceased tenant told Thomas Donahue that an explosion occurred that damaged the roof at the leased premises. Another individual testified that, after the explosion, the deceased tenant told the individual that he was "transferring oxygen and acetylene into propane tanks." That same individual testified that he sold "meth" day and night out of the deceased tenant's property; had approximately 100 regular customers and customers constantly coming to purchase the methamphetamine; and was "sure" that "law enforcement" was watching the property. The deputy fire marshal testified that, after investigating the subject propane-cylinder explosion, he believed that the deceased tenant had likely put acetylene in the propane cylinder. An acquaintance of the deceased tenant, who attended treatment with him, affirmed that, while the acquaintance and others—including Thomas Donahue—were cleaning up the tenant's rental property after his death, the acquaintance heard someone "talking about [the deceased tenant] cooking f-cking meth out at the property." And Lyzhoft testified that, after the explosion, Thomas

Donahue told him by phone, "'I know where this tank came from, but I can't tell you . . . right now,'" and arranged a meeting with Lyzhoft along the side of a country road after telling Lyzhoft that he wanted them to "work[] together on this thing."

"[I]t is only in the clearest of cases that the question of negligence becomes one of law." *Martinco v. Hastings*, 265 Minn. 490, 501, 122 N.W.2d 631, 640 (1963); *see Canada By & Through Landy v. McCarthy*, 567 N.W.2d 496, 505 (Minn. 1997) ("The question of negligence is ordinarily a question of fact and not susceptible to summary adjudication."). This case is not one of the "clearest of cases." Because genuine issues of material fact exist regarding the extent of Donahues' knowledge and therefore the extent of their duties and whether they breached those duties, we conclude that the district court erred by granting summary judgment to the Donahues on Lyzhoft's negligence claims, dismissing those negligence claims, and dismissing Waconia Farm Supply's cross-claim against the Donahues for contribution and indemnity. Accordingly, we affirm the district court's dismissal of Lyzhoft's strict products-liability claim against the Donahues, reverse the dismissal of Lyzhoft's negligence claims against the Donahues, reverse the dismissal of Waconia Farm Supply's cross-claim against the Donahues, and remand for proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.