STATE OF MICHIGAN

COURT OF APPEALS

BRITNEY JOANNE HENLEY, Plaintiff-Appellee,	UNPUBLISHED February 3, 2009
v	No. 280558
FRED HERSCHELMAN and STACEY HERSCHELMAN, Defendants-Appellants.	Oakland Circuit Court LC No. 2006-075303-NO

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

This case has been remanded by our Supreme Court for consideration as on leave granted. Defendants challenge that portion of the trial court's order denying their motion for summary disposition of plaintiff's claim under MCL 554.139 in this premises liability case. We reverse that portion of the trial court's order challenged by defendants, lift the stay imposed by our Supreme Court, and remand this case to the trial court with instructions that the trial court dismiss the case in its entirety. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendants purchased a home in 2003 with the intention of using it as rental property. The home was built in 1966. Defendants made various improvements to the home, including installing new windows and doors. Defendants replaced the home's front door, but did not replace the exterior basement door or alter it in any way.

In 2005, Marnie Henley leased the home from defendants. Marnie Henley signed a form residential lease that stated that the lessee, designated as Fred Herschelman, had examined the premises, and that the premises were, at the time of the lease, "in good order, repair, and a safe, clean, and tenantable condition."

On November 30, 2005, plaintiff Britney Henley, the daughter of Marnie Henley and a resident of the leased home, went to the exterior basement door to let the family dog into the yard. Plaintiff attempted to close the door, but it would not close properly. Plaintiff pushed on the door with both hands in an attempt to close it completely; in doing so, plaintiff's right hand slipped and went through the glass pane in the door. Plaintiff sustained severe and permanent injuries to her arm as a result of the incident.

Plaintiff filed a first amended complaint[1] alleging: (1) premises liability, in that defendants failed to maintain the premises in a reasonably safe condition and to warn plaintiff of the unsafe condition on the property (i.e., the absence of safety glass in the exterior basement door); (2) negligence, in that defendants breached their duty to maintain the premises in a reasonably safe condition by replacing the plain glass in the exterior basement door with safety glass; (3) gross negligence, in that defendants' failure to replace the plain glass in the exterior basement door with safety glass constituted a high degree of carelessness and a complete disregard for the safety of their tenants; (4) statutory violations/negligence per se, including violation of MCL 125.1383 (requiring the use of safety glass in new construction and remodeling done after the effective date of the statute [July 1, 1973]), violation of MCL 125.471 (requiring a dwelling's owner to keep the dwelling and all parts thereof in good repair), violation of MCL 554.139 (requiring a lessor to maintain leased premises in reasonable repair), and violation of MCL 125.536 (permitting unsafe conditions to exist unabated); (5) private nuisance; and (6) public nuisance.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10). Defendants asserted that Marnie Henley never reported a problem with the exterior basement door or inquired if the glass pane in the door had been replaced with safety glass. Defendants contended that no statute obligated them to replace the glass in the exterior basement door with safety glass. Defendants argued that because MCL 125.1383 was a specific provision requiring the use of safety glass under certain circumstances, it prevailed over the other, general statutes on which plaintiff relied. Defendants contended that they did not breach a duty of general care by not replacing the glass pane in the exterior basement door with safety glass because the home was built in 1966, prior to the effective date of MCL 125.1383, and the door had not been replaced since that time. Moreover, defendants contended that no evidence showed that the glass pane was unsafe or unfit for its intended use.

In response, plaintiff argued that the evidence showed that the basement exterior door was in disrepair because it would not close properly and contained a pane of non-safety glass. Plaintiff contended that defendants' failure to replace the glass in the exterior basement door at the time all other doors and windows were replaced constituted a breach of the duty of ordinary care, and made the premises unfit for the intended use.

In a written decision the trial court granted the motion in part and denied it in part. The trial court dismissed all claims except that based on MCL 554.139. The trial court found that a question of fact existed as to whether defendants failed to maintain the premises in reasonable repair because the exterior basement door lacked safety glass.

Defendants moved for reconsideration, arguing that MCL 554.139 and MCL 125.1383 were contradictory, and that because MCL 125.1383 was the more specific statute, it controlled

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[1] In June 2006 plaintiff filed suit naming Fred Herschelman, only, as a party defendant. Plaintiff filed the first amended complaint for the purpose of adding Stacey Herschelman as a party defendant. The substantive allegations in the original complaint and the first amended complaint are identical.

over MCL 554.139. The trial court denied the motion, finding that MCL 125.1383 and MCL 554.139 were not contradictory.

This Court denied defendants' application for leave to appeal and the motion for stay; however, our Supreme Court, in lieu of granting leave to appeal, remanded this matter to this Court for consideration as on leave granted, and stayed proceedings in the trial court pending completion of the appeal.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

We reverse that portion of the trial court's order denying defendants' motion for summary disposition of plaintiff's claim based on MCL 554.139, lift the stay imposed by our Supreme Court, and remand this case with instructions that the trial court dismiss the case in its entirety.

MCL 554.139 provides:

> (1) In every lease or license of residential premises, the lessor or licensor covenants:
>
> (a) That the premises and all common areas are fit for the use intended by the parties.
>
> (b) To keep the premises in reasonable repair during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants willful or irresponsible conduct or lack of conduct.
>
> (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.
>
> (3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefits of the covenants established herein.

MCL 125.1383 provides:

> (1) A person shall not knowingly fabricate, assemble, glaze, install, consent or cause to be installed glazing materials other than safety glazing materials in, or for use in, a hazardous location in a commercial, public, or residential building or in any building constructed or substantially remodeled after the effective date of this act, and the building is located in this state.
>
> (2) A person shall not knowingly sell, fabricate, or install a glazed storm door, shower door, tub enclosure, or sliding glass door in or for use in any

> building in this state unless the storm door, shower door, tub enclosure, or sliding glass door is equipped with safety glazing material.

Initially, and contrary to defendants' assertion, we conclude that the trial court's finding that defendants were entitled to summary disposition under MCL 125.1383[2] did not mandate a conclusion that defendants were entitled to dismissal of plaintiff's claim under MCL 554.139 as well. The trial court determined that MCL 125.1383 did not require defendants to replace the glass in the exterior basement door with safety glass absent a remodeling project, but that MCL 554.139 imposed a duty to maintain the premises in reasonable repair, and that a question of fact existed as to whether defendants breached that duty by failing to replace the glass with safety glass. The trial court correctly found that the statutes are not contradictory. MCL 125.1383 does not deal solely with leased property or with steps that must be taken in order to maintain premises in reasonable repair. Circumstances might exist in which plain glass must be replaced (as in a remodeling project) even if the premises are in reasonable repair. We find that defendants' duties under MCL 554.139 are at issue in this case.

Nevertheless, we hold that the trial court erred by denying defendants' motion for summary disposition of plaintiff's claim under MCL 554.139. Plaintiff argued that the door was defective because it would not close properly and did not contain safety glass. Had defendants been on notice that the door would not close properly, they would have had a statutory duty under MCL 554.139(1)(b) to repair the defect, and, if replacement of the door proved necessary and a decision was made to install a door with a glass pane, a statutory duty under MCL 125.1383 to install a door containing safety glass.

A landlord is statutorily obligated to repair only those defects about which the landlord knew or should have known. *Evans v VanKleek*, 110 Mich App 798, 803; 314 NW2d 846 (1981). A landlord has no duty to inspect the premises on a regular basis to search for defects; rather, a landlord is required to repair only defects about which a tenant complains or the landlord discovers upon casual inspection of the premises. See *Raatikka v Jones*, 81 Mich App 428, 430; 265 NW2d 360 (1978). "[R]epairing a defect equates to keeping the premises in a good condition as a result of restoring and mending damage to the property." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 434; 751 NW2d 8 (2008). Fred Herschelman testified that he received no complaints from lessee Marnie Henley or any other resident regarding the condition of the exterior basement door, and that although he replaced glass in other parts of the home, he did not replace the glass in the exterior basement door because there was no reason to do so. He indicated that the door was in good working condition. Plaintiff's assertion that defendants must have had actual or constructive knowledge of the condition of the door because it is reasonable to infer that defendants inspected the home after purchasing it is based entirely on speculation. Defendants purchased the home in 2003, and plaintiff's accident occurred more than two years later, in 2005. As noted, defendants had no duty to inspect the premises on a regular basis to search for defects. *Raatikka*, *supra* at 430. Plaintiff points to no evidence that created a question

[2] Plaintiff has not challenged this finding by way of cross-appeal.

of fact as to whether defendants knew or should have known that the exterior basement door did not close properly, and thus had a duty to repair the defect. *Evans*, *supra* at 803.

We reverse that portion of the trial court's decision that denied defendants' motion for summary disposition of plaintiff's claim under MCL 554.139, lift the stay imposed by our Supreme Court, and remand this case to the trial court with instructions that the trial court dismiss this case in its entirety. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Brian K. Zahra