

STATE OF MICHIGAN
COURT OF APPEALS

LORI MORRIS,

Plaintiff-Appellee,

v

TRACEY B. VADEN,

Defendant-Appellant.

UNPUBLISHED

September 13, 2007

No. 271108

Wayne Circuit Court

LC No. 03-341571-NO

Before: O'Connell, P.J., and Murphy and Fitzgerald, JJ.

MEMORANDUM.

Defendant appeals by leave granted the trial court's order denying her motion for summary disposition that was brought pursuant to MCR 2.116(C)(10). We vacate the order denying summary disposition and remand the case to the trial court.

Plaintiff, defendant's residential tenant, was injured by an explosion of flames when she attempted to light the pilot light on her water heater that had gone out. Plaintiff had called defendant and her maintenance man on numerous occasions to report problems with the pilot light going out, but the problem was never corrected, and plaintiff regularly relit the pilot light herself.

At oral arguments the parties acknowledged that discovery remains open and plaintiff stated that he had two experts listed on his witness list who are yet to be deposed. Accordingly, we vacate the order denying summary disposition and remand the case to the trial court, subject to the right of defendant to refile a motion for summary disposition once discovery is complete.

Vacated and remanded. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ William B. Murphy

/s/ E. Thomas Fitzgerald