Order

Michigan Supreme Court
Lansing, Michigan

March 9, 2018

Stephen J. Markman,
Chief Justice

154360

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

MICHAEL MARTIN,
Plaintiff-Appellee,

v

SC: 154360
COA: 328240
Kalamazoo CC: 2013-000485-NO

MILHAM MEADOWS I LIMITED PARTNERSHIP and MEDALLION MANAGEMENT, INC.,
Defendants-Appellants.

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On January 10, 2018, the Court heard oral argument on the application for leave to appeal the July 19, 2016 judgment of the Court of Appeals. On order of the Court, the application is again considered, and it is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.

MARKMAN, C.J. (*dissenting*).

I respectfully dissent from this Court's order denying leave to appeal. I would reverse the judgment of the Court of Appeals and reinstate the trial court's grant of summary disposition in favor of defendants.

Plaintiff, Michael Martin, sustained injuries when he slipped and fell down the stairs inside his townhouse. The stairs at issue led from the main floor of Martin's unit to his basement, and they were wooden stairs painted with what the building's maintenance supervisor described as "Sherwin Williams porch and floor paint." After the fall, Martin filed the instant lawsuit against Milham Meadows I Limited Partnership, which owned the building, and Medallion Management Inc, which was responsible for maintaining the premises. According to Martin's complaint, the paint used on the basement stairs was slippery and caused tenants to fall. In relevant part, Martin alleged that the stairs were not fit for their intended use as required by MCL 554.139(1)(a) and that they were not kept in reasonable repair as required by MCL 554.139(1)(b). Defendants moved for summary disposition under MCR 2.116(C)(10), and the trial court granted this motion and dismissed Martin's claims with prejudice. However, the Court of Appeals reversed the trial court's decision regarding Martin's claims under MCL 554.139(1)(a) and (b), holding that there were questions of material fact regarding whether the stairs were fit for their intended use and whether they were kept in reasonable repair.

In relevant part, 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 [sic] wilful or irresponsible conduct or lack of conduct.

In *Allison v AEW Capital Mgt, LLP*, 481 Mich 419 (2008), this Court analyzed a lessor's duty under MCL 554.139(1)(a) and (b). The plaintiff in *Allison* sustained injuries during a fall, which occurred while walking on one to two inches of snow in the parking lot of his apartment complex. *Id*. at 423. In relevant part, the plaintiff alleged that the condition of the parking lot constituted a breach of the covenants in MCL 554.139(1). *Id*.

With respect to MCL 554.139(1)(a), *Allison* explained that "the lessor effectively has a contractual duty to keep the parking lot 'fit for the use intended by the parties.' " *Id*. at 429. *Allison* indicated that "fit" is defined as " 'adapted or suited; appropriate[.]' " *Id*., quoting *Random House Webster's College Dictionary* (1997). Because the primary purpose of a parking lot is to store vehicles, "a lessor has a duty to keep a parking lot adapted or suited for the parking of vehicles." *Allison*, 481 Mich at 429. *Allison* explained, "A parking lot is generally considered suitable for the parking of vehicles as long as the tenants are able to park their vehicles in the lot and have reasonable access to their vehicles." *Id*. Therefore, in the context of snow and ice, "[a] lessor's obligation under MCL 554.139(1)(a) with regard to the accumulation of snow and ice concomitantly would commonly be to ensure that the entrance to, and the exit from, the lot is clear, that vehicles can access parking spaces, and that tenants have reasonable access to their parked vehicles." *Id*. Notably, *Allison* held that lessors do not need to maintain perfect conditions:

> The statute does not require a lessor to maintain a lot in an ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain it in a condition that renders it fit for use as a parking lot. Mere inconvenience of access, or the need to remove snow and ice from parked cars, will not defeat the characterization of a lot as being fit for its intended purposes. [*Id*. at 430.]

Here, Martin claims that the slippery nature of the stairs made them unfit for their intended use. "The primary purpose or intended use of a stairway is to provide pedestrian

access to different levels of a building or structure." *Hadden v McDermitt Apartments, LLC*, 287 Mich App 124, 130 (2010). The record contains evidence that the stairs were in good condition when Martin moved into the townhouse and that he successfully traversed the stairs thousands of times to access different levels of his townhouse; thus, these stairs successfully served their "intended use" thousands of times. The Court of Appeals improperly discounted the fact that Martin successfully traversed the stairs thousands of times, and it improperly enlarged a landlord's duty to essentially encompass a guarantee of safety.

Contrary to the opinion by the Court of Appeals, a tenant's ability to avoid a condition is, in fact, highly relevant to whether the condition is only a "mere inconvenience of access." As *Allison* explained, "[m]ere inconvenience of access" does "not defeat the characterization of [the premises] as being fit for its intended purposes." *Allison*, 481 Mich at 430. The relevant inquiry under the "intended use" covenant is whether, and to what degree, a condition interferes with the intended use of the premises. As the trial court noted, Michigan law does not require a landlord to make the premises "fool-proof." Defendants' motion for summary disposition was supported with evidence that the stairs were in good condition when Martin moved in and that he successfully traversed the stairs thousands of times, which strongly supports the notion that the stairs were fit for their intended use. Martin failed to respond with evidence demonstrating that any alleged level of slipperiness precluded reasonable access to different levels of his townhouse.[1] Therefore, he failed to show that there was a genuine issue of material fact as to whether the stairs were "fit" (i.e., "adapted or suited; appropriate") for their intended purposes. The Court of Appeals erred by holding otherwise, and the trial court properly granted summary disposition in favor of defendants regarding the alleged violation of the covenant set forth in MCL 554.139(1)(a).

With respect to the covenant set forth in MCL 554.139(1)(b), *Allison* stated, "The plain meaning of 'reasonable repair' as used in MCL 554.139(1)(b) requires repair of a defect in the premises." *Id*. at 434 (quotation marks and citation omitted). In turn, *Allison* held that "repairing a defect equates to keeping the premises in a good condition *as a result of restoring and mending damage to the property*." *Id*. (emphasis added). After concluding that there was a question of material fact regarding whether the stairs were fit for their intended use-- a conclusion that is flawed for the reasons explained above-- the Court of Appeals summarily concluded, "Similarly, a question of material fact exists regarding whether defendants failed to keep the premises in reasonable repair after Mar[t]in provided notice of the steps' slippery condition." *Martin v Milham Meadows I Ltd Partnership*, unpublished per curiam opinion of the Court of Appeals,

[1] Martin did obtain an expert, but the expert merely opined that there were ways to make the stairs less slippery. There is no evidence that the alleged level of slipperiness precluded reasonable access to different levels of the townhouse.

issued July 19, 2016 (Docket No. 328240), p 10. The conclusory treatment of this issue by the Court of Appeals expands *Allison*'s definition of "reasonable repair" and gives little meaning to the qualifier "reasonable."

Here, Martin's complaint merely alleged slipperiness of the stairs due to the paint used; it did not contain allegations of damage to the stairs. Inspections by defendants indicated that the stairs were in good condition, and Martin acknowledged this fact when signing his lease. Although Martin's expert opined that the paint on the stairs was more slippery than a paint containing a nonslip additive, this opinion does not indicate that there was a defect that required *restoring or mending damage* to the premises; rather, it merely demonstrates that there was a conceivable way that the stairs could have been improved. Because the paint used on the stairs did not constitute damage to the premises requiring mending or restoring, it cannot be said that defendants failed to "keep the premises in reasonable repair" on the basis of the alleged slipperiness of the paint. Accordingly, defendants were entitled to summary disposition regarding Martin's claim under MCL 554.139(1)(b).

In sum, I would fully sustain *Allison*, reverse the judgment of the Court of Appeals, and reinstate the trial court's grant of summary disposition in favor of defendants.