Order

Michigan Supreme Court
Lansing, Michigan

January 17, 2025

167185

KANDICE HOLDER,
Plaintiff-Appellant,

v

SC: 167185
COA: 364401
St Clair CC: 2021-000013-NI

ANCHOR BAY INVESTMENTS, INC.,
Defendant-Appellee.

_____/

On order of the Court, the application for leave to appeal the March 21, 2024 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should now be reviewed by this Court.

CAVANAGH, J. (*dissenting*).

I respectfully dissent from the Court's order denying plaintiff's application for leave to appeal in this published opinion concerning statutory duties owed by landlords to their tenants.

Plaintiff alleged that she was injured after falling on exterior stairs that led to a landing outside the main entrance of her rented apartment. The wooden stairs were "algaefied" and slippery. She filed a two-count complaint against defendant, her landlord. Relevant for present purposes, plaintiff argued that defendant breached its statutory duties under MCL 554.139 and MCL 125.536. The trial court granted defendant summary disposition pursuant to MCR 2.116(C)(10). On appeal, the Court of Appeals affirmed the trial court's dismissal of the statutory claims. *Holder v Anchor Bay Investments*, ___ Mich App ___ (December 17, 2024) (Docket No. 364401). Plaintiff now seeks leave to appeal in this Court.

First, plaintiff argued that defendant violated the duty to repair found in MCL 125.536(1). That provision states:

> When the owner of a dwelling regulated by this act permits unsafe, unsanitary or unhealthful conditions to exist unabated in any portion of the dwelling, whether a portion designated for the exclusive use and occupation

> of residents or a part of the common areas, where such condition exists in violation of this act, any occupant, after notice to the owner and a failure thereafter to make the necessary corrections, shall have an action against the owner for such damages he has actually suffered as a consequence of the condition. When the condition is a continuing interference with the use and occupation of the premises, the occupant shall also have injunctive and other relief appropriate to the abatement of the condition.

The Court of Appeals concluded that plaintiff could not bring a claim under MCL 125.536(1) because the algaefied exterior stairs were not " '*in* any portion of the dwelling.' " *Holder*, ___ Mich App at ___; slip op at 7, quoting MCL 125.536(1). That is, the Court of Appeals held that plaintiff's claim was meritless because the stairs were outside the building. I question, however, whether MCL 125.536(1) should be read so narrowly as to include only a dwelling's interior, and I would have heard oral argument on the issue.

Second, plaintiff argued that defendant violated MCL 554.139(1)(a), which provides that "[i]n every lease or license of residential premises, the lessor or licensor covenants . . . [t]hat the premises and all common areas are fit for the use intended by the parties." The Court of Appeals agreed with the trial court that there was no genuine issue of material fact regarding whether the stairs at issue were "fit for the use intended by the parties." The panel majority first noted that plaintiff was "familiar with the danger posed by the algae[.]" *Holder*, ___ Mich App at ___; slip op at 5. This strikes me as just another way of saying that the condition was open and obvious. See *Lugo v Ameritech Corp*, 464 Mich 512, 517 (2001) ("[T]he general rule is that a premises possessor is not required to protect an invitee from open and obvious dangers . . . ."), overruled by *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95 (2023). That doctrine has recently been overhauled in the common-law premises-liability context. *Kandil-Elsayed*, 512 Mich at 143. More importantly, this Court has stated that the "open and obvious doctrine cannot be used to avoid a specific statutory duty." *Woodbury v Bruckner*, 467 Mich 922, 922 (2002); see also *O'Donnell v Garasic*, 259 Mich App 569, 581 (2003) ("The open and obvious danger doctrine is not available to deny liability . . . on leased or licensed residential premises when such premises present a material breach of the specific statutory duty imposed on owners of residential properties to maintain their premises in reasonable repair . . . ."), abrogated in part on other grounds by *Mullen v Zerfas*, 480 Mich 989 (2007). Because a tenant's familiarity with an open and obvious danger cannot preclude liability as it relates to a landlord's statutory duty, I question the relevance of this fact to the analysis of whether defendant breached its statutory duties.

The panel majority also reasoned that summary disposition was appropriate on this claim because plaintiff had previously used the stairway, which showed that she was "not impeded from accessing her apartment." *Holder*, ___ Mich App at ___; slip op at 5. In *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 430 (2008), this Court held that "[m]ere inconvenience of access . . . will not defeat the characterization of a [parking] lot as being fit for its intended purposes." However, in *Hadden v McDermitt Apartments, LLC*, 287 Mich App 124, 132 (2010), the Court of Appeals held that reasonable minds could differ on whether icy, dimly lit stairs were fit for their intended purpose and that such an obstacle was more than a "mere inconvenience." I believe an argument exists that this case is more like *Hadden* than *Allison*, a point made by dissenting Judge PATEL when she concluded that, because plaintiff's evidence presented a genuine issue of material fact as to whether the slippery algae-covered stairway was fit for its intended use, this question is properly left for the jury.

In sum, I believe that the Court of Appeals reached two questionable holdings in this published opinion that have the potential to seriously affect the ability of tenants to enforce the statutory duties owed to them. I would have granted leave to appeal or heard oral argument on the application. Because the majority denies leave to appeal, I respectfully dissent.

WELCH, J., joins the statement of CAVANAGH, J.