

Court of Appeals, State of Michigan

ORDER

Francis H Clark v Trumbell Insurance Company

Docket No. 342273

LC No. 2016-004321-NI

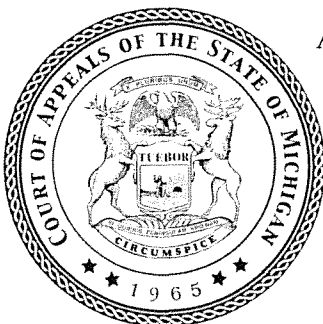
Colleen A. O'Brien
Presiding Judge

Mark J. Cavanagh

Jonathan Tukel
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(E)(2), the Court orders that the Macomb Circuit Court's January 22, 2018 order denying defendant St. Clair Place Condominium Association's motion for summary disposition is REVERSED and the matter REMANDED to the circuit court for dismissal of plaintiff's claims against defendant St. Clair Place Condominium Association. Plaintiff's complaint alleged a dangerous condition of the land and so was a premises liability claim rather than a negligence claim. *Compau v Pioneer Resource Co, LLC*, 498 Mich 928; 871 NW2d 210 (2015); *Jahnke v Allen*, 308 Mich App 472, 475; 865 NW2d 49 (2014). There is no genuine issue of material fact that the visual obstruction posed by the fence on defendant's property presented an open and obvious danger, since it was reasonable to expect that an average person with ordinary intelligence would have discovered that danger upon casual inspection. *Hoffner v Lanctoe*, 492 Mich 450, 461; 821 NW2d 88 (2012). Defendant St. Clair Place Condominium Association did not owe plaintiff a duty of care to warn him of or protect him from that open and obvious danger, so it was entitled to summary disposition of plaintiff's claims as a matter of law. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JUN 28 2018

Date


Chief Clerk