

Court of Appeals, State of Michigan

ORDER

Anthony Morris v Metro Detroit Property Management LLC

Christopher M. Murray
Presiding Judge

Docket No. 347896

Cynthia Diane Stephens

LC No. 18-004616-NO

Anica Letica
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), the circuit court's February 15, 2019 order is REVERSED, and the matter is REMANDED for entry of an order granting summary disposition in favor of defendant Metro Detroit Property Management, LLC (MDPM) pursuant to MCR 2.116(C)(10). To succeed on a claim of premises liability, it is plaintiff's burden to present evidence tending to show that MDPM had either actual or constructive notice of the alleged hazardous condition. *Lowrey v LMPJ & LMPJ, Inc*, 500 Mich 1, 8-11; 890 NW2d 344 (2016). Plaintiff presented no evidence demonstrating that MDPM had actual or constructive notice of the alleged hazardous condition. While plaintiff asserts that the porch had been deteriorating for some time, plaintiff presented no evidence supporting this assertion. To the extent plaintiff seeks recovery on the basis that MDPM violated a duty to use due care in its undertakings, plaintiff fails to allege the existence of a duty that is separate and distinct from the management contract. See *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 165-166; 809 NW2d 553 (2011). Plaintiff alleges that MDPM failed to perform its contractual obligation to maintain the porch. An action claiming that a defendant has failed to perform a contractual obligation lies in contract, not in tort. *Id.* at 166. See also *Fultz v Union-Commerce Assoc*, 470 Mich 460, 470; 683 NW2d 587 (2004) ("[I]f a defendant fails or refuses to perform a promise, the action is in contract.").

The motion for peremptory reversal is DENIED AS MOOT.

This order is to have immediate effect. MCR 7.215(F)(2). We do not retain jurisdiction.



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

APR 16 2019

Date

Chief Clerk