

STATE OF MICHIGAN
COURT OF APPEALS

JOANN FAUSTINA,

Plaintiff-Appellant,

v

TOWN CENTER,

Defendant-Appellee,

and

ST. CLAIR CONSTRUCTION COMPANY,

Defendant/Third-Party Plaintiff-
Appellee,

and

FALCON CARPET SERVICE, INC.,

Third-Party Defendant-Appellee.

Before: WILDER, P.J., and SAAD and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order granting defendant/third-party plaintiff St. Clair Construction Company's (St. Clair) motion to enforce a settlement agreement and an earlier order granting summary disposition in favor of defendant Town Center. We affirm both orders.

I

Plaintiff's complaint alleged she suffered serious injuries when she slipped and fell down seven steps leading to the basement of her apartment. According to plaintiff, her fall was caused by construction debris left behind by Town Center, the owner of the apartments, and St. Clair, the construction company hired by Town Center to do the work. She brought claims of negligence and premises liability.

Town Center moved for summary disposition. Town Center argued that (1) it owed no duty to plaintiff because it was not in possession and control of the premises, (2) it did not have actual or constructive notice of the claimed hazard, and (3) the condition was open and obvious. Plaintiff argued that Town Center was in control of the premises. The trial court granted Town Center's motion for summary disposition.

St. Clair also moved for summary disposition, contending it did not owe a duty to plaintiff and that it did not possess or control the premises. St. Clair further argued that it was a general contractor and its subcontractor, third-party defendant Falcon Carpet Service (Falcon), was directly responsible for the debris. The trial court denied St. Clair's motion for summary disposition.

Plaintiff, St. Clair, and Falcon participated in facilitative mediation, by stipulation, and afterward, St. Clair moved to enforce the settlement agreement that was reached and signed by all parties, including plaintiff. St. Clair had forwarded a release and stipulated order to plaintiff's counsel but it had not been signed and returned. Plaintiff testified at the motion hearing that she signed the agreement, but her medical bills, which she had tried to show the attorneys, were not taken into account. The trial court explained that facilitated settlement agreements are binding and that the court had to enforce the agreement. The trial court (1) ordered plaintiff to sign a release of all claims, (2) ordered that St. Clair and Falcon were not required to turn over the settlement checks until plaintiff signed a release, and (3) dismissed the case with prejudice.

II

On appeal, plaintiff challenges the trial court's order to enforce the settlement agreement, arguing that her outstanding medical expenses were not addressed during mediation or in court. The question of whether a legally binding and enforceable settlement agreement existed is reviewed de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). This Court reviews a trial court's decision to enforce a settlement agreement for an abuse of discretion. *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989).

An agreement between parties to settle a lawsuit is a contract governed by the principles of contract construction and interpretation. *Kloian*, 273 Mich App at 452. A valid contract requires an offer, acceptance, and mutual agreement or a meeting of the minds to all of the contract's essential terms. *Id.* at 453; *Houghton Lake Area Tourism & Convention Bureau v Wood*, 255 Mich App 127, 149; 662 NW2d 758 (2003).. In addition, a contract for the settlement of pending litigation that fulfills the requirements of contract principles will not be enforced unless the agreement also satisfies the requirements of MCR 2.507(F).¹ *Mich Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484-485; 637 NW2d 232 (2001). MCR. 2.507(F) requires that, to be enforceable, an agreement between the parties or their attorneys regarding

¹ After the events at issue in this appeal occurred, the applicable court rule was amended from MCR 2.507(G) to MCR 2.507(F), but the language of the rule did not change.

pending litigation must be made in open court or must be evidenced by a writing signed by the party against whom it is offered or by that party's attorney.

In this case, plaintiff's signature appears on the settlement agreement and plaintiff testified in open court that she signed the agreement. The agreement provided, in relevant part, that plaintiff would receive \$47,500 "in full settlement of any and all claims, liens (known or unknown) actions, proceedings, debts, liabilities, agreements, controversies, promises, obligations, damages, costs, expenses, attorney fees, and demands in tort, contract, or any other cause of action or theory of liability whatsoever, whether known or unknown, rising out of or related to this matter." Unambiguous agreements must be enforced according to their plain terms. *Phillips v Homer*, 480 Mich 19, 24; 745 NW2d 754 (2008). This Court has previously stated that "[a] compromise and settlement is conclusive as to all matters included. It merges and bars all included claims and pre-existing causes of actions." *Pedder v Kalish*, 26 Mich App 655, 657; 182 NW2d 739 (1970). Based on the unambiguous terms of the settlement agreement in this case, the parties clearly expressed their intent to abandon all claims in exchange for a binding settlement agreement. *Kloian*, 273 Mich App at 452.

In the absence of duress, fraud, mutual mistake, severe stress, or unconscionable advantage taken by one party over the opposing party, courts are bound to enforce settlement agreements. *Lentz v Lentz*, 271 Mich App 465, 474; 721 NW2d 861 (2006). "[O]nce a settlement agreement is reached a party cannot disavow it merely because he has had a 'change of heart.'" *Metropolitan Life Ins Co v Goolsby*, 165 Mich App 126, 128; 418 NW2d 700 (1987), quoting *Thomas v Mich Mut Ins Co*, 138 Mich App 117, 120; 358 NW2d 902 (1984). Here, plaintiff attended the facilitated mediation sessions and was represented by counsel. A settlement is by definition "a compromise of a disputed claim." *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009). If a claim is no longer disputed because it has been resolved by settlement, there can be nothing to appeal. The question is whether there was a meeting of the minds as to all of the agreement's essential terms and, under the circumstances of the instant case, it appears that there was. We find no abuse of discretion in the court's order enforcing the settlement agreement. *Groulx*, 176 Mich App at 493.

III

Plaintiff further argues that she did not receive the settlement proceeds and is, therefore, not prohibited from rescinding the settlement agreement. The law is clear that the party requesting a contract be rescinded cannot reap the benefits under the contract and request rescission at the same time. However, in order to rescind the settlement agreement, the party requesting rescission must prove that there was duress, fraud, mutual mistake, severe stress, unconscionable advantage taken by one party over the opposing party, or ignorance of a material term of the settlement agreement. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998); *Howard v Howard*, 134 Mich App 391, 394, 399-400; 352 NW2d 280 (1984).

Although plaintiff claims that she was not informed that the issue of her ongoing medical expenses was resolved by the parties' agreement, a mistake of fact warranting rescission must be mutual (shared and relied on by both parties). *Ford Motor Co v Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). Plaintiff has neither alleged nor shown that St. Clair and Falcon shared

her mistaken belief. A unilateral mistake of fact is not ground for voiding a contract. See *Casey v Auto Owners Ins Co*, 273 Mich App 388, 398; 729 NW2d 277 (2006).

Plaintiff argues on appeal that St. Clair and Falcon had an unconscionable advantage. The unconscionable advantage that warrants relief from a contract is “unconscionable advantage taken by one party over the other.” *Jackson v Wayne Circuit Judge*, 341 Mich 55, 60; 67 NW2d 471 (1954). Plaintiff was represented by counsel at the facilitated settlement conference and has not shown that defendants took advantage of her during settlement negotiations. Therefore unconscionable advantage is not a basis for relief. Plaintiff was free to reject that settlement and proceed to trial on the scheduled trial date. Because plaintiff has not shown a basis for the settlement agreement to be set aside or rescinded, she has not established a right to relief on this ground.

IV. SUMMARY DISPOSITION

Next, plaintiff argues that the trial court improperly granted summary disposition in favor of Town Center. We disagree.

This Court reviews de novo a trial court’s decision on a motion for summary disposition. *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). This Court reviews a “motion brought under MCR 2.116(C)(10) by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party.” *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). Summary disposition is properly granted “if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Id.* A genuine issue of material fact exists “when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party.” *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

It is not disputed that plaintiff encountered some debris on the steps in her apartment and fell, injuring herself. The question is whether Town Center as the landlord of the premises has liability for the fall. Plaintiff alleged claims of negligence and premises liability against Town Center. “The elements of an action for negligence are (i) duty, (ii) general standard of care, (iii) specific standard of care, (iv) cause in fact, (v) legal or proximate cause, and (vi) damage.” *Moning v Alfonso*, 400 Mich 425, 437; 254 NW2d 759 (1977). The element of duty “comprehends whether the defendant is under *any* obligation to the plaintiff to avoid negligent conduct.” (*Id.*)

In general, a premises possessor owes a duty to an invitee, who is a person “who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises[.]” *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000); see also *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001).

As a tenant of Town Center’s apartment complex, plaintiff was an invitee. *Benton v Dart Properties*, 270 Mich App 437, 440; 715 NW2d 335 (2006). To sustain a premises liability

action, a tenant must show that the landlord or its employees caused the unsafe condition or that the landlord knew or should have known of the unsafe condition. *Clark v Kmart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001); *Hampton v Waste Mgt of Mich, Inc*, 236 Mich App 598, 603-604; 601 NW2d 172 (1999). A landlord is

subject to liability for physical harm caused to his invitees by a condition on the land if the owner: (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that the condition involves an unreasonable risk of harm to such invitees; (b) should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect invitees against the danger. [*Stitt*, 462 Mich at 597.]

However, this duty generally does not require the owner to protect an invitee from an open and obvious danger. *Lugo*, 464 Mich at 517. Generally, whether a condition is open and obvious is considered objectively, considering whether an average person with ordinary intelligence would have discovered the condition upon casual inspection. *Price v Kroger Co of Mich*, 284 Mich App 496, 501; 773 NW2d 739 (2009). If the dangers of the premises are known to the invitee or are obvious to an extent that the invitee could reasonably be expected to discover them, the premises owner does not owe a duty to protect or warn the invitee, unless “special aspects of a condition make even an open and obvious risk unreasonably dangerous[.]” *Lugo*, 464 Mich at 516-517. Michigan courts have recognized two instances in which special aspects of an open and obvious danger may give rise to liability: (1) when the danger is unreasonably dangerous or (2) when the danger is effectively unavoidable. *Hoffner*, 492 Mich at 455, 463. “Unavoidability is characterized by an *inability to be avoided*, an *inescapable* result, or the *inevitability* of a given outcome.” *Id.* at 468. Further, the “hazard must be unavoidable or inescapable *in effect or for all practical purposes.*” *Id.*

There is no question that the debris left on plaintiff’s stairs was open and obvious. The question lies in whether an average person with ordinary intelligence would have discovered the debris upon casual inspection of the stairs. The evidence provided by the parties shows that contractors had been working in plaintiff’s apartment and that she was aware of the work being done. At 3:00 a.m., she took a basket of laundry down the stairs without first turning on the light, stepped on a nail, and fell down the stairs, injuring her knee and ankle. We find that the open and obvious hazard in this case does not fall within the “special aspects” exception. While the stairs were the only way for plaintiff to access the laundry facilities, she could have simply chosen not to confront that open and obvious danger. *Hoffner*, 492 Mich at 469-470. Furthermore, the open and obvious danger could have been avoided through the use of precautions by plaintiff. *Perkoviq v Delcor Homes-Lake Shore Pointe Ltd*, 466 Mich 11, 19-20; 643 NW2d 212 (2002). Plaintiff could have put on shoes and turned on the light to avoid falling down the stairs. She also could have removed any debris that was left on the stairs.

Finally, Town Center did not have notice of the debris on the stairs. A possessor’s duty to protect an invitee extends only to those hazards about which it has actual notice or would discover in the exercise of reasonable care. *Stitt*, 462 Mich at 597. The landlord does not have a duty “to inspect the premises on a regular basis to determine if any defects exist. It does require him to repair any defects brought to his attention by the tenant or by his casual inspection of the

premises.” *Raatikka v Jones*, 81 Mich App 428, 431, 265 NW2d 360 (1978). Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Henry William Saad
/s/ Kirsten Frank Kelly