

Court of Appeals, State of Michigan

ORDER

Tina Stroud v Lanny Huber

Docket No. 279856

LC No. 06-006974-NP

Joel P. Hoekstra
Presiding Judge

David H. Sawyer

Jane E. Markey
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the Court VACATES the circuit court's July 23, 2007 order denying defendants' motion for summary disposition, and REMANDS this matter to the circuit court with direction to enter an order granting that motion. Plaintiff presented no evidence that would create a genuine issue of material fact on the issue of whether defendants knew of, or by the exercise of reasonable care would have discovered, any problem with the turnbuckle. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). Plaintiff asserts that she would be entitled to an adverse inference that rather than the turnbuckle nut coming unscrewed, the turnbuckle had deteriorated due to being left out in the elements. And she asserts that she would be entitled to an adverse inference regarding Huber's credibility as to why he disposed of the turnbuckle. However, even if plaintiff were entitled to the inferences, and even if they may be used for those purposes, matters which we leave undecided, the discarded evidence would not be material, as it must be, to whether defendants had the actual or constructive notice of whichever condition existed, *Clark v Kmart Corp (On Remand)*, 249 Mich App 141, 147; 640 NW2d 892 (2002), and proof of such notice is necessary to sustain a premises liability claim. The Court does not retain jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 21 2008
Date

Sandra Schultz Mengel
Chief Clerk