

Court of Appeals, State of Michigan

ORDER

Candis Adams v Bretton Woods Condo Assn Inc

Kirsten Frank Kelly
Presiding Judge

Docket No. 310066

Michael J. Talbot

LC No. 11-002049-ND

Christopher M. Murray
Judges

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

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court further orders that the April 16, 2012, order of the Wayne County Circuit Court is REVERSED. First, the trial court erred in ruling that there was a genuine issue of material fact whether the hazardous conditions on the walkways at defendant's premises for each slip-and-fall incident were open and obvious. Because plaintiff admitted at her deposition that she was aware of the ice and snow, the icy conditions were open and obvious dangers. Second, plaintiff failed to present evidence that the icy conditions had any special aspects to avoid summary disposition. Snow and ice in the wintertime in Michigan are not an unreasonably dangerous hazard, and the icy snow on the walkway was not effectively unavoidable. With respect to the March 2008, incident, plaintiff could have chosen another path or simply chose not to walk her dog. With respect to the January 2011, incident, plaintiff did not establish that the doorway from which she exited the building was the only exit and therefore, she was compelled to confront the risk in order to reach her car in the parking lot. We note that plaintiff's counsel referred to a "front and back" door at the hearing conducted below, which indicates that plaintiff had a choice to leave the building through another doorway but chose to encounter the risk on the sidewalk once she traversed the steps. *Hoffner v Lanctoe*, 492 Mich 450, 459-464, 468-474; 821 NW2d 88 (2012). Finally, the trial court erred in failing to dismiss plaintiff's claim that defendant violated its statutory duty under MCL 554.139 since the covenants set forth under the statute unambiguously only apply to a residential lease, and there is no dispute that there is no residential lease between plaintiff and defendant. Accordingly, the matter is REMANDED to the trial court for entry of an order granting defendant's motion for summary disposition.

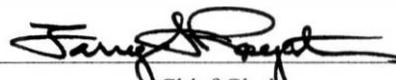
Pursuant to MCR 7.215(F)(2), this order shall take immediate effect. The Court retains no further jurisdiction.



A true copy entered and certified by Larry S. Royster, Chief Clerk, on

JAN 16 2013

Date


Chief Clerk