

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ZOEANN MCDONALD,

Plaintiff-Appellant,

v

ALDEN PARKS APARTMENTS, LAVENTRICE  
COX, VANESSA NANCE, CRAIG  
SAPERSTEIN, and SAPERSTEIN  
MANAGEMENT COMPANY,

Defendants-Appellees.

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UNPUBLISHED

May 31, 2005

No. 260512

Wayne Circuit Court

LC No. 04-423513-CH

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendants' motion for summary disposition. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first argues that the circuit court erred in granting summary disposition before plaintiff was able to conduct discovery. We agree. Ronica Ellis, who is an African-American female, leased an apartment at Alden Parks Apartments. Plaintiff, who is an African-American female, moved into Ellis' apartment without first obtaining management approval, as required by Ellis' lease.<sup>1</sup> When plaintiff sought to place her name on Ellis' lease as a colessee, defendants refused to process the application, asserting that defendants would not enter into a lease with plaintiff, whether or not she qualified, because plaintiff had occupied Ellis' apartment without obtaining prior approval.

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<sup>1</sup> In a separate case, defendants moved to terminate Ellis' tenancy on the ground that she was subleasing her apartment in violation of her lease. That case was resolved by entry of a consent judgment that provided that Ellis and her daughter would be the only occupants of the apartment. The judgment also provided that any person visiting Ellis for a period in excess of one week would be required to register with the complex manager.

Plaintiff filed a verified complaint alleging that defendants' refusal to place her name on Ellis' lease or to consider her application constituted race and gender discrimination in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.* She also sought ex-parte injunctive relief. The circuit court entered a temporary restraining order precluding defendants from evicting plaintiff, but then declined to enter a preliminary injunction.<sup>2</sup>

Plaintiff submitted interrogatories and a request for production of documents to defendants. Defendants did not respond, but rather moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that plaintiff's act of moving into Ellis' apartment without prior approval of management prompted their decision to not enter into a lease agreement with plaintiff. The circuit court granted defendants' motion, finding that no landlord/tenant relationship existed between the parties, and that plaintiff failed to establish a prima facie case of discrimination in violation of the ELCRA.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2002).

Under the ELCRA, a person engaged in a real estate transaction, or a real estate broker, may not refuse to engage in a real estate transaction with a person based on that person's race or sex. MCL 37.2502(1)(a).

A motion for summary disposition is premature if granted before discovery on a disputed issue is complete.<sup>3</sup> *Townsend v Chase Manhattan Mortgage Corp*, 254 Mich App 133, 140; 657 NW2d 741 (2002). However, summary disposition is appropriate if further discovery does not stand a reasonable chance of uncovering factual support for the opposing party's position. *Village of Diamondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000). While plaintiff does not dispute defendants' assertion that she did not have management approval prior to moving into Ellis' apartment, she does contend that she sought that approval on numerous occasions, but was refused. Plaintiff was entitled to conduct further discovery regarding defendant's rental practices.

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<sup>2</sup> Plaintiff filed a delayed application for leave to appeal the circuit court's order setting aside the temporary restraining order (Docket No. 257965). This Court denied the application for failure to persuade of the need for immediate appellate review.

<sup>3</sup> Plaintiff's argument that she is entitled to reversal because the circuit court failed to specify the subrule under which it granted defendants' motion for summary disposition is without merit. The circuit court considered evidence outside the pleadings in granting the motion; therefore, we treat the circuit court's decision as having been based on MCR 2.116(C)(10). *Mitchell Corp of Owosso v Dep't of Consumer & Industry Services, Bureau of Worker's & Unemployment Compensation*, 263 Mich App 270, 275; 687 NW2d 875 (2004).

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Helene N. White