

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET PRINGLE,

Plaintiff-Appellant,

v

STEVEN LANGOLF,

Defendant-Appellee.

UNPUBLISHED

July 24, 2008

No. 277102

St. Clair Circuit Court

LC No. 05-002840-NO

Before: Whitbeck, P.J., and O’Connell and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting defendant summary disposition pursuant to MCR 2.116(C)(10). We affirm.

I. Basic Facts and Proceedings

Plaintiff had been a tenant for six months at a rental home owned by defendant in Port Huron. The home contained a hardwood staircase, upon which a black rubber mat or tread had been installed on each step. At the edge of each step was a silver metal strip. As plaintiff began to move her belongings out of the home, and while descending the staircase from the middle landing, her toe caught the metal stripping on the first step. She fell to the bottom of the stairs, sustaining injuries.

Plaintiff filed a premises liability claim against defendant. Defendant moved for summary disposition, arguing that the open and obvious doctrine barred plaintiff’s claim. In reply, plaintiff asserted that the open and obvious doctrine did not apply because defendant had failed to comply with the statutory duty imposed on residential landlords pursuant to MCL 554.139(1) which provides, in relevant part, that a lessor of residential premises covenants to “keep the premises in reasonable repair . . . and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located” Plaintiff also claimed that the danger posed by the metal strip was not open and obvious, but if it were, it contained special aspects that made it unreasonably dangerous.

The trial court granted defendant summary disposition, finding that the danger created by the metal strip was open and obvious and that the stairs contained no special aspects. The trial court also found that defendant had not breached his statutory duty because there was no evidence that the stairs were not in reasonable repair.

II. Standard of Review

We review de novo a trial court's ruling regarding a motion for summary disposition. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). We consider "the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id.* Summary disposition is properly granted, "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Cowles v Bank West*, 476 Mich 1, 32; 719 NW2d 94 (2006) (internal quotation marks and citation omitted).

III. Statutory Violation

Plaintiff first argues that the trial court erred in concluding that there were no genuine issues of material fact with respect to whether the stair was in "reasonable repair." We find that no error occurred because plaintiff failed to plead a statutory violation claim in her complaint.

Generally, "[a] trial court does not have the authority to grant relief based on a claim that was never pleaded in a complaint or requested at any time before or during trial." *Reid v Michigan*, 239 Mich App 621, 630; 609 NW2d 215 (2000). To determine the gravamen of the complaint, we disregard the labels applied by plaintiff and read the claim as a whole to ascertain the exact nature of the claim. *Kuznar v Raksha Corp*, 272 Mich App 130, 134; 724 NW2d 493 (2006).

Here, plaintiff's complaint contained one count entitled "*NEGLIGENCE*," and she alleged that defendant had breached various duties with respect to the stairs, the metal strip, and repairs. (Emphasis in original.) She further alleged defendant was negligent in failing "to obtain a rental approval and certification per the City of Port Huron."¹ However, she failed to cite or otherwise refer to MCL 554.139 anywhere in the complaint. It is clear that plaintiff relied on defendant's failure to obtain a rental certificate as evidence of negligence and not as an element with regard to a statutory violation of MCL 554.139(1)(b). See *Candelaria v BC Gen Contractors, Inc*, 236 Mich App 67, 82 n 5; 600 NW2d 348 (1999) (providing that a violation of an ordinance or an administrative regulation is evidence of negligence); also see *Summers v Detroit*, 206 Mich App 46, 52; 520 NW2d 356 (1994). Thus, we conclude that the gravamen of plaintiff's complaint was a common law negligence claim.

We note that issues not raised in the pleadings may be "tried by express or implied consent of the parties" and "treated as if they had been raised by the pleadings." MCR 2.118(C)(1). But defendant never consented to the pursuit of a claim pursuant to MCL 554.139(1).

¹ Port Huron Ordinance § 10-159 provides that no residential lessor shall lease a property "unless there is a valid certification issued by the city inspection department . . ." It is undisputed that defendant failed to obtain a rental certificate before renting the premises to plaintiff.

Therefore, we conclude that it was unnecessary for the trial court to address the purported statutory violation claim because plaintiff failed to plead such a claim.²

IV. Open and Obvious Doctrine

Plaintiff contends that the trial court erred in finding that the metal strip was open and obvious and that the staircase contained no special aspects. We disagree.

“In a premises liability action, a plaintiff must prove (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached the duty, (3) that the defendant’s breach of the duty caused the plaintiff’s injuries, and (4) that the plaintiff suffered damages.” *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 712; 737 NW2d 179 (2007). The status of the plaintiff determines the duty the landowner owes, and a tenant is an invitee of a landlord. *Benton v Dart Properties, Inc*, 270 Mich App 437, 440; 715 NW2d 335 (2006). Therefore, defendant owed plaintiff “a duty . . . to exercise reasonable care to protect the [plaintiff] from an unreasonable risk of harm caused by a dangerous condition on the land.” *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). Generally, this duty does not require a landlord to protect the tenant from an open and obvious danger unless the condition contains a special aspect that renders the risk unreasonably dangerous. *Id.* at 516-517; *Benton, supra* at 440-441. “Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger on casual inspection.” *Royce v Chatwell Club Apts*, 276 Mich App 389, 392; 740 NW2d 547 (2007) (internal quotation marks and citation omitted). Because this test is objective, we focus on whether a reasonable person in plaintiff’s position would have foreseen the danger. *Kennedy, supra* at 713.

Plaintiff asserts that the danger presented by the step was not open and obvious because an average person of ordinary intelligence would not examine each and every step. However, “steps are the type of everyday occurrence that people encounter, [and] under most circumstances, a reasonably prudent person will look where he is going, will observe the steps, and will take appropriate care for his own safety.” *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614, 616-617; 537 NW2d 185 (1995). The metal strip was silver, and the surrounding rubber mat was black. There were no issues with the lighting, and the metal strip was not concealed. The same type of metal strip and rubber mat was installed on each step. Given the contrast between the wood, the black rubber mat, and the silver metal strip, the average person of ordinary intelligence would have discovered the metal strip upon casual inspection. In fact, plaintiff was aware that the metal strip was at the edge of the step, and she had never had any problems with it in the past. Plaintiff had lived on the premises for six months before she fell, and she had gone up and down the stairs at least 12 times on the day that she was injured.

² We also note that a party may move to amend its pleadings to conform to the proofs unless it would surprise or prejudice the opposing party. *Reid, supra* at 630. And plaintiff did move at the summary disposition hearing to amend her complaint. But the trial court denied the motion, and plaintiff has not appealed that decision.

Plaintiff argues that the metal strip constituted a special aspect that rendered the steps unreasonably dangerous. See *Bertrand, supra* at 614, 616-617. Plaintiff has identified nothing unusual about the steps, i.e., their “character, location, or surrounding conditions” that made them unreasonably dangerous. *Id.* at 617. As the trial court noted, there was no testimony that the strip “was loose or jagged or in any other way a danger to the residents.” Contrary to plaintiff’s assertion, there is no evidence that the metal strip protruded. Rather, plaintiff acknowledged in her deposition that there were no loose nails on the metal strip and that although the metal strip was not exactly flush, it only stuck out to the extent of its height. We therefore conclude that the metal strip did not constitute a special aspect and that the danger posed was open and obvious. Accordingly, the trial court did not err in granting defendant summary disposition.

Affirmed.

/s/ William C. Whitbeck
/s/ Peter D. O’Connell
/s/ Kirsten Frank Kelly