

STATE OF MICHIGAN
COURT OF APPEALS

MICHELLE QUIGLEY, Personal Representative of
the ESTATE OF THOMAS S. QUIGLEY,

Plaintiff-Appellee/Cross-Appellee,

v

DETROIT AIRLINES NORTH TERMINAL
CONSORTIUM, INC., doing business as DANTEC,

Defendant-Cross-Appellant,

and

AVAIRPROS SERVICES, INC.,

Defendant-Appellant,

and

SCHINDLER ELEVATOR CORPORATION,

Defendant.

MICHELLE QUIGLEY, Personal Representative of
the ESTATE OF THOMAS S. QUIGLEY,

Plaintiff-Appellee/Cross-Appellee,

v

DETROIT AIRLINES NORTH TERMINAL
CONSORTIUM, INC., doing business as DANTEC,

Defendant-Cross-Appellant,

UNPUBLISHED
October 17, 2025
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No. 367717
Wayne Circuit Court
LC No. 21-006482-NO

No. 367740
Wayne Circuit Court
LC No. 21-006482-NO

and

AVAIRPROS SERVICES, INC.,

Defendant,

and

SCHINDLER ELEVATOR CORPORATION,

Defendant-Appellant.

Before: GADOLA, C.J., and MURRAY and YATES, JJ.

PER CURIAM.

Plaintiff, Michelle Quigley, personal representative of the Estate of Thomas S. Quigley, brought this wrongful death action against defendants Detroit Airlines North Terminal Consortium, Inc. (DANTEC), AvAirPros Services, Inc. (APS), and Schindler Elevator Corporation (Schindler), after the death of plaintiff's decedent, Thomas S. Quigley. In Docket No. 367717, APS appeals by leave granted the trial court's order denying its motion for summary disposition under MCR 2.116(C)(8) of plaintiff's claim against APS. In Docket No. 367740, Schindler appeals by leave granted the same order denying its motion for summary disposition under MCR 2.116(C)(8) of plaintiff's claim against Schindler. DANTEC cross-appeals in both cases challenging the same order denying its motion for summary disposition under MCR 2.116(C)(8) of plaintiff's claims against DANTEC. We affirm in part, vacate in part, and remand for further proceedings.

I. FACTS

On September 4, 2018, Thomas Quigley fell while boarding an up escalator at the North Terminal of the Detroit Metropolitan Wayne County Airport (DTW). According to plaintiff's complaint, Quigley was carrying luggage when he stepped onto the escalator; when the luggage shifted, he lost his footing, fell, and sustained injuries that included a broken neck. He died the next day as a result of his injuries.

Plaintiff brought this lawsuit against DANTEC, APS, and Schindler alleging theories of premises liability and negligent undertaking. According to plaintiff's complaint, DANTEC is the entity that contracts with the Wayne County Airport Authority to operate the North Terminal at DTW, providing all maintenance and service necessary to maintain the North Terminal. Plaintiff alleged that DANTEC is liable under a theory of premises liability as a possessor and occupier of the premises, and also is liable under a theory of negligent undertaking because DANTEC failed to use ordinary care in undertaking its duties.

Plaintiff alleged that both APS and Schindler are liable under a theory of negligent undertaking because they failed to use ordinary care in performing their duties after contracting

with DANTeC. Plaintiff alleged that APS “contracted with DANTeC to supply the staffing needs and services necessary for DANTeC to carry out its various responsibilities at the North Terminal.” Plaintiff alleged that Schindler had a business relationship with DANTeC and APS to provide “post-sale safety inspections, advice and consultation services” with respect to the escalators in the North Terminal.

Each defendant moved for summary disposition under MCR 2.116(C)(8) in lieu of filing an answer to the complaint. APS and DANTeC argued that plaintiff’s claims against them sounded in premises liability, which failed as a matter of law because neither APS nor DANTeC exercised the requisite possession and control of the premises. APS and DANTeC further argued that plaintiff had failed to allege sufficiently a claim of ordinary negligence against them. Schindler contended that plaintiff had failed to set forth a valid claim of negligent undertaking against it, and that plaintiff’s claim against it sounded in products liability, which plaintiff had failed to plead adequately. The trial court denied the motions without prejudice, reasoning that summary disposition was premature before discovery had been conducted. The trial court also denied defendants’ motions for reconsideration.

This Court granted defendants’ respective applications for leave to appeal, consolidated the appeals,¹ and reversed and remanded for further proceedings on the basis that the trial court incorrectly analyzed the motions for summary disposition as motions under MCR 2.116(C)(10), rather than MCR 2.116(C)(8). *Quigley v Detroit Airlines North Terminal Consortium, Inc.*, unpublished per curiam opinion of the Court of Appeals, issued May 25, 2023 (Docket Nos. 360267, 360272, and 360273), pp 2-4. This Court instructed the trial court on remand to apply the proper standard when analyzing the motions under MCR 2.116(C)(8), consistent with *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152; 934 NW2d 665 (2019). *Quigley*, unpub op at 4-5.

On remand, the trial court again denied defendants’ motions for summary disposition. The trial court held that plaintiff sufficiently pleaded claims against DANTeC under theories of both premises liability and negligent undertaking. The trial court also held that plaintiff sufficiently pleaded claims against APS and Schindler under a theory of negligent undertaking, reasoning that APS and Schindler had breached their duty to exercise care and skill in the performance of their contractual obligations.

In Docket No. 367717, APS sought leave to appeal the trial court’s order. In Docket No. 367740, Schindler sought leave to appeal the same order. This Court granted leave to appeal in

¹ *Quigley v Detroit Airlines North Terminal*, unpublished order of the Court of Appeals, entered May 9, 2022 (Docket No. 360267); *Quigley v Detroit Airlines North Terminal*, unpublished order of the Court of Appeals, entered May 9, 2022 (Docket No. 360272); *Quigley v Detroit Airlines North Terminal*, unpublished order of the Court of Appeals, entered May 9, 2022 (Docket No. 360273).

both cases, and consolidated the appeals.² DANTeC filed a cross-appeal in the consolidated appeals, also challenging the trial court's order.

II. DISCUSSION

A. STANDARD OF REVIEW

We review de novo the trial court's decision to grant or deny summary disposition. *Jostock v Mayfield Twp*, 513 Mich 360, 368; 15 NW3d 552 (2024). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the claim based on the factual allegations of the complaint, and is warranted when a claim is so unenforceable that no factual development could justify recovery. *El-Khalil*, 504 Mich at 159-160. When reviewing a trial court's grant or denial of summary disposition under MCR 2.116(C)(8), we consider the motion based on the pleadings alone and accept all well-pleaded factual allegations as true. *Id.*

B. APS

In Docket No. 367717, APS contends that the trial court erred by denying its motion for summary disposition. APS argues that plaintiff's claim against it is one of premises liability and that the claim fails as a matter of law. We agree.

In any negligence action, whether for ordinary negligence or premises liability, a plaintiff must establish that "(1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach proximately caused the plaintiff's injuries, and (4) the plaintiff suffered damages." *Jeffrey-Moise v Williamsburg Towne Houses Coop, Inc*, 336 Mich App 616, 626; 971 NW2d 716 (2021). The specific duty owed is determined by the theory of liability alleged. *Laier v Kitchen*, 266 Mich App 482, 493; 702 NW2d 199 (2005).

Although the basic elements are the same, "Michigan law distinguishes between a claim of ordinary negligence and a claim premised on a condition of the land." *Jeffrey-Moise*, 336 Mich App at 625. If it is alleged that the plaintiff's injuries "arose from a dangerous condition on the land, the claim is one of premises liability rather than one of ordinary negligence." *Id.* "[T]his is true even when the plaintiff alleges that the premises possessor created the condition giving rise to the plaintiff's injury." *Bowman v Walker*, 340 Mich App 420, 426; 986 NW2d 419 (2022), quoting *Buhalis v Trinity Continuing Care Servs*, 296 Mich App 685, 692; 822 NW2d 254 (2012), overruled in part on other grounds by *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95; 1 NW3d 44 (2023); see also *Kachudas v Invaders Self Auto Wash, Inc*, 486 Mich 913, 914 (2010) (although a plaintiff may pursue a claim of ordinary negligence for the overt act of the premises owner on the

² *Quigley v Detroit Airlines North Terminal*, unpublished order of the Court of Appeals, entered November 30, 2023 (Docket No. 367717); *Quigley v Detroit Airlines North Terminal*, unpublished order of the Court of Appeals, entered November 30, 2023 (Docket No. 367740).

premises, when the plaintiff alleges injury by a condition of the land, the claim sounds exclusively in premises liability).³

“[A] claim of premises liability arises merely from the defendant’s duty as an owner, possessor, or occupier of land.” *Jeffrey-Moise*, 336 Mich App at 626 (quotation marks and citation omitted). A plaintiff may recover from a defendant for an injury caused by a condition of the land only if the defendant had legal possession and control of the premises. *Morelli v Madison Hts*, 315 Mich App 699, 702; 890 NW2d 878 (2016). “Premises liability is conditioned upon the presence of both possession and control over the land because the person in possession is in a position of control and normally best able to prevent any harm to others.” *Id.* at 702-703 (quotation marks and citation omitted).

By contrast, a claim of negligence rests on the basis that each person has a duty to conform his or her conduct to an applicable standard of care when undertaking an activity. *Jeffrey-Moise*, 336 Mich App at 624. “Whether the gravamen of an action sounds in [ordinary] negligence or in premises liability is determined by considering the plaintiff’s complaint as a whole, regardless of the labels attached to the allegations by the plaintiff.” *Id.* at 625. Further, even when a plaintiff “alleges that the dangerous condition was created by the actions of defendant or its employees—or more accurately, their failure to act—that allegation does not transform a premises-liability action into one of ordinary negligence.” *Id.*

In other words, if the plaintiff’s injury arose from a condition of the land, the plaintiff’s claim sounds exclusively in premises liability, not ordinary negligence, and the claim of premises liability may only be successfully prosecuted against a defendant who had possession and control of the premises. In *Bowman*, the plaintiffs’ claim arose from a slip and fall outside the decedent’s apartment. The plaintiffs sued both the owner of the apartment complex and the property manager, alleging both negligence and premises liability. The trial court granted summary disposition to the property manager reasoning that the alleged injury arose from an alleged dangerous condition on land, which precluded the plaintiffs’ claim of ordinary negligence. This Court held that the trial court properly granted summary disposition to the property manager reasoning that because the plaintiff alleged that she was injured after encountering a dangerous condition on the premises,

³ We note that this Court in *Laier*, 266 Mich App at 494-495, 500, concluded that the plaintiff’s complaint in that case sounded in both ordinary negligence and premises liability, and held that the plaintiff could advance both claims because in that case the claims were grounded on independent theories of liability. In that case, the plaintiff’s decedent died after he was crushed by a tractor that he was helping the defendant repair while on the defendant’s farm. The plaintiff’s complaint alleged a single count of negligence. This Court concluded that the claim sounded in premises liability, the success of which at that time was precluded by the open and obvious doctrine, but also sounded in ordinary negligence because the plaintiff alleged that the defendant’s negligence in operating the tractor caused the decedent to be crushed by the tractor’s bucket. By contrast, plaintiff’s claim in this case arises only from the allegation that the decedent’s injury arose from a dangerous condition on the premises, and plaintiff thus is not advancing an independent theory of liability in her claim of negligence. See *Pugno v Blue Harvest Farms, LLC*, 326 Mich App 1, 402-403; 930 NW2d 393 (2018).

her claim sounded in premises liability rather than ordinary negligence. “And because [the manager] is not an owner, possessor, or occupier of the premises, he cannot be held liable on a premises-liability theory.” *Bowman*, 340 Mich App at 426. In other words, the plaintiff had no cause of action against the property manager under either theory; her claim of injury arising from a condition of the land was exclusively one of premises liability, which could only be alleged successfully against a defendant who possessed or controlled the premises. See *id.*

In this case, plaintiff labeled her claim against APS as one of “negligent undertaking,” that is, ordinary negligence. However, we consider the gravamen of a claim rather than the label. *Trowell v Providence Hosp & Med Ctrs, Inc*, 502 Mich 509, 519; 918 NW2d 645 (2018) (courts must “disregard the labels given to the claims and instead read the complaint as a whole, seeking the gravamen of the claims”). A review of plaintiff’s complaint as a whole demonstrates that plaintiff’s claim against APS is one of premises liability rather than ordinary negligence. Plaintiff alleges that Quigley was injured by a condition on the premises of the North Terminal, namely, an escalator that plaintiff alleges was a dangerous condition. A significant portion of plaintiff’s 47-page complaint is devoted to setting forth information related to the alleged dangers of escalators, particularly the dangers of transporting luggage on escalators in airports, and methods to address those dangers, such as signs warning of the danger and modifications to escalators to improve safety. Plaintiff states in the general allegations of her complaint that

[T]he subject escalator was unreasonably dangerous due to a combination of design factors, in light of the particular location and application to which it was put in the baggage claim area, which included a too narrow step width, too few “flat steps” before the transition to up or down, and running too high of a speed in light of the expectation that so many older passengers and children were likely to be using it.

Specifically with respect to APS, plaintiff alleges, in relevant part:

[APS] was negligent in numerous respects, including, but not limited to: selecting an escalator design that was too narrow in width for the application, with too few “flat steps” before the up/down transition to be safe in this location, operating at a speed that was too fast to be safe in this location, and that lacked adequate signs, audio, or other visual warnings that it was unsafe to use escalators with objects or carriers with wheels, such as carts, strollers, and wheeled luggage, and that passengers with such objects must use elevators instead and adequately directing them to the nearest elevators for that purpose.

Plaintiff alleges that Quigley’s injuries and death resulted from his encounter with a dangerous condition in the North Terminal, that is, the escalator, and therefore plaintiff’s claim falls within the ambit of premises liability.

Because plaintiff’s claim against APS is one of premises liability, despite the label in the complaint of “negligent undertaking,” we consider whether plaintiff succeeded in sufficiently pleading her claim of premises liability. As discussed, a plaintiff may only recover from a defendant for injuries arising from a condition of the land if the defendant had legal possession and control of the premises. *Morelli*, 315 Mich App at 702. In other words, if a claim sounds in premises liability, a defendant that is not an owner, possessor, or occupier of the premises cannot

be held liable on that theory and is entitled to summary disposition. See *Bowman*, 340 Mich App at 426.

In this case, plaintiff did not allege that APS possessed and controlled the premises where Quigley allegedly was injured; plaintiff in fact asserted in the trial court and on appeal that APS did not possess or control the premises.⁴ APS is thus entitled to summary disposition with respect to plaintiff's claim against APS, and the trial court erred by concluding otherwise. See *Bowman*, 340 Mich App at 426.

C. SCHINDLER

In Docket No. 367740, Schindler contends that it is entitled to summary disposition because plaintiff's claim against it fails to establish a claim of negligent undertaking, that plaintiff's claim actually sounds in products liability, and that the claim is deficient because plaintiff failed to adequately allege facts supporting that theory of liability. We conclude that Schindler is entitled to summary disposition because plaintiff's claim against Schindler is one of premises liability, and Schindler did not possess or control the premises.

In her complaint, plaintiff alleges generally that Quigley was injured when he fell after stepping onto an up escalator at the North Terminal of DTW. Plaintiff alleges against Schindler specifically that Schindler undertook to render services to Wayne County Airport Authority and DANTeC that were relevant to the care and safety of persons in Quigley's circumstances, such as the design, maintenance, and operation of the escalator, and the safety features related to the use of the escalator, including warnings. Plaintiff alleges that Schindler was negligent in performing these services.

Although plaintiff labels the claim against Schindler to be one of negligent undertaking, the claim is nonetheless one of premises liability because the claim alleges that Quigley's injury arose from a dangerous condition on the land. See *Jeffrey-Moise*, 336 Mich App at 625. Plaintiff's complaint does not allege that Schindler possessed or controlled the premises where the dangerous condition is alleged to have existed. Because the claim sounds in premises liability, a defendant that is not an owner, possessor, or occupier of the premises cannot be held liable for that claim. See *Bowman*, 340 Mich App at 426. Plaintiff's complaint thus failed to allege a sufficient claim

⁴ Plaintiff argues that its claim against APS cannot be one of premises liability because plaintiff did not allege that APS is an owner, possessor, or controller of the property. We are unpersuaded that a claim of premises liability can be transformed into a claim of ordinary negligence simply by asserting the claim against a defendant who did not own, possess, or control the premises. Rather, if it is "alleged that the plaintiff's injuries arose from a dangerous condition of the land, the claim is one of premises liability rather than one of ordinary negligence." *Jeffrey-Moise*, 336 Mich App at 625. Only one who possesses and controls the premises can be held liable for a claim arising from a dangerous condition on the premises; that duty emanates from the principle that a party in possession of premises is in a position of control of the premises and therefore generally is best able to prevent harm to others arising from conditions on the land. See *Finazzo v Fire Equip Co*, 323 Mich App 620, 627; 918 NW2d 200 (2018).

of premises liability against Schindler, and the trial court therefore erred by denying Schindler's motion for the summary disposition under MCR 2.116(C)(8).

D. DANTEC

DANTEC contends on cross-appeal that it is entitled to summary disposition under MCR 2.116(C)(8) with respect to plaintiff's claims against it of premises liability and ordinary negligence. We agree that DANTEC is entitled to summary disposition of plaintiff's claim of ordinary negligence, but disagree that plaintiff has failed to state a claim of premises liability against DANTEC.

As discussed, plaintiff's complaint alleges that Quigley was injured because he encountered a dangerous condition on the premises, and as a result, plaintiff's claim against DANTEC sounds exclusively in premises liability. See *Kachudas*, 486 Mich at 914. DANTEC is therefore entitled to summary disposition of plaintiff's claim against it of ordinary negligence.

DANTEC argues that plaintiff also failed to allege sufficient facts to establish a claim of premises liability against DANTEC because she does not sufficiently allege that DANTEC possessed and controlled the premises. In the context of premises liability, "possession" is defined as "the right under which one may exercise control over something to the *exclusion of all others*." *Derbabian v S & C Snowplowing, Inc*, 249 Mich App 695, 703; 644 NW2d 779 (2002) (quotation marks, brackets, and citation omitted). "[P]ossession for purposes of premises liability does not turn on a theoretical or impending right of possession, but instead depends on the actual exercise of dominion and control over the property." *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 661; 575 NW2d 745 (1998). Ownership of the property is not required. *Finazzo v Fire Equip Co*, 323 Mich App 620, 627; 918 NW2d 200 (2018).

Plaintiff's complaint alleges that DANTEC is a corporate entity formed by multiple airlines "for the purpose of constructing, installing, operating, and maintaining select airline equipment and systems, and for providing other operations, maintenance and support services to the airlines at the North Terminal" DANTEC allegedly contracted with the airport authority to "operate" the North Terminal and was responsible for the operation and maintenance of the escalators in the North Terminal. In Count I of the complaint, which asserts a premises liability claim against DANTEC, plaintiff alleges:

At all relevant times herein, Defendant DANTEC was the occupier of the premises at DTW and had under its control the condition of that premises in all ways relevant to the safety of persons who could be reasonably expected to be present therein.

The factual allegations in the complaint thus indicate that DANTEC was responsible for operations in the North Terminal, including the operation and maintenance of the escalator at issue. Although plaintiff further alleges that APS contracted to supply DANTEC with staff and "services necessary for DANTEC to carry out its various responsibilities at the North Terminal," the allegations support a reasonable inference that DANTEC directed the staff supplied by APS.

Again, when reviewing a trial court's grant or denial of summary disposition under MCR 2.116(C)(8), we consider the motion based on the pleadings alone and accept all well-pleaded

factual allegations as true. *El-Khalil*, 504 Mich at 159-160. Here, the factual allegations of the complaint sufficiently allege that DANTeC exercised possession and control over the premises. DANTeC further argues that plaintiff's premises liability claim is not viable because plaintiff is merely alleging that DANTeC should have done more to make the escalator safer or to reduce the risk of a fall. We conclude that plaintiff pleaded the requisite allegations to support a premises liability claim, namely, that DANTeC owed Quigley a duty, that DANTeC breached that duty by failing to maintain the premises in a reasonably safe condition and failing to warn the decedent of the dangers, and that the breach caused Quigley's death and plaintiff's damages. See *Kandil-Elsayed*, 512 Mich at 110-112 (outlining the elements of negligence in the premises liability context). The trial court therefore did not err by denying DANTeC's motion for summary disposition under MCR 2.116(C)(8) with respect to plaintiff's premises liability claim.

We note that APS and Schindler argue that on remand to the trial court, plaintiff should not be permitted to amend her complaint with regard to the allegations against them because the record demonstrates that amendment of the complaint would be futile. We decline to reach this issue. Although some exceptions exist, as an error-correcting court this Court's review generally is limited to matters actually decided by the trial court. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 210; 920 NW2d 148 (2018). The record in this case does not indicate that plaintiff is seeking to amend her complaint, but such a future motion would be more properly addressed by the trial court in the first instance.

We affirm the order of the trial court denying DANTeC summary disposition under MCR 2.116(C)(8) of plaintiff's premises liability claim against DANTeC. We vacate the order of the trial court denying DANTeC, APS, and Schindler summary disposition of plaintiff's claims of ordinary negligence. We remand for entry of an order granting defendants summary disposition of plaintiff's ordinary negligence claims and for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Christopher M. Murray
/s/ Christopher P. Yates