STATE OF MICHIGAN

COURT OF APPEALS

YOLANDA WILLIAMS,

Plaintiff-Appellant,

v

KARL ROGERS,

Defendant-Appellee.

UNPUBLISHED
December 26, 2025
2:01 PM

No. 372054
Wayne Circuit Court
LC No. 22-015023-NO

Before: GADOLA, C.J., and CAMERON and RICK, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). We affirm in part, reverse in part, and remand.

I. FACTUAL BACKGROUND

This case arose when a kitchen cabinet fell on plaintiff in her home, which she leased from defendant. Originally, plaintiff signed a one-year lease agreement, lasting from December 10, 2015, through December 30, 2016. Thereafter, plaintiff rented the house on a month-to-month basis. The incident at issue happened in January 2020, when plaintiff went to get a glass from a cabinet in her kitchen. She noticed that the cabinet was leaning forward. Plaintiff tried to remove the contents of the cabinet in an effort to stop the cabinet from falling. The cabinet fell, striking her in the face and chest and knocking her to the floor. Plaintiff alleged in her deposition that the cabinet was on top of her when she hit the floor and that she had to scoot out from under it. Plaintiff then crawled to the living room and called 911. She was taken by ambulance to the hospital.

In December 2022, plaintiff filed a complaint against defendant, alleging one count of negligence. Plaintiff stated that defendant owed a duty to her, the public, and his tenants. Plaintiff claimed that defendant breached that duty by failing to inspect and remove hazards, protect against and correct dangerous conditions, and repair defects to the property. Plaintiff further claimed that defendant allowed the defect—namely, the broken cabinet—to exist despite the foreseeable risks involved. She likewise stated that defendant failed to provide safe premises for tenants. Plaintiff claimed a series of injuries, including aggravation of a prior cervical injury, headaches, and carpal

tunnel syndrome, among other ailments. She stated that her injuries resulted in past, present, and future pain and suffering, mental anguish, loss of enjoyment of life, loss of function, and loss of earnings and earning capacity.

At her deposition, plaintiff stated that in 2012, another cabinet fell on her at her previous apartment not owned by defendant. She experienced numbness in her arms and hands and severe headaches as a result. In 2016, a different cabinet fell off the wall of the home she rented from defendant, but no one was injured. A handyman repaired the cabinet and did a full inspection of the cabinets. The handyman found them to be in good condition and properly secured. Plaintiff admitted that she did not notice the cabinet that fell on her in 2020 was close to falling off the wall. She asserted that she would have notified defendant of the issue had she noticed it beforehand. Plaintiff additionally claimed that the 2020 incident did not create new injuries, but aggravated her preexisting injuries from 2012.

Defendant was also deposed. He stated that he owned approximately 55 single-family houses in Detroit in January 2020, including the one plaintiff rented. In 2014 or 2015, Defendant purchased the property that he rented to plaintiff. Defendant explained that he does not personally inspect properties during tenancies, despite having the contractual right to do so at reasonable times. Defendant could not recall if his handyman, Ed Beal, inspected the cabinet after the 2016 incident where a cabinet fell in the kitchen. Defendant paid the bill for the repair, but did not verify if the cabinet was secure afterward or instruct Beal to check other cabinets. Defendant agreed that it was his responsibility to inspect the cabinets and did not expect plaintiff to repair them. In his own deposition, Beal testified that he was not asked to, and did not, inspect the other cabinets in 2016.

Defendant moved for summary disposition under MCR 2.116(C)(10). Defendant argued that plaintiff's claim sounded in premises liability, not ordinary negligence. He stated that he owed no duty to plaintiff because he was not in possession and control of the premises when the cabinet fell. Defendant pointed out that the lease agreement transferred exclusive possession and control to plaintiff. Even if defendant had possession and control, he argued that he had no actual or constructive notice of any defect with the cabinet.

Plaintiff responded that defendant, as landlord and property owner, owed her a common law duty to exercise reasonable care. She additionally argued that defendant owed statutory duties under MCL 554.139(1) and 554.139(2) to ensure that the premises were fit for their intended use and kept in reasonable repair. Regarding defendant's statutory duties, plaintiff noted that she had not raised that issue in her complaint, and requested leave to file an amended complaint to specifically allege statutory violations. Further, she argued that defendant had both actual and constructive notice of the defect, given that another kitchen cabinet had previously fallen and required reattachment in 2016.

At a hearing on the matter, the trial court determined that plaintiff's negligence claim sounded in premises liability. The court concurred with plaintiff that landlords owed tenants a duty, but reasoned that defendant's duty did not extend to areas that he did not control. With respect to duty, the court determined that the parties' lease agreement established that plaintiff was responsible for the maintenance of the cabinets. The trial court also determined that defendant had no actual notice of the defect. While there was an argument to be made that defendant had

constructive notice, the trial court found "that notice has to be hazard specific." The court observed that the prior cabinet issue from 2016 had been resolved and that the other cabinets "appeared to be in good order and repair." The trial court thus granted defendant's motion for summary disposition. It did not address plaintiff's request for leave to amend her complaint. This appeal followed.

II. ANALYSIS

Plaintiff contends that the trial court erred by deciding, as a matter of law, that defendant did not owe her a common law duty to keep the leased premises in reasonable repair. Plaintiff further maintains that defendant had notice of the defect. Additionally, plaintiff argues that defendant violated his statutory duty to keep the premises fit for their intended use and in reasonable repair under MCL 554.139. She likewise claims that the trial court erred by failing to address her statutory premises liability claim or her request for leave to amend her complaint. We agree in part.

A. STANDARDS OF REVIEW

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *BC Tile & Marble Co v Multi Bldg Co, Inc*, 288 Mich App 576, 583; 794 NW2d 76 (2010). The trial court granted defendant's motion for summary disposition in this matter under MCR 2.116(C)(10). Motions brought under MCR 2.116(C)(10) "test the *factual sufficiency* of a claim." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). In reviewing a motion under MCR 2.116(C)(10), the court "must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion." *Id*. The motion "may only be granted when there is no genuine issue of material fact." *Id*. "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *Id*. (quotation marks and citation omitted).

"We review a trial court's decision on a motion to amend pleadings for an abuse of discretion." *Charter Twp of Pittsfield v Washtenaw County Treasurer*, 338 Mich App 440, 458; 980 NW2d 119 (2021). "A trial court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes." *Andreson v Progressive Marathon Ins Co*, 322 Mich App 76, 83-84; 910 NW2d 691 (2017). "A trial court necessarily abuses its discretion when it makes an error of law." *Pirgu v United Servs Auto Ass'n*, 499 Mich 269, 274; 884 NW2d 257 (2016).

B. COMMON LAW DUTY

"All negligence actions, including those based on premises liability, require a plaintiff to prove four essential elements: duty, breach, causation, and harm." *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95, 110; 1 NW3d 44 (2023). "[D]uty[] is essentially a question whether the relationship between the actor and the injured person gives rise to any legal obligation on the actor's part for the benefit of the injured person." *Id*. (quotation marks and citation omitted). Whether a defendant owes a plaintiff a duty is a question of law for the court to decide. *Id*. at 112. 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 harm

to others. *Orel v Uni-Rak Sales Co*, 454 Mich 564; 563 NW2d 241 (1997). A landlord's duty does not generally extend to areas within a tenant's leasehold because the landlord has relinquished control over those areas to the tenant, which extinguishes the landlord's duty of reasonable care. *Bailey v Schaaf*, 494 Mich 595, 608, 609 n 36; 835 NW2d 413 (2013).

There is no dispute that plaintiff was an invitee in this matter, as tenants are invitees of their landlord. *Gabrielson v Woods Condo Ass'n, Inc*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket Nos. 364809 and 364813); slip op at 9. "An 'invitee' is a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for [the invitee's] reception." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000) (quotation marks and citation omitted; alterations in original).

Plaintiff contends that the trial court erred by concluding that defendant could not be held liable under a theory of premises liability because defendant did not have control over the premises. Plaintiff's argument is unavailing. The lease agreement transferred exclusive possession of the entire premises to plaintiff. Defendant did not retain possession and control of any part of the premises, effectively transferring his possessory rights and any duty to make the premises safe to plaintiff. Again, although a landlord owes a duty to tenants to keep areas under its control reasonably safe, that duty does not extend to areas leased to the tenant, over which the landlord has relinquished control. *Bailey*, 494 Mich at 609 n 36. The kitchen where the cabinet was located was within plaintiff's exclusive leasehold, not a common area under defendant's control. *Id.* The lease provisions confirm this transfer of control. Under the terms of the lease, plaintiff received quiet enjoyment of the premises and exclusive use as a private residence. She stipulated that she had examined the premises and found them in good condition. Most importantly, under Paragraph 12 of the lease, she assumed responsibility for maintaining "the leased premises and appurtenances in good and sanitary condition and repair," specifically including fixtures in the house.

Plaintiff nevertheless argues that defendant owed her a duty in accordance with *Mobil Oil Corp v Thorn*, 401 Mich 306; 258 NW2d 30 (1977). There, our Supreme Court overruled the "landlords out of possession" rule. *Id.* at 312. Under the "landlords out of possession" rule, a landlord owed no further duty to a tenant once the tenant took possession of the premises. *Id.* The Court instead adopted 2 Restatement Torts, 2d, § 357, which states:

> A lessor of land is subject to liability for physical harm caused to his lessee and others upon the land with the consent of the lessee or his sublessee by a condition of disrepair existing before or arising after the lessee has taken possession if
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> (a) the lessor, as such, has contracted by a covenant in the lease or otherwise to keep the land in repair, and
>
> (b) the disrepair creates an unreasonable risk to persons upon the land which the performance of the lessor's agreement would have prevented, and

> (c) the lessor fails to exercise reasonable care to perform his contract. [*Mobil Oil Corp,* 401 Mich at 311-312, quoting 2 Restatement of Torts, 2d, § 357, p 241.]

In *Mobil Oil Corp*, the plaintiff landlord had a contractual obligation to repair the tenant's roof. *Mobil Oil Corp*, 401 Mich at 308. By contrast, defendant's maintenance obligations were governed by Paragraph 12 of the lease agreement, which stated:

> Maintenance and Repair: Lessee will, at his sole expense, keep and maintain the leased premises and appurtenances in good and sanitary condition and repair during the term of this lease and any renewal thereof. In particular, Lessee shall keep the fixtures in the house or on or about the leased premises in good order and repair; . . . Major maintenance and repair of the leased premises, not due to Lessee's misuse, waste, or neglect or that of his employee, family, agent, or visitor, shall be the responsibility of Lessor or his assigns.

Thus, the court opined that, unlike *Mobil Oil Corp*, the lease agreement in this matter established that plaintiff, as the tenant lessee, bore the burden to maintain and repair fixtures in the house.

Plaintiff contends that this was error because questions of fact existed regarding defendant's contractual duty to repair and maintain the cabinets. Again, Paragraph 12 of the lease agreement established plaintiff was responsible to "keep the fixtures in the house or on or about the leased premises in good order and repair," and that defendant was responsible for "major maintenance." Cabinets and their mounting fasteners are fixtures. Maintenance and routine repairs remain with the tenant under Paragraph 12 of the lease agreement. Plaintiff identifies no evidence that the cabinet condition was a "major" repair within the lease's meaning.

Plaintiff also points to defendant's deposition statement that he considered himself "responsible" for cabinets and did not expect plaintiff to repair them, and that he had previously arranged a cabinet repair. But occasional voluntary repairs or the landlord's right of entry do not equal a contractual covenant to keep the entire premises in repair. The Restatement standard is contractual and cannot be satisfied by ad hoc repairs or a general practice. The trial court thus properly declined to convert defendant's deposition statements into a binding covenant and found that § 357 was inapplicable in this case.

C. NOTICE OF DEFECT

Plaintiff contends the trial court erred when it determined that defendant did not have actual or constructive notice of the defective cabinet. We disagree.

"[A]ctual or constructive notice of the relevant dangerous condition is an essential element in establishing a premises liability claim." *Albitus v Greektown Casino, LLC*, 339 Mich App 557, 562-563; 984 NW2d 511 (2021) (quotation marks and citation omitted). The plaintiff bears the burden to show that the premises possessor had actual or constructive notice of the dangerous condition. *Jeffrey-Moise v Williamsburg Towne Houses Cooperative, Inc*, 336 Mich App 616, 627; 971 NW2d 716 (2021). Summary disposition is proper if no question of fact is presented regarding whether a defendant had notice. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 8; 890 NW2d 344 (2016). Actual notice exists when the defendant knew of or created the hazardous

condition. See *Hampton v Waste Mgt of Mich, Inc*, 236 Mich App 598, 604; 601 NW2d 172 (1999). "Constructive notice is present when the hazard was of such a character, or had existed for a sufficient time, that a reasonable premises possessor would have discovered it." *Albitus*, 339 Mich App at 563 (quotation marks and citation omitted).

Plaintiff's testimony establishes that defendant lacked actual notice. Plaintiff lived on the premises for years and was in the best position to know the cabinet's condition. She testified that she was unaware of any defect in the specific cabinet at issue prior to the 2020 incident. She stated that if she had any warning the cabinet was loose or going to fall, she would have notified defendant. She confirmed that she did not tell defendant that anything was wrong with the cabinet. There is likewise no evidence that defendant created the hazardous condition or that his actions—or lack thereof—caused the cabinet to fall. Thus, defendant had no actual notice of the defect.

This same evidence also indicates that defendant lacked constructive notice of the defect. Again, plaintiff averred that she had not noticed that anything was wrong with the cabinet before it fell. It is unclear why the cabinet fell on this particular day, but plaintiff presented no evidence that the issue was of the type that "a reasonable premises possessor would have discovered . . . ." *Id*. (quotation marks and citation omitted). Plaintiff argues that defendant had constructive notice because another cabinet fell off the wall in 2016. However, plaintiff fails to explain how a different cabinet falling four years prior to the 2020 incident establishes that defendant had constructive notice of the defective cabinet that fell in 2020. Accordingly, the trial court did not err by finding that defendant lacked actual or constructive notice of the defect at issue.

D. STATUTORY DUTY AND LEAVE TO AMEND

In her answer to defendant's motion for summary disposition, plaintiff additionally raised a claim of statutory premises liability under MCL 554.139 and requested leave to amend her complaint. MCL 554.139 provides "specific protection to lessees and licensees of residential property in addition to any protection provided by the common law." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). The statute states, in relevant part:

> (1) In every lease or license of residential premises, the lessor or licensor covenants:
>
> (a) That the premises and all common areas are fit for the use intended by the parties.
>
> (b) To keep the premises in reasonable repair during the term of the lease or license, 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, except when the disrepair or violation of the applicable health or safety laws has been caused by the tenants wilful or irresponsible conduct or lack of conduct.
>
> (2) The parties to the lease or license may modify the obligations imposed by this section where the lease or license has a current term of at least 1 year.

The trial court did not address the issue, instead electing to grant summary disposition to defendant solely on the basis of plaintiff's common law premises liability claim.

"As a general rule, appellate review is limited to issues decided by the trial court." *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996). Since the trial court never ruled on this issue, we decline to address it on the merits. Under MCR 2.116(I)(5), "[i]f the grounds [for summary disposition] asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." Generally, leave to amend "shall be freely given when justice so requires." MCR 2.118(A)(2). A motion for leave to amend

> should be denied only for the following particularized reasons: (1) undue delay, (2) bad faith or dilatory motive on the part of the movant, (3) repeated failure to cure deficiencies by amendments previously allowed, (4) undue prejudice to the opposing party by virtue of allowance of the amendment, or (5) futility of the amendment. [*Lane v KinderCare Learning Ctrs, Inc.*, 231 Mich App 689, 697; 588 NW2d 715 (1998).]

Amendment of a complaint is futile "if (1) ignoring the substantive merits of the claim, it is legally insufficient on its face; (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction." *PT Today, Inc v Comm'r of Office of Fin and Ins Servs*, 270 Mich App 110, 143; 715 NW2d 398 (2006) (quotation marks and citations omitted).

MCL 554.139 provides a separate avenue for recovery from plaintiff's common law premises liability claim; thus, plaintiff did not "merely restate[] allegations already made" by requesting leave to amend in this instance. *Id*. There is likewise no doubt that the trial court had jurisdiction over this issue, and missed addressing it. *Id*. This Court recently held that, "according to the plain language of the statute, no notice is required for liability under MCL 554.139." *McNeal v Lincolnshire 2007 Ltd Dividend Housing Ass'n*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 370549); slip op at 4. Thus, although plaintiff's common law premises liability claim fails for the reasons stated above, including defendant's lack of actual or constructive notice, her statutory premises liability claim does not require her to establish actual or constructive notice. Accordingly, the trial court abused its discretion by failing to address plaintiff's request for leave to amend her complaint. On remand, the court must specifically address her request.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Thomas C. Cameron
/s/ Michelle M. Rick