

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001147-MR

AMANDA MALAPELLI

APPELLANT

v. APPEAL FROM CAMPBELL CIRCUIT COURT
HONORABLE JULIE REINHARDT WARD, JUDGE
ACTION NO. 08-CI-01584

ROBERT BROADDUS

APPELLEE

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ACREE, VANMETER, AND WINE, JUDGES.

WINE, JUDGE: Amanda Malapelli appeals from a Campbell Circuit Court order granting summary judgment in favor of her landlord, Robert Broaddus. Finding that a landlord is ordinarily not liable for personal injuries caused by open and obvious conditions on a leased premise, we affirm the order of the trial court.

In March 2005, Malapelli rented a single family home from Broaddus through the assistance of Section 8 Housing.¹ Malapelli entered into a standard

¹ Section 8 of the United States Housing Act of 1937 [42 U.S.C.A. §1437].

lease with Broaddus on a form provided by the Public Housing Authority (“PHA”). Broaddus entered into a separate contract with the PHA, described as a Housing Assistance Payment Contract, to determine the rent payments and the landlord’s obligations. The terms of the lease included an inspection of the home by the PHA each year prior to renewing the lease.

On or about October 18, 2007, as she carried her infant son, Malapelli slipped and fell down a staircase inside the home on a carpet runner which had been installed in 2005 at the direction of Broaddus. As a result of the fall, Malapelli sustained a broken right ankle. Malapelli testified the carpet runner would occasionally come loose and slide, and that her boyfriend would tack the carpet back into place. Malapelli submitted an affidavit stating she had informed Broaddus that the condition of the carpet runner created a danger. Malapelli requested permission from Broaddus to remove the carpet runner, but Broaddus did not allow her to do so. She claims that prior to her fall, an invited guest had also slipped and fallen down the staircase, resulting in a broken toe. However, Malapelli testified that as recently as a few days prior to her own fall, the carpet runner was not loose.

Malapelli filed suit against Broaddus on October 17, 2008. Broaddus moved for summary judgment, citing the proposition that, absent a contractual obligation, a landlord has no duty to repair a premises, nor is he liable for injuries suffered by a tenant or guest from a defective condition that is open and obvious.

Malapelli presented two separate defenses in opposition to the summary judgment motion. First, she claims that Broaddus acted willfully when he failed to either repair the carpet runner or give her permission to remove it. Secondly, she claims that Broaddus breached his duty to “maintain the unit in accordance with housing quality standards, including performance of ordinary and extraordinary maintenance,” as set forth in the Housing Assistant Payments Contract which governs Section 8 Housing,² in effect arguing that federal law, and not Kentucky common law, governed.

The trial court heard the parties’ arguments on May 11, 2009, and issued its written findings granting Broaddus’s motion for summary judgment on May 21, 2009. This timely appeal followed.

Analysis

Summary judgment shall be granted only if “the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Kentucky Rule(s) of Civil Procedure (“CR”) 56.03. The trial court must review the record “in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor.” *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 480 (Ky. 1991). Further, “a party opposing a properly supported summary judgment motion cannot defeat it without

² 24 CFR §982.452(a)(2).

presenting at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482.

On review, the appellate court must determine “whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law.” *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996). Because this summary judgment deals only with legal questions and there are no genuine issues of material fact, we need not defer to the trial court’s decision and must review the issue *de novo*. *Lewis v. B&R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001). With this standard in mind, we review the issue.

The general rule is that the tenant takes the premises as he finds them and a landlord is not liable for injuries to the tenant or his property because of defects in the leased premises in the absence of a contract or warranty as to the condition of the premises or to repair same, and where the landlord is guilty of no fraud or wilful wrong.

Clary v. Hayes, 300 Ky. 853, 190 S.W.2d 657, 659 (Ky. 1945), citing *Lindsey v. Kentucky Dev. Co.*, 291 Ky. 253, 163 S.W.2d 499, 500 (Ky. 1942). Malapelli offers no evidence of fraud or willful wrong on the part of Broaddus. The Kentucky Uniform Residential Landlord and Tenant Act defines “willful” as an action with “deliberate intention, not accidentally or inadvertently, and done according to a purpose.” Kentucky Revised Statute(s) (“KRS”) 383.545(17). While Broaddus admits he directed Malapelli not to remove the carpet runner, he did so only with the intent of keeping her or any guests from slipping on the staircase.

The law governing the landlord-tenant liability is further summarized in

Lambert v. Franklin Real Estate Co., 37 S.W.3d 770 (Ky. App. 2000).

[A] landlord has a duty to disclose a known defective condition which is unknown to the tenant and not discoverable through reasonable inspection. However, [i]t has been a longstanding rule in Kentucky that a tenant takes the premises as he finds them. The landlord need not exercise even ordinary care to furnish reasonably safe premises, and he is not generally liable for injuries caused by defects therein. [T]he landlord is under no implied obligation to repair the demised premises in the absence of a contract to that effect, nor is he responsible to a tenant for injuries to persons or property caused by defects therein, where there has been no reservation on the part of the landlord of any portion of the rented premises. In such cases the law applies to the contract or lease the doctrine of caveat emptor.

Id. at 775 (internal citations omitted).

When a tenant maintains complete control and possession over the premises and the landlord has no contractual or statutory obligation to repair, the landlord is liable only for “the failure to disclose known latent defects at the time the tenant leases the premises.” *Carver v. Howard*, 280 S.W.2d 708, 711 (Ky. App. 1955). Only when a portion of the premises is retained by the landlord for the common use and benefit of numerous tenants, the landlord must exercise ordinary care to keep common areas in a reasonably safe condition. *Id.*

In this case, the defect was not latent. Malapelli testified she was aware of the defective carpet runner for more than two years prior to her fall. She and her boyfriend made repeated attempts to repair the carpet runner. Furthermore, the entirety of the premises was leased by Malapelli, and there were no shared

common areas. Thus, Broaddus did not retain control over a portion of the premises for the common use of numerous tenants. Absent a contractual or statutory duty to repair, Broaddus did not have a duty to repair, or even to remove, the carpet runner.

The Low Income Housing Assistance Program provides for annual inspections of rental units by the PHA.

Each public housing agency providing assistance under this subsection (or other entity, as provided in paragraph (11)) shall make an annual inspection of each assisted dwelling unit during the term of the housing assistance payments contract for the unit to determine whether the unit is maintained in accordance with the requirements under subparagraph (A). The agency (or other entity) shall retain the records of the inspection for a reasonable time and shall make the records available upon request to the Secretary, the Inspector General for the Department of Housing and Urban Development, and any auditor conducting an audit under section 1437c(h) of this title.

42 U.S.C.A. § 1437f(o)(8)(D). The housing quality standards are established by the Secretary of Housing and Urban Development or by local housing codes or codes adopted by the PHA. 42 U.S.C.A. § 1437f(o)(8)(B)(i)(ii). No evidence was offered to show that any annual inspection found a violation of the housing quality standards, which are set out in 24 CFR § 982.401(g) as follows.

(1) Performance requirement. The dwelling unit must be structurally sound. The structure must not present any threat to the health and safety of the occupants and must protect the occupants from the environment.

(2) Acceptability criteria.

....

(iv) The condition and equipment of interior and exterior stairs, halls, porches, walkways, etc., must not present a danger of tripping and falling. For example, broken or missing steps or loose boards are unacceptable.

If a violation had been discovered, the PHA would have been required to take prompt and vigorous action to enforce the owner obligations. 24 CFR § 982.404(a)(2). Again, there was no evidence offered that any action was taken against Broaddus to enforce his obligations.

Finally, even presuming a contractual duty was contained in the lease, Broaddus could only be liable for breach of the contract, not for the injury sustained by Malapelli. Recovery would be limited to the cost of the repair. *See Miller v. Cundiff*, 245 S.W.3d 786, 788 (Ky. App. 2007).

Malapelli cannot recover damages from Broaddus for the injuries she sustained on the property regardless of her status as a Section 8 housing tenant since there was no evidence of willful misconduct on the part of Broaddus, nor was there any evidence of a latent defect.

The order of the Campbell Circuit Court dismissing Malapelli's claims is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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