

IN THE SUPREME COURT OF IOWA

NO. 19-1640

(Black Hawk County Case No. LACV130978)

KRISTINA LEWIS,

Plaintiff-Appellant,

vs.

HOWARD L. ALLEN INVESTMENTS, INC.; HOWARD L. ALLEN,

Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR BLACK HAWK COUNTY
HONORABLE GEORGE STIGLER
JUDGE OF THE FIRST JUDICIAL DISTRICT

PLAINTIFF-APPELLANT'S FINAL BRIEF
AND REQUEST FOR ORAL ARGUMENT

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANT ALLEN INVESTMENTS AND DENYING PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Iowa Code §562A.2.

Iowa Code § 562A.6

- a. The Uniform Residential Landlord Tenant Act at Iowa Code Ch. 562A is a remedial statute to be construed liberally and according to legislative intent and words

Hornby v. State, 559 N.W.2d 23, 25 (Iowa 1997)

Iowa Code Ch. 562A.

Uniform Residential Landlord and Tenant Act (1972).

- b. Under the unambiguous, statutorily defined terms of the URLTA Defendant Allen Investments is a "landlord" obligated to provide safe and habitable premises for its rental dwellings

Hollingsworth v. Schminkey, 553 N.W.2d 591 (Iowa 1996)

Hornby v. State, 559 N.W.2d 23, 25 (Iowa 1997)

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Iowa Code § 562A.6(5)

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Iowa Code § 562A.15(1)(a)(1)

Iowa Code § 562A.15(1)(a)(2)

Uniform Residential Landlord and Tenant Act, 1.301(7)(1972)

MERRIAM-WEBSTER DICTIONARY, "Or", <https://www.merriam-webster.com/dictionary/or> (last visited July 15, 2019).

ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.1101(2) this appeal should be retained by the Supreme Court because it presents a substantial issue of first impression regarding the scope of Iowa Code Ch. 562A-Uniform Residential Landlord Tenant Act (“URLTA”).

STATEMENT OF THE CASE

Nature of the Case

This case involves a claim of personal injury arising out of a fire that occurred at a rental home located at 323 Archer Avenue, Waterloo, Black Hawk County, Iowa (“323 Archer Avenue”). (App. p. 31 ¶7). Plaintiff Kristina Lewis was in the home at the time of the fire and suffered severe personal injuries. (App. p. 32 ¶10). Plaintiff alleged theories of common law premises liability and statutory liability for failure to maintain safe and habitable premises under the Uniform Residential Landlord Tenant Act at Iowa Code Ch. 562A.

At the time of the fire there was an existing but unfulfilled real estate purchase contract pending between contract seller Defendant Howard L. Allen Investments, Inc.¹ (“Allen Investments”) and contract buyers

¹ Throughout the summary judgment briefing and the order on appeal, Defendants Howard L. Allen Investments, Inc. and Howard L. Allen, individually have been referred to in tandem. At issue now is specifically Howard L. Allen Investment Inc.’s ownership of the rental property as Plaintiffs have never alleged Howard L. Allen held an individual interest, but instead sued him as part of another claim involving fraudulent corporate transfers subsequent to the fire. Howard L. Allen, individually, has been included in the briefing and prior order by virtue of his joint representation by counsel for Howard L. Allen

Defendants Javier Escobar Flores and Benito Rodrigues dela Rosa. (App. p. 33 ¶ 18). Defendant Allen Investments was the deed holder of 323 Archer Avenue at the time of the fire. (App. p. 33 ¶ 17). Plaintiff argues that Allen Investment’s deed ownership of the property qualifies it as an “owner” and “landlord” under the URLTA and subjects it to the requirements to maintain safe and habitable premises for lawfully residing tenants, such as Plaintiff. Defendant Allen Investments argue it had no ownership interest in 323 Archer Avenue and thus owed no common law or statutory duty to the Plaintiff to maintain the rental home in a safe and habitable condition. (Def. Allen MSJ)

On November 3, 2016, Plaintiff filed a Petition at Law and Jury Demand. (App. p. 7). Plaintiff filed a Motion for Partial Summary Judgment on August 21, 2018 seeking a determination that Allen Investments was statutorily liable as an “owner” and “landlord” under the URLTA and that it owed a common law duty to Plaintiff. (App. p. 55). Defendant Allen Investments filed a “counter” Motion for Summary Judgment on September 21, 2018. (App. p. 170) asking to be dismissed for lack of liability, either statutory or common law.

Investments, Inc. and that his personally liability only arises from any liability of Howard L. Allen Investments, Inc.

On May 6, 2016, the District Court verbally informed the parties it would be granting Defendants' motion and denying Plaintiff's motion. Plaintiff's counsel informed the court of their intention to appeal and the case was removed from the trial docket. (App. p. 149). On May 10, 2019 the court formally entered its Ruling denying Plaintiff's Motion for Partial Summary Judgment and granting Defendants Howard L. Allen and Howard L. Allen Investments, Inc.'s Motion, thereby dismissing them as defendants. Plaintiff filed an Application for Interlocutory Appeal from the Ruling on motions for summary judgment on June 6, 2019. (App. p. 151). On July 24, 2019 the Iowa Supreme Court denied Plaintiff's application for interlocutory review without explanation. (App. p. 165). Thereafter, Plaintiff dismissed Defendants Javier Escobar Flores and Benito Rodrigues Dela Rosa without prejudice thereby making the summary judgment ruling as to the remaining Allen defendants final as to the entire case and worth of appeal. (App. p. 168).

STATEMENT OF THE FACTS

On or about November 7, 2014, a fire started inside the dwelling located at 323 Archer Avenue. (App. p. 31 ¶ 7). Plaintiff Kristina Lewis and her fiancé, Stevie Thomas, were the lawfully residing tenants of 323 Archer Avenue, having previously entered into a written real estate lease with

Defendants Javier Escobar Flores and Benito Rodrigues dela Rosa as lessors. (App. p. 31 ¶6; Def. Flores & Dela Rosa Ans. and Crossclaim, Count 1 ¶ 6). At the time of the fire, Plaintiff Kristina Lewis and her two minor children, E.L. and A.L., were inside the dwelling. (App. p. 32 ¶ 8). Plaintiff Kristina Lewis was unable to escape the flames and smoke, and suffered severe personal injuries. (App. p. 32 ¶ 10).

At the time of the fire there was an existing but unfulfilled Real Estate Purchase Contract for 323 Archer Avenue pending between contract seller Defendant Allen Investments and contract buyers Defendants Javier Escobar Flores and Benito Rodrigues dela Rosa. (App. p. 33 ¶ 18; App. p. 25). Under the Real Estate Purchase Contract Defendant Allen Investments would execute and deliver the deed to 323 Archer Avenue at the completion of the contract. (App. p. 26). At the time of the fire, the contract with not completed and was unfulfilled and Defendant Allen Investments continued to hold the deed. (App. p. 12, depo. p. 17). Defendant Allen Investments was the deed holder of 323 Archer Avenue at the time of the fire. (App. p. 33 ¶ 17; App. p. 10., depo p. 12). Tax statements were mailed to a PO Box controlled by Defendant Allen Investments or its staff. (App. p. 10., depo p. 12). Following the fire, Defendant Allen Investments received the insurance

proceeds for property damage to the home in excess of \$30,000. (App. p. 13., depo p. 22-23).

ERROR PRESERVATION

The District Court dismissed Defendants Howard L. Allen and Howard L. Allen Investments, Inc. as parties in its Ruling on Motions for Summary Judgment. (App. p. 144). Error was preserved by the timely filing of Notice of Appeal within 30 days of Plaintiff's dismissal of Defendants Javier Escobar Flores and Benito Rodrigues dela Rosa which is the date the case would have been finally adjudged as to all parties.

SCOPE AND STANDARD OF REVIEW

An appellate court reviews a district court grant of summary judgment for correction of errors at law. *Wallace v. Des Moines Indep. Cmty. Sch. Dist.*, 754 N.W.2d 854, 857 (Iowa 2008). The facts relevant to whether or not Defendant Allen Investments is an "owner" or "landlord" under URLTA are largely undisputed. There is no question of fact as to who held the deed at the time of the fire or where the property tax statements were sent. Defendant Allen Investments does not deny the existence of the contract, its terms, or that it was unfulfilled at the time of the fire. The parties simply disagree over the legal effect of the contract and how it fits within the URLTA. Further, there is no dispute that Defendant Allen Investments did

not have present possession or the right to enter the property at the time of the fire, as the contract purchasers were the people leasing the property to Plaintiff. The issue on appeal is the “existence of a duty under a given set of facts [and] is a question of law for the court, [which] is property resolvable by summary judgment. *Overturff v. Raddatz Funeral Services, Inc.*, 757 N.W.2d 241, 245 (Iowa 2008); Iowa R. Civ. P. 1.981(3).

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING SUMMARY JUDGMENT TO DEFENDANT ALLEN INVESTMENTS AND DENYING PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT.

In its grant of Defendant Allen Investments s Motion for Summary Judgment the District Court failed to properly apply the unambiguous statutory definitions of “owner” and “landlord” of the URLTA. (Iowa Code § 562A.6). The District Court failed to follow the statutory instruction of Iowa Code Ch. 562A to liberally construe and apply its provisions to promote its underlying purposes and policies. Iowa Code §562A.2.

- a. The Uniform Residential Landlord Tenant Act at Iowa Code Ch. 562A is a remedial statute to be construed liberally and according to legislative intent and words.

“A statute that regulates conduct for the public good or welfare is ordinarily remedial and liberally interpreted”. *Hornby v. State*, 559 N.W.2d 23, 25

(Iowa 1997)(quoting First Iowa State Bank v. Iowa Dep't of Natural Resources, 502 N.W.2d 164, 166 (Iowa 1993). “[Courts] are guided by what the legislature actually said, rather than which it might or should have said.” *Id.* “Ordinarily, where the legislature defines its own terms and meanings in a statute, the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature.” *Id.*

These directives are exceptionally important in this case. The district court improperly imposed vague concepts of control of the property and knowledge of defects instead of liberally and properly applying the URLTA based on its clear statutory language to the undisputed facts

- b. Under the unambiguous, statutorily defined terms of the URLTA Defendant Allen Investments is a “landlord” obligated to provide safe and habitable premises for its rental dwellings.

The Iowa URLTA at Iowa Code § 562A requires a “landlord” to “comply with the requirements of applicable building and housing codes materially affecting health and safety” and to “make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.” Iowa Code § 562A.15(1)(a)(1)-(2). Who is a “landlord”? The question is answered directly and unambiguously by Iowa Code § 562A.6(5) which defines landlord as “the owner, lessor, or sublessor of the dwelling

unit” Who qualifies as an “owner” for purposes of being a landlord?

The question is, again, answered directly and unambiguously by Iowa Code § 562A.6(6), which states:

“Owner” means one or more persons, jointly or severally, in whom is vested:

- a. All of part of the legal title to property; or
- b. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

On the date of the fire, Defendant Howard L. Allen Investments, Inc. was the deed holder and contract seller of 323 Archer Avenue. (App. p. 33 ¶ 17). As a contract seller Defendant Allen Investments retained “legal title of record . . . pending payment of the purchase price . . . such that title is conveyed to the buyer upon final payment. See *Junkin v. McClain*, 265 N.W. 362, 365 (Iowa 1936)(stating that an installment contract is where “legal title of record is retained by the seller pending payment of the purchase price—paid in two or more installments—such that title is conveyed to the buyer upon final payment.”) By application of *Junkin*, Allen Investments retained legal title to 323 Archer on the date of the fire and at all times material hereto. Defendant Allen Investments also, in fact, held the deed at the time of the fire as admitted by Defendant Allen Investments in its deposition and Answer to Plaintiff’s Petition. (App. p. 12, depo. p. 17; App. p. 40 ¶ 17).

Additionally, it was Defendant Allen Investments or Howard L. Allen, acting on its behalf, who did all of the following with regard to 323 Archer:

1. Received \$38,756 in insurance proceeds for damage to the premises at 323 Archer;
2. Decided to demolish the dwelling at 323 Archer;
3. Signed a deed of conveyance of the former 323 Archer parcel to another of his limited liability corporations following the fire.

The district court cited the case of *Hollingsworth v. Schminkey*, 553 N.W.2d 591 (Iowa 1996) as authority that individuals who had sold land on contract were no longer liable for the condition of the premises. (Order, p. 4). The court reasoned that since *Hollingsworth* controlled because it was decided well after passage of the URLTA. The court's reasoning entirely ignores that *Hollingsworth* did not involve a landlord-tenant relationship that would have subjected any party to obligations under URLTA. Outside of the landlord-tenant relationship *Hollingsworth* would control. However, Plaintiff's claims fall under the URLTA and are to be considered in light of those obligations and specific definitions included therein.

Defendant Allen Investments wishes to step away from the plain language of the statute because it is adverse to their position and argue, in essence, that the plain language of the statute is not what could have been intended by the law. This is a completely improper line of inquiry. To abide

by Iowa Code Ch. 562A the court must make a determination of the meaning of owner and landlord under Iowa Code Ch. 562A.

While it is role of the court to interpret statutes, the court is not without bounds in doing so;

[t]he purpose of statutory interpretation is to determine the legislature's intent. The first step in ascertaining the true intent of the legislature is to look at the statute's language. *When the statute's language is plain and unambiguous, we will look no further.* We determine the legislature's intent by the words the legislature chose, not by what it should or might have said. ... We may not extend, enlarge, or otherwise change the meaning of a statute under the guise of construction.

Mulhern v. Catholic Health Initiatives, 799 N.W.2d 104, 113 (Iowa 2011)

(citations omitted) (emphasis added).

The legislature's intent for which parties are to be considered owners and landlords under Iowa Code Ch. 562A can be determined by looking at the text of the statute. In interpreting these definitions, the court looks at the words chosen by the legislature. Here, the words chosen by the legislature are clear and unambiguous; there is no reason for the court to consider what the legislature should or might have said and no reason for the court to change the meaning in the name of statutory construction. Because there is no ambiguity in the definitions of owner and landlord under Iowa Code Ch. 562A, there is no need to look beyond the text of the statute to determine

Defendants Howard L. Allen and Howard L. Allen Investments, Inc. were owners and landlords of 323 Archer Avenue at the time of the fire.

It is within the legislature's prerogative to define terms in statutes as they so please. The court has recognized such stating: "we recognize the legislature 'may act as its own lexicographer.' When it does so, we are normally bound by the legislature's own definitions." *The Sherwin-Williams Co. v. Iowa Dep't of Revenue*, 789 N.W.2d 417, 424 (Iowa 2010). When the legislature has chosen to define certain terms contained in a statute and those terms are unambiguously defined the court has found they are obligated to apply the statutory definition. *Id.* at 425. The court has done so even when "the common law and the dictionary definitions...may not coincide with the legislative definition..." and found in such cases that the court "must yield to the language of the legislature." *Id.* "[Courts] are guided by what the legislature actually said, rather than which it might or should have said." *Hornby v. State*, 559 N.W.2d 23 at 25. "Ordinarily, where the legislature defines its own terms and meanings in a statute, the common law and dictionary definitions which may not coincide with the legislative definition must yield to the language of the legislature." *Id.*

This case presents a situation where the legislature has chosen to define particular terms in a statute. The legislature has defined "owner" to

include parties that are not typically included in the common law and dictionary definitions of owner. This was a choice by the legislature and the court must yield to the language chosen by the legislature.

The definition of owner in Iowa’s Uniform Landlord and Tenant Act (i.e. Iowa Code Ch. 562A) is not unique. The Uniform Law Commission publishes a Uniform Residential Landlord and Tenant Act (URLTA) for states to adopt and modify as they wish. The first URLTA was published in 1972 and Iowa has adopted significant portions, including the definitions of owner and landlord. *See* Iowa Code Ch. 562A. In its adoption of portions of the 1972 URLTA the Iowa legislature did not change the definitions of “owner” and “landlord”. Thus, both Acts include persons with legal title to property in the definition of owner, and both include owners in the definition of landlord. The definition of owner under both URLTA 1.301(7) and Iowa Code §562A.6(6) consist of two parts:

- [O]ne or more persons, jointly or severally, in whom is vested:
 - (i) all or part of the legal title to property, or
 - (ii) all or part of the beneficial ownership and a right to present use and enjoyment of the premises.

The inclusion of a two-part definition for “owner” represents a choice by the Uniform Law Commission and the Iowa Legislature. The use of “or” is a choice to include as “owners” those who do not necessarily have physical control of a property but merely hold part of the legal title. This is a

choice by the Uniform Law Commission and the Iowa Legislature to not limit liability for injuries occurring on a property to persons with physical control of the property. Thus, neither the 1972 URLTA nor Iowa Code Ch. 562A require a right of possession or control in order for a person to be considered an owner owing statutory duties to tenants.

Adoption of the 1972 URLTA was not mandatory, and Iowa did not adopt the Act in its entirety. If the Iowa legislature wanted to limit the definition of owner to a smaller category of persons than those included in the 1972 URLTA they could have done so. However, the Iowa legislature chose to adopt the same definition for owner as that provided in the 1972 URLTA and include holders of legal title to land as owners even if they do not have physical control.

This is a case of simple statutory interpretation. Iowa Code Ch. 562A uses clear and unambiguous language to define owner and landlord. In addition to this clear and unambiguous language, the legislature has specifically defined the terms as they are to be applied within Ch. 562A. The legislature clearly intended persons holding legal title to property to be considered owners and landlords for purposes of Iowa Code Ch. 562A. Defendant Allen Investments resists the idea that a person who lacks physical possession of property can be held responsible for accidents that

occur on that property. While this idea may seem unconventional, it is the idea codified in Iowa Code Ch. 562A.

The determination of which party is an owner of the property is based on *either* the holding of legal title *or* beneficial ownership with the right to present use and enjoyment. The only factor to consider in determining whether a party is an owner under Iowa Code 562A is whether they satisfy either prong of the statutory definition of owner.

Defendants argued at the hearing on this issue in a manner that blatantly confused the meaning and effect of “or” with “and”. The argument made at hearing and in their summary judgment briefing is that only holding part of the legal title to the property alone does not suffice to make one an owner, but that they must also enjoy beneficial ownership and right to present use and enjoyment. (App. p. 133-139). If this were the case, 562A.6(6)(a) and 562A.6(6)(b) would be separated by the word “and”. They are not. They are separated by “or”, which is defined as “used in logic as a sentential connective that forms a complex sentence which is true when at least one of its constituent sentences is true.” MERRIAM-WEBSTER DICTIONARY, “Or”, <https://www.merriam-webster.com/dictionary/or> (last visited July 15, 2019).

CONCLUSION

It is true and undisputed that Defendant Allen Investments held all or part of the legal title to 323 Archer on the date of the fire and at all times material hereto. That is all that is required to be an “owner” and therefore a landlord and also liable for the condition of the premises. The district court erred in finding otherwise and Plaintiff-Appellant respectfully requests the court reverse its ruling granting Defendants’ Motion for Summary Judgment and enter an Order granting Plaintiff’s Motion for Partial Summary Judgment.

REQUEST FOR ORAL SUBMISSION

Plaintiff-Appellant respectfully requests this appeal be granted oral argument.

CERTIFICATE OF COST

I hereby certify that the actual cost of printing the foregoing Plaintiff-Appellant’s Proof Brief was \$0.

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on January 13, 2020 I, Eashaan Vajpeyi, the undersigned, did electronically file the foregoing instrument with the Clerk of the Supreme Court, Case No. 19-1640, using the Court ECF System, which will send a notice of electronic filing to the following registered

parties per Iowa Ct. R. 16.317(1); whom I understand to be Attorneys and Pro-Se parties of record on the EDMS Service List at the time and date of this filing:

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this brief contains 3,380 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P.

6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman.

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