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IN THE SUPREME COURT OF IOWA
NO. 21-0854

SHELLEY BARNES and CAMERON BARNES,

Plaintiffs-Appellants,

vs.

CDM RENTALS, LLC,

Defendant-Appellee.

Appeal from the Iowa District Court for Polk County
LACL149560
Honorable Celene Gogerty

FINAL BRIEF OF APPELLEE CDM RENTALS, LLC and Statement of Oral Argument

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the District Court erred in ruling that CDM did not control the driveway where plaintiff Shelley Barnes fell, and that CDM was not liable to plaintiffs as a matter of law.

[Inasmuch as the Appeal contains a single issue, the authorities are those set forth in the Table of Authorities, *supra*.]

ROUTING STATEMENT

The issue presented should be decided on existing interpretation of case law and can be referred to the Iowa Court of Appeals.

STATEMENT OF THE CASE

Nature of the Case

In this case Shelley and Cameron Barnes seek to recover damages for bodily injury to Shelley Barnes she claims to have suffered on February 19, 2019, when she slipped and fell on the driveway of Apartment 107 of the Brook Run Condominium in Des Moines. That apartment is owned by CDM Rentals, LLC. The Barnes leased apartment 107 from CDM on September 17, 2015.

Procedural History

The Barnes filed their Amended Petition on January 19, 2021 CDM Rentals, LLC as the defendant. (Amended App. p. 8) Amended Petition)). CDM filed its Answer on February 10, 2021. (Amended App. p. 11) Answer)).

CDM filed a Motion for Summary Judgment on April 19, 2021. (Amended App. p. 14) Brief in Support of MSJ)).

Barnes filed their Resistance on May 3, 2021, (Amended App. p. 132) Resistance)), arguing that CDM was responsible for the driveway pursuant to the lease between the Barnes and CDM, under the Uniform Landlord Tenant Act, ("ULTA"), Iowa Code Chapter 562A. (Amended App. p. 135) Plaintiff's Memo.))

CDM filed its Reply on May 5, 2021, noting that the property at issue is governed by Iowa Horizontal Property Act, Chapter 499B.1 et seq., which puts the duty to maintain common areas on the Homeowners Association. [*see*, Combined General Docket p.3].

Barnes filed a Surreply Brief on May 11, 2021 (Amended App. p. 152) Sur. Brief)), and CDM filed a Response to the Surreply on May 13, 2021 [see, Combined General Docket p. 4].

Oral argument was had on June 2, 2021, and the district court entered it Ruling on June 15, 2021. The court correctly framed the issue was whether CDM had control over the common area, including the area where Shelley Barnes fell.

(Amended App. p. 164) Ruling MSJ)). The court found that condominiums are governed by Chapter 499B of the Iowa Code, and that pursuant to provisions there and the Declarations of the Brook Run Park the driveway is a common element; that the condominium association is responsible for maintenance, repair and replacement of the common elements, and no individual apartment owner is allowed under the Declaration to perform any of the common area maintenance, repair or replacement. (Amended App. p. 164) Ruling MSJ)). The court found that CDM had no control over the common area where Shelley Barnes fell and was not subject to liability to her, and sustained CDM's Motion for Summary Judgment. (Amended App. p. 165) Ruling MSJ)).

STATEMENT OF THE FACTS

1. Defendant/Appellee CDM Rentals, LLC ("CDM") owns Apartment 107 at 3779 Village Run Drive in Des Moines ("Apartment") (Amended App. p. 11) Answer, para. 2)).
2. That Apartment is a condominium unit and is a part of a Declaration of Submission of Property to Horizonal Property Regime for Brook Run Park ("Declaration"). (Amended App. p. 21 (Declaration, Def MSJ. App., p. 1)).

3. The Apartment boundaries consists of the interior walls, floors and ceilings. (Amended App. p. 21 (Declaration § 2, Def MSJ App., p. 1)).
4. All portions of the real estate, other than apartments, are deemed Common Elements. (Amended App. p. 22 (Declaration §3(A), Def MSJ App., p. 2)).
5. Certain portions of the Common Elements are designed to serve a single apartment and are deemed Limited Common Elements. (Amended App. p. 22 (Declaration §3(A), Def MSJ App., p.2)). Garages and driveways are Limited Common Elements. (Amended App. p. 22 (Declaration §3(A), Def MSJ App., p.2)).
6. On September 17, 2015, CDM leased 3700 Village Run Drive #107 to Cameron E. and Shelley D. Barnes. (Amended App. p. 126 (Lease, Def MSJ App., p.106)).
7. Appellees Barnes allege that on February 19, 2019, Shelley Barnes slipped and fell outside, on the driveway servicing unit 107, on ice that formed from a downspout along the exterior wall of the garage. (Amended App. p. 8 (First Amended Pet. Para. 4)).
8. Having occurred on the driveway, the accident therefore occurred in a Limited Common Element. (Amended App. p. 22 (Declaration §3(A), Def MSJ App., p.2)).

9. Brook Run Parks Homeowners Association is responsible for maintenance of the Limited Common Elements which expressly includes the driveway. (Amended App. pp. 22, 30 (Declaration §§ 3(A), 5(C), Def MSJ App. pp. 2, 10)).

10. The property where the accident occurred is owned by Brook Run, L. C. (Amended App. p. 21 (Declaration, Def MSJ App. p.1).

11. CDM did not own the driveway or exterior of the garage and it was not responsible for and not allowed to perform maintenance thereof. (Amended App. pp. 21, 30 (Declaration p. 1, and §5(C), Def MSJ App. pp. 1, 10)).

ARGUMENT

1. The District Court Did Not Err In Applying Iowa Code Chapter 499B In Its Ruling That CDM Was Not Liable To Barnes For Her Fall On The Common Area Of The Driveway, Where CDM Did Not Control That Area And Was Not Allowed To Perform Any Of The Common Area Maintenance, Repair Or Replacement.

A. Issue Preservation

CDM admits to the preservation of the issue raised in its Motion for Summary Judgment, namely, whether CDM can be liable to Barnes for an

injury that occurred in an area that CDM not own, occupy or control. This issue was addressed in the District Court's Ruling, and CDM admits to Barnes' timely appeal of that Ruling.

B. <u>Standard of Appellate Review</u>

"We review a trial court's grant of summary judgment for correction of errors at law. On motion for summary judgment, the court must: (1) view the facts in the light most favorable to the nonmoving party, and (2) consider on behalf of the nonmoving party every legitimate inference reasonably deduced from the record. Summary judgment is appropriate if "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law." The existence of a legal duty is a question of law for the court to decide."

McCormick v. Nikkel & Assoc, Inc., 819 N.W.2d 368, 371 (Iowa 2012)(*quoting*, *Van Fossen v. MidAmerican Energy Co*., 777 N.W.2d 689, 692-93 (2009).

C. <u>Discussion</u>

Barnes seek to impose liability on CDM for a condition on property that CDM did not own or control, and over which it had no right to perform maintenance. It is established law in Iowa that premises liability stems from

physical harm caused by a condition on the possessor's land. *Reis v. Steffensmeier*, 570 N.W.2d 111, 113 (Iowa 1997) (emphasis in original) (*citing* Restatement (Second) of Torts § 343 (1965)); see also *Uniform Iowa Jury Instruction No. 900.2*. A possessor of land is a person who occupies the land and controls it. See *Restatement (Second) of Torts* § 328E (1965); *Restatement (Third) of Torts* § 49 (2012).

The district court found, and it is in fact undisputed for purpose of CDM's motion for summary judgment and this appeal: that Barnes fell outside, on the driveway of apartment 107 of the Brook Run Park Condominium; that her landlord, CDM, owned the interior of the unit that it leased to her; that the driveway where she fell is, according the Declaration of the Brook Run Park Condominium and Iowa Code § 499B.2(6), a limited common element; that the homeowners association was responsible for the maintenance, repair and replacement of the limited common elements; and, that CDM was *not allowed* in any way to perform maintenance, repair or replacement of a common area, including driveways.

Barnes suggest that CDM had control over the driveway because CDM required Barnes to park in the driveway provided. That CDM would so require does not mean that CDM had control over the maintenance or repair of the driveway for apartment 107, it is simply a reflection of the fact that neither CDM

nor its lessee of apartment 107 had a right to use any *other* driveway. Pursuant to the Declarations the driveways are for the exclusive use by the respective apartments they serve, "to the exclusion of other apartments." (Amended App. p. 22 (Declaration, §3A, Def MSJ App. p. 2)). In the absence of such a requirement on parking, would the Barnes believe that they could park in the driveway of an apartment they were not leasing? Imagine the chagrin of another apartment owner or lessee who finds their driveway taken up by a stranger proclaiming, "no-one said I couldn't park here."

As to Barnes argument that the Uniform Residential Landlord and Tenant Act ("ULTA") requires landlords to maintain common areas, the district court properly noted, "this presumes a landlord has control over those areas. The Horizontal Property Act and the Brook Run declaration establish the owner/landlord of an individual condominium has no control over the common areas, including the ability to maintain or repair these areas." (Amended App. p. 164 (Ruling at p. 2)).

Barnes argue that the absence in the Lease of reference to the Declaration means that CDM should be responsible for harms Shelley sustained in her fall, referring to the Declaration, §4C. However, nothing in that section states that an apartment owner who fails to adhere to the requirements thereof is thereby granted a right or obligation contrary to other provisions of the Declaration, specifically the

right or duty to maintain, repair or control any common or limited common element. (Amended App. p. 26 (Declarations §4C, Def MSJ App. p. 6)).

The Barnes were not without a potential remedy for their alleged damages. As observed by the district court, "The declaration also states the condominium association is responsible for maintenance, repair, and replacement of the common elements." (Amended App. 164 (Ruling at p. 2)).

CONCLUSION

The District Court committed no error of law in sustaining CDM's Motion for Summary Judgment, and this Court should uphold its Ruling and Order.

REQUEST FOR ORAL ARGUMENT

CDM submits to the court that the issue in this appeal can be decided on the record, without oral argument.

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 29th day of November 2021, I served Defendant-Appellee's Final Brief and Statement of Oral Argument by mailing one copy to:

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I further certify that on the 29th of November 2021, I filed the Defendant-Appellee's Final Brief and Statement of Oral Argument via EDMS with the Clerk of the Iowa Supreme Court pursuant to the Iowa Rules of Appellate Procedure.

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This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

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