IN THE STATE OF SOUTH CAROLINA
COURT OF APPEALS

FROM THE SOUTH CAROLINA COURT OF COMMON PLEAS

Honorable Renee Allyson Lee, Judge

Case No.: 2016-000491

Crystal Faye Clark ..... APPELLANT

v.

Housing Authority of the City of Columbia ..... RESPONDENT

BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in granting the Respondent's motion for summary judgment in this case?

I. Whether the Defendant is entitled to summary judgment as a matter of law when the Plaintiff alleges that she notified the Defendant of the defective stairwell prior to her slip and fell down the stairs?

II. Whether the Plaintiff assumed the risk when she entered her apartment by using the defective stairwell to enter her apartment when it was the only means by which the apartment can be entered or exited?

STATEMENT OF THE CASE

1. Date of Commencement of the action or matter was November 6, 2014 when the Appellant, Crystal Faye Clark filed a Civil Action Cover Sheet, Summons, Complaint and Verification in the Richland County Court of Common Pleas seeking damages from the Respondent, Housing Authority of the City of Columbia (CHA), due to injuries she sustained when she slipped and fell down a flight of stairs that she alleges was negligently maintained by the Respondent;

2. Nature of the action or matter is for damages for the injuries she sustained during the fall;

3. Nature of the defense or response is that the Respondent alleges that the Appellant failed to present any issues for a jury to consider so the Respondent is entitled to judgment in its favor as a matter of law;

4. Action of the circuit court judge was to grant the Respondent's Motion for a Directed Verdict;

5. Date of the motion hearing was October 13, 2015.

6. The mode of resolution of the issue was oral and written arguments before the court;

7. The amount involved on appeal less than $25,000.00;

8. The date and nature of the order, judgment or decision appealed from is a written order from the circuit court judge that was filed on October 27, 2015 which the Plaintiff asked the hearing judge to reconsider when the Plaintiff filed a Motion to Reconsider Dismissal of Plaintiff's Case via Summary Judgment which was denied by order dated February 11, 2016. This appeal was thereafter filed on March 8, 2016.

9. The date of the service of the Notice of Appeal was March 8, 2016;

FACTUAL BACKGROUND

Plaintiff, Crystal Faye Clark, asserts a claim for negligence in the repair of her stairs in her apartment by the Defendant which resulted in her falling and injuring herself on July 10, 2013, in an apartment owned by the Defendant, as a landlord, and occupied by the, ROA pgs. 299-304 Plaintiff, as a tenant. Crystal was treated at a local hospital, for her injuries she sustained from the fall. ROA pgs. 9 – 15.

Plaintiff rented Apartment L-1 at Allen-Benedict Court from the Defendant and resided at that apartment from January 26, 2012 to July 30, 2013. (Exhibit 1: Plaintiff's Lease for Apartment L-1, ROA pgs. 299-304, 2; Exhibit 2: Maintenance Report for Apartment L-1), ROA pgs. 305-306. Plaintiff was served with an eviction notice on March 11, 2013, allegedly because her son was arrested in her apartment with illegal drugs in violation of the terms of her lease. (Exhibit 3: Letter from State Constable Willie Bennett, dated March 11, 2013), ROA pgs. 307-309. Plaintiff was subsequently evicted on July 30, 2013. (Exhibit 2), ROA pg. 307. However, the Plaintiff believes that she was evicted because of her claim for damages in this case. ROA p. 14.

Plaintiff asserts that she was injured in her apartment prior to her eviction, as a result of a fall, down a staircase located within her apartment on July 10, 2013. The layout of Plaintiff's apartment requires that after opening the door to the apartment, a person must ascend a steep 13 steps flight of stairs to reach the living quarters. There is a railing on one side if the stairs and a wall on the other. The stairs are concrete, and each stair is covered by a large black protective mat with anti-slip tread lines. (Exhibit 4: Photograph of stairs from Apt. L-1), ROA pgs. 310. The staircase is the only entrance into the living quarters of the apartment and the sole exit from the apartment.

The Plaintiff testified that she had just returned from grocery shopping and was

bringing groceries into her apartment when she fell. The Plaintiff also testified at her deposition that when she fell part of the black protective mat came down the stairs with her. ROA p. 52, lns 23 - 24.

ARGUMENT
STANDARD OF REVIEW

Summary judgment is appropriate where the "pleadings, dispositions, answers to interrogatories, and admissions on file together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), SCRCP; see also Tupper v. Dorchester County, 487 S.E. 2d 187, 191 (S.C. 1997); Wells v. City of Lynchburg, 501 S.E.2D 746, 749 (S.C. Ct. App.1998). In determining whether a genuine issue as to any material fact exists, the "evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Strother v. Lexington County Recreation Comm'n, 504 S.E.2d 117, 121 (S.C. 1998).

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court ap plies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). That standard requires the Court to construe the complaint in the light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id.* (internal quotations omitted). The Court may sustain the dismissal when "the facts alleged in the complaint do not support relief under any theory of law." *Flateau v. Harrelson*, 355 S.C. 197, 202, 584 S.E.2d 413, 416 (Ct. App. 2003).

DISCUSSION OF THE ISSUE

I. DEFENDANT IS NOT ENTITLED TO JUDMENT AS A MATTER OF LAW BECAUSE THE PLAINTIFF ALLEGES THAT SHE NOTIFIED DEFENDANT OF THE DEFECT.

A. Standard of Review:

A plaintiff seeking damages suffered because of a dangerous or defective condition on a defendant's property must demonstrate that the defendant had "actual or constructive knowledge of a dangerous condition and failed to remedy it." Nelson v. Piggly Wiggly Central, Inc., 390 S.C. (2010). Actual notice means "all the facts are disclosed and there is nothing left to investigate." Actual notice arises when a condition has existed for such a period of time that a.....[defendant] in the use of reasonable care should have discovered the condition." Major v. City of Hartsville, 410 S.C. 1 (2014).

Ordinarily, when land is occupied by a lessee, "the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. After the premises are surrendered in good condition, the lessor surrenders possession and control of the land to the lessor is typically not responsible for hazardous conditions which thereafter develop or are created by the lessee." Byerly v. Connor, 307 S.C 441, 443, 415 S.E.2d 796, 798 (1992). However, because the relationship between the Plaintiff and Defendant is that of "residential" landlord and tenant, pursuant to the South Carolina Residential Landlord Tenant Act of 1986 ("SCRLTA"), the lease agreement between the parties creates an exception to the common law rule. **Under SCRLTA, the landlord is required to make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition. See S.C. Code Ann 27-40-440 (a) (2); (Exhibit 1, (6) (C),** ROA pg. 301. Similarly, the tenant

must keep the dwelling unit, and that part of the premises as she uses, reasonably safe and reasonably clean. See S.C. Code Ann 27-40-510 (2); (Exhibit 1, (7) (F), ROA pg. 303. **In addition, pursuant to the lease agreement between the parties, the tenant must promptly report to the landlord any needed repairs to the leased premises. (Exhibit 1, (7) (Q),** ROA pg. 303.

B. Discussion of the Issue. The Plaintiff alleges that the Defendant had both actual and constructive knowledge of the defective stairwells in her apartment and indeed many of the other apartments like her in the complex where she lived. ROA pgs. 110 - 111, lns 20 – 25, ROA pgs. 111, lns 1-14. The Plaintiff asserted that she reported defects in the steps when she stated she "was constantly calling about ..... [her] steps." (Plf. Depo. P. 80, lines 20-24, ROA pgs. 110, lns 20 - 24). Even though, Plaintiff, in the discovery process could not establish either the date and time of her alleged telephone call making the maintenance request regarding the staircase, or the identity of the person whom she allegedly spoke about the request, the Defendant acknowledged that it made repairs to the stairwell on at least one occasion. ROA pgs 305 - 306.

The Plaintiff is alleging that that repair was negligent and contributed to the mat coming off and contributing to her fall. When questioned about the identity of the individual answering the alleged call, the Plaintiff testified "I know there'd normally be a man or lady that answers. We can't – we don't really know who is answering the phone....." (Plf. Depo. P. 28, lines 11-15, ROA pg. 56, lns 11 - 15). The credibility of those statements are questions of fact for the jury. However, for the purpose of granting summary judgment the Court must assume the statements are true and still lead to the same result. That is not the case here.

Further, the Defendant asserts that it maintains detailed maintenance logs for all

apartment units, including Plaintiff's apartment, which do not reflect a maintenance request for all the alleged damage to the staircase which Plaintiff says caused her injury. (Exhibit 2). The reason the logs don't reflect the repairs is that the repairs were not done. The log does not reflect repairs not done. It only reflects the repairs made or repairs for which it may have a written request but the Defendant also allows the tenants to call in repairs. The defendant has not presented a list of called in repairs so it is a question for the jury as to whether the defendant had actual of the defective stairwell or constructive knowledge from its work on other units in the complex.

The South Carolina Court of Appeals has held that it "is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine." Priest v. Brown, 302 S.C. 405, 408-09, 396 S.E.2d 638-40 (Ct. App. 1990). Here, the Defendant does not dispute the fact that the Plaintiff fell down the stairs in her apartment and that she was injured and immediately received treatment for her injuries. Clearly there is a genuine issue of fact as to actual notice in this case but none as to the fact that the Defendant had constructive knowledge of the dangers associated with the mats or adhesive it used in securing the mats.

The Defendant argues that "... Defendant established a reporting system for tenants to report items in need of repair in their occupied dwellings and Plaintiff admitted that she know that she had to contact the Defendant's office to report any issues in her apartment. (Plf. Dep. P. 27, lines 13-18, ROA pg. 55, lns. 13 - 18). The Plaintiff also indicated that they were allowed to call in repairs. Accordingly, there is a genuine issue of material fact as to whether Defendant received actual or constructive notice of the damage to the staircase. Therefore, the Defendant is not entitled to judgment as a matter of law.

II. DEFENDANT IS NOT ENTITLED TO JUDGMENT AS A MATTER OF LAW BECAUSE THE PLAINTIFF DID NOT ASSUME THE RISK OF INJURY WHEN SHE NOTIFIED THE DEFENDANT OF THE DAMAGE TO THE STAIRCASE PRIOR TO HER FALL AND SHE CONTINUED TO USED THE DEFECTIVE STAIRWELL BECAUSE THERE WAS NO OTHER WAY TO ENTER OR LEAVE HER APARTMENT OTHER THAN USING THE DEFECTIVE STAIRCASE IN HER APARTMENT.

A. Standard of review.

The Defendant bears the burden of proving the affirmative defense assumption of the risk. Cole v. South Carolina Elec & Gas. Inc., 326 S.C. 445 (2005). To establish the defense of assumption of the risk, "(1) the Plainitff must have knowledge of the facts constituting a dangerous condition; (2) the Plaintiff must know the condition is dangerous; (3) the plaintiff must appreciate the nature and extent of the danger; and (4) the plaintiff must voluntarily expose himself to the danger." Id. Assumption of the risk "arises when the plaintiff knowingly encounters a risk created by the defendant's negligence." Davenport v. Cotton Hope Plantation Horizontal Property Regime, 333 S.C. 71 (1998). The trial court may declare a plaintiff has assumed the risk of injury as a matter if law where it clearly appears the plaintiff had knowledge of and appreciated the danger or that the danger was so obvious or apparent that knowledge should have been imputed to him. Ballou v. Sigma Nu General Faternity, 291 S.C. 140, 352 S.E.2d 488 (Ct. App. 1986). If evidence of the plaintiff's greater negligence is overwhelming, evidence of slight negligence in the part of the defendant is not enough for a case to go to the jury." Singleton v. Sherer, 377 S.C. 185 (2008).

B. Discussion of the issue.

The Defendant asserted in its memorandum that "In this case, the Plaintiff assumed the risk when she noticed damage to the stairs and voluntarily exposed herself to the danger when she continued using the stairs. During her deposition, Plaintiff asserted

that she reported defects in the steps when she stated she "was constantly calling about ….. [her] steps." (Plf. Depo. P. 80, lines 20-24, ROA pg. 111, lns. 20 - 24). When asked what the condition of the mat was on the day of the incident Plaintiff stated "it wasn't even down there stable." (Plf. Depo. 86, lines 22-23, ROA pg. 116, lns 22 - 23). The Plaintiff used the stairs at least three times after allegedly reporting the defect knowing that the continued use, without repair, could result in an injury. (plf. Depo. P. 86, lines 9-12, ROA pg. 116, lns 9 - 12). Therefore, the Plaintiff's negligence is overwhelmingly greater than any alleged negligence by the Defendant when Plaintiff continued to use the allegedly defective stairs; therefore, the Defendant us entitled to judgment under the law.". ROA pgs. 205 - 206.

However, the trial judge did not address that ground in her decision but relied solely on the notice argument above. ROA pgs. 3 - 5.

As indicated above the Plaintiff was a tenant in an apartment provided by the Defendant. They provided the Plaintiff with an apartment that was a steep 13 steps climb upstairs and the stairway was covered with a mat that they received numerous calls and/or work orders to repair from numerous tenants including the Plaintiff. The mat covered steep 13 steps stairwell was the only meant to enter or exit the apartment. The Defendant is poor and the apartment was provided by the appellant City of Columbia Housing Authority.

The Defendant was clearly aware of the problems with the mats and failed to remedy the problem while providing no other way for the tenants to enter or leave the units it provided.

Under SCRLTA, the landlord is required to make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable

condition. See S.C . Code Ann 27-40-440 (a) (2); (Exhibit 1, (6) (C), ROA pg. 301, 302.

The dangerous steep 13 steps stairwell apartment was provided by the Defendant as meeting the requirement of the act. The Defendant had a duty to make the stairwell safe.

CONCLUSION

For the reasons stated above, the Defendant respectfully requests that this Court remand this case to the lower court for a trial on the issue of notice which is a decision for the jury.

Respectfully submitted,

Johnny E. Watson,
Attorney for Appellant,
Crystal Faye Clark

November 28, 2016
Columbia, South Carolina