STATE OF MICHIGAN

COURT OF APPEALS

BRENDA ZEBOLD and STEVEN ZEBOLD,

Plaintiffs-Appellants,

v

CHRISTOPHER INVESTMENTS, d/b/a OAKLAND ESTATES,

Defendant-Appellee,

and

DAVID OTTMAN, d/b/a ADVANCED ASPHALT,

Defendant.

UNPUBLISHED
September 1, 2000

No. 214577
Oakland Circuit Court
LC No. 96-521410-NO

Before: Fitzgerald, P.J., and Holbrook, Jr. and McDonald, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendant Christopher Investments, doing business as Oakland Estates. We reverse and remand.

This claim arises out of plaintiff Brenda Zebold's slip and fall on an asphalt addition to plaintiffs' driveway, located in defendant's trailer park. Oakland Estates, plaintiffs' landlord, hired Advanced Asphalt to construct the addition. Advanced Asphalt is not a party to this appeal. Plaintiffs claimed that the negligent installation of an asphalt addition to the driveway resulted in an unnatural accumulation of ice which caused Brenda Zebold's fall.

On appeal, plaintiffs argue that the landlord's liability concerning the asphalt addition is governed by MCL 554.139; MSA 26.1109, such that the trial court's grant of summary disposition was in error. This Court reviews de novo a trial court's grant or denial of summary disposition pursuant to MCR 2.116(C)(10), based on a finding that there is no genuine issue of material fact. *Zurcher v Herveat*, 238 Mich App 267, 275; 605 NW2d 329 (1999). Like the trial court, we must view the depositions,

affidavits, and documentary evidence in the light most favorable to the nonmoving party and must make all legitimate inferences in favor of the nonmoving party. *Quinto v Cross & Peters*, 451 Mich 358, 362; 574 NW2d 314 (1996); *Zurcher, supra* at 275.

Plaintiffs argue that defendant breached MCL 554.139; MSA 26.1109 by not fixing the allegedly defective asphalt job and/or by not removing the snow and ice from their driveway. That statute provides:

> (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.
>
> (3) The provisions of this section shall be liberally construed, and the privilege of a prospective lessee or licensee to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein. [MCL 554.139; MSA 26.1109.]

Plaintiffs contend that this statute required defendant to remove snow and ice from plaintiffs' driveway. However, other than arguing that the statute is to be liberally construed, plaintiffs have cited no authority construing the duty to keep premises in good repair to include ice removal. Accordingly, plaintiffs have waived this issue. *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).

We review, however, plaintiffs' preserved claim that the statute conferred on their landlord the duty to repair the asphalt driveway. Unless defined in a statute, every word or phrase of the statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. MCL 8.3a; MSA 2.212(1), *Western Michigan University Bd of Control v State*, 455 Mich 531, 539; 565 NW2d 828 (1997). The fair and natural import of the terms employed, in view of the subject matter of the law, should govern. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). The statute at issue in this case uses the word "repair" as noun. The dictionary defines the use of "repair" in this manner as "good condition resulting from continued maintenance and repairing." *Random House Webster's College Dictionary* (1996). We conclude that the plain language of "repair" includes the landlord's duty to fix the gap in the asphalt addition to plaintiffs' driveway, making summary disposition inappropriate.

In *Madison v Wirtz*, 373 Mich 153, 157-158; 128 NW2d 488 (1964), our Supreme Court held that a trailer park resident's right of occupancy is not confined to the space necessary to park a trailer, but included a space in front of her trailer where she parked her automobile. Consistent with *Madison*, we conclude that plaintiffs' driveway was within the "premises" for purposes of MCL 554.139; MSA 26.1109, which is to be liberally construed. Therefore, under the plain language of MCL 554.139; MSA 26.1109, requiring "repairs" to the premises and that the premises be fit for the use intended, defendant may be liable to plaintiffs under the aforementioned statute for failure to correct the gap in the asphalt. Furthermore, there were questions of fact regarding whether defendant adequately repaired the asphalt after plaintiffs complained about its construction.

Defendant argues that it should incur no liability because of the "hold harmless" clause in the parties' lease agreement for injuries resulting from falls on ice in a tenant's driveway. Parties to the lease or license may modify the obligations imposed by MCL 554.139; MSA 26.1109 only "where the lease or license has a current term of at least one year" MCL 554.139(2); MSA 26.1109(2). Plaintiffs testified that they had a month-to-month tenancy that extended beyond a year. Accordingly, the issue applicability of the hold harmless clause is moot. In any event, the hold harmless clause did not affect defendant's obligation to repair the asphalt.

Finally, plaintiffs argue that the circuit court erred in denying their motion to amend their complaint to add contractual and promissory estoppel counts. This Court reviews grants and denials of motions for leave to amend pleadings for an abuse of discretion. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). There was no abuse of discretion in this case because the amendment would have been futile. *Ben P. Fyke & Sons, Inc v Gunter Co*, 390 Mich 649, 660; 213 NW2d 134 (1973).

Reversed and remanded for further proceedings with respect to defendant's liability under MCL 554.139; MSA 26.1109. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Gary R. McDonald