STATE OF MICHIGAN

COURT OF APPEALS

EARL LOSEY, JR., and TALENNA RILEY,

Plaintiffs-Appellants,

v

RICHARD B. FUSCO, LINDA FUSCO, RICHARD VELCHANSKY, and DEBBIE VELCHANSKY,

Defendants-Appellees.

UNPUBLISHED
November 17, 2000

No. 218442
Emmet Circuit Court
LC No. 97-004403-NZ

Before: Neff, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiffs were tenants in a building owned by defendants. The building was destroyed by a fire. Plaintiffs argue the trial court erred by concluding that there was no genuine issue of material fact regarding whether defendants should have known the fireplace was defective.

We review the trial court's decision granting summary disposition de novo. *Allen v Keating*, 205 Mich App 560, 562; 517 NW2d 830 (1994). When reviewing a motion for summary disposition under MCR 2.116(C)(10), the court must examine the documentary evidence presented below and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Maiden v Rozwood*, 461 Mich 109, 119-121; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362; 547 NW2d 314 (1996). The party opposing the motion may not rest on the mere allegations or denials contained in the pleadings but must come forward with evidence of specific facts to establish the existence of a material factual dispute. *Id.* at 362, 371. A question of fact exists when reasonable minds could differ regarding the conclusions to be drawn from the evidence. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 398-399; 491 NW2d 208 (1992); see also *Quinto, supra* at 367, 371-372.

For purposes of their motion, defendants do not dispute plaintiffs' status as invitees. "An 'invitee' is 'a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance or understanding that reasonable care has been used to

prepare the premises, and make them safe for their reception.'" *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000), quoting *Wymer v Holmes*, 429 Mich 66, 71 n 1; 412 NW2d 213 (1987). "The landowner has a duty of care, not only to warn the invitees of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Stitt*, *supra* at 597; see also *Kroll v Katz*, 374 Mich 364, 373-374; 132 NW2d 27 (1965). "Thus, an invitee is entitled to the highest level of protection under premises liability law." *Stitt*, *supra* at 597. "A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if the owner: (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that the condition involves an unreasonable risk of harm to such invitees; (b) should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it; (c) fails to exercise reasonable care to protect invitees against the danger." *Id.* at 597; see also *Kroll*, *supra* at 373-374.

Here, plaintiffs contend they presented sufficient evidence to establish a genuine issue of material fact with regard to whether defendants should have known about the alleged defective condition of the fireplace, i.e., its potential to cause pyrolization. We disagree. There was no evidence that any of the defendants had any training, knowledge, or experience concerning firebox insulation or the specific phenomenon of pyrolization. Although there was evidence that the defendants Velchansky knew the *furnace ductwork* in the unit was not up to code, there was no suggestion the furnace ductwork contributed to the cause of the fire and such knowledge does not support an inference that defendants Velchansky should have known the *fireplace* in unit 6 was defective.

Further, notwithstanding evidence that defendants were aware a fire occurred in unit 1, there was no evidence the Velchanskys were aware of the cause of that fire, or that it was caused by the same fireplace defect that allegedly existed in unit 6. Indeed, the evidence indicated the fireplace in unit 1 was replaced *before* the fire in that unit. Thus, the fact that the Velchanskys were aware there had been a fire in unit 1 on a prior occasion does not support an inference that they should have known the fireplace in unit 6 was allegedly defective.

Viewed most favorably to plaintiffs, the submitted evidence did not raise a genuine issue of material fact with regard to whether defendants should have known about the allegedly defective condition of the fireplace. The trial court therefore properly granted defendants' motion for summary disposition. See *McCune v Meijer, Inc*, 156 Mich App 561, 562-563; 402 NW2d 6 (1986) (no question of fact existed where the plaintiff failed to produce evidence to support his theory that the defendant knew or should have known about an oil spill that caused the plaintiff's accident).

Affirmed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Richard Allen Griffin