

STATE OF MICHIGAN
COURT OF APPEALS

HEATHER ANNE TRESTAIN,

Plaintiff-Appellant,

v

OCCIDENTAL DEVELOPMENT, LTD., d/b/a
STONERIDGE APARTMENTS,

Defendant-Appellee.

UNPUBLISHED

January 22, 2004

No. 243490

Oakland Circuit Court

LC No. 01-032885-NO

Before: Smolenski, P.J. and Saad and Kelly, JJ.

PER CURIAM.

In this premises liability case, plaintiff appeals as of right an order granting summary disposition to defendant. We affirm.

Plaintiff argues that the trial court erred in granting defendant summary disposition because (1) defendant had a duty to keep its parking lot reasonably safe and take reasonable precautions to protect invitees from foreseeable criminal acts of third parties and (2) plaintiff's attack was the foreseeable result of an unreasonably dangerous condition on defendant's premises created by defendant's failure to maintain and repair lights. We disagree.

The trial court granted defendant's motion under MCR 2.116(C)(10).¹ A motion under MCR 2.116(C)(10), which goes beyond the pleadings and tests the factual support for a claim, is subject to de novo review. *Smith v Global Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Such a motion should only be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* at 454-455, quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362-363; 547 NW2d 314 (1996). Whether a legal duty exists is a question of law that we also review de novo. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 14; 596 NW2d 620 (1999).

¹ Although defendant brought the motion under MCR 2.116(C)(8) and (10), the trial court considered evidence outside the pleadings, i.e., the affidavit of plaintiff's lighting expert.

Stanley v Town Square Cooperative, 203 Mich App 143; 512 NW2d 51 (1993) remains authority for the duty of care a landlord owes to tenants with regard to third-party criminal acts.² Landlords owe a special duty to tenants and their guests to shield them from unreasonable risks resulting from foreseeable activities that occur in common areas, including foreseeable criminal activities. *Id.* at 148-149. But concerning parking lots, this Court held:

The danger of falling victim to criminality in an open parking lot located outside a building is not a dangerous condition created by the possessor of the property, but it is a dangerous condition inherent in the society in which we live. The risk of being criminally assaulted in the middle of the night in a poorly lit, unfenced parking lot in the Detroit Metropolitan area is real and certainly can be anticipated. However, that risk is as obvious and apparent to an invitee as it is to the landowner. In short, the danger to which invitees are exposed in a parking lot is the same danger to which they are exposed in the community at large. The landlord has done nothing to create a condition conducive to criminal assaults. . . . We find that a landlord does not owe a duty to invitees to make open parking lots safer than the adjacent public streets. [*Id.* at 150.]

Accordingly, defendant had no duty to shield plaintiff from the harm that befell her in the parking lot. Therefore, the trial court did not err in granting summary disposition in defendant's favor because there was no genuine issue of material fact and defendant was entitled to judgment as a matter of law.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Kirsten Frank Kelly

² We agree with plaintiff that trial court erred in applying *MacDonald v PKT, Inc.*, 464 Mich 322; 628 NW2d 33 (2001).