STATE OF MICHIGAN

COURT OF APPEALS

TRACEY REDMANN,

Plaintiff-Appellant,

v

JOHN LEETE, a/k/a PHILLIP LEETE, and DARYLENE LEETE,

Defendants,

and

LONGFELLOW STREET, LLC,

Defendant-Appellee.

UNPUBLISHED
July 30, 2009

No. 284381
Washtenaw Circuit Court
LC No. 07-000611-NO

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the February 20, 2008, order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff alleges the trial court erred in granting summary disposition to defendant, Longfellow Street, LLC, because there exists a genuine issue of material fact as to whether it breached the statutory duty to keep the rental property fit for its intended use. We affirm.

Plaintiff rented a house from Longfellow Street in August 2004. In April 2005, plaintiff began to notice an increasing number of spiders in the house, and she was allegedly bitten by a spider. Plaintiff reported the problem to defendant's agent, defendant Phillip Leete, but defendants denied responsibility for eradicating the problem. In June 2005, plaintiff allegedly was bitten by a spider and became ill as a result. Defendants were again informed of the spider infestation. In July 2005, plaintiff moved out of the home.

"This Court reviews a trial court's summary disposition decision de novo." *Schaendorf v Consumers Energy Co*, 275 Mich App 507, 509; 739 NW2d 402 (2007). "This Court must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law." *Hines v Volkswagen of America, Inc*, 265 Mich App 432, 437; 695 NW2d 84 (2005). Under MCR 2.116(C)(10), a motion for summary disposition should be granted if the "proffered evidence fails to establish a genuine issue regarding any

material facts." *Joyce v Rubin*, 249 Mich App 231, 234; 642 NW2d 360 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Ritchie Gamester v City of Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999).

Plaintiff argues that Longfellow Street had a duty under MCL 554.139 to eliminate the spider infestation from the premises. MCL 554.139(1)(a) provides a covenant that premises "are fit for the use intended by the parties." In *Allison v AEW Capital Mgmt*, 481 Mich 419, 429; 751 NW2d 8 (2008), the Michigan Supreme Court considered whether a parking lot covered with an accumulation of "one to two inches of snow" was unfit for its intended use, pursuant to MCL 554.139(1)(a). The Court reasoned that the intended use of the parking lot "was [not] anything other than basic parking and reasonable access to such parking." *Id.* at 430. The plaintiff argued that it was unfit because the lot was covered in snow and because the plaintiff slipped and fell. *Id*. The Court held that under the facts presented in the record, there could not be reasonable differences of opinion regarding the fact that tenants were able to enter and exit the parking lot. *Id*. Ultimately, the Court held that the "plaintiff has not established that tenants were unable to use the parking lot for its intended purpose, and his claim fails as a matter of law." *Id*. The Court stated "that statute does not require a lessor to maintain a lot in an ideal condition or in the most accessible manner possible, but merely renders it fit for use as a parking lot." *Id*.

Viewing the facts in a light most favorable to plaintiff, assuming that a spider infestation was present, plaintiff cannot prevail on this statutory claim as a matter of law. Similar to the ice and snow in *Allison, supra* at 430, the presence of spiders on the premises appeared to be seasonal. Additionally, plaintiff has not established a genuine issue of material fact with regard to whether the house was unfit for living. The record indicates plaintiff was still able to sleep, eat, and live on the premises as provided for in lease. She did so for eleven months. Though a spider infestation may not be an "ideal condition," plaintiff failed to establish that it rendered the premises unfit as a dwelling house. *Id*. at 431.

MCL 554.139(1)(b) warrants that the lessor must maintain the premises "in reasonable repair." Plaintiff maintains that the trial court incorrectly focused on determining whether there was a genuine issue of material fact as to whether there was a defect that permitted the infestation of spiders. This argument ignores current precedent. "The plain meaning of 'reasonable repair' as used in MCL 554.139(1)(b) requires repair of a defect in the premises." *Allison, supra* at 434, citing *Teufel v Watkins*, 267 Mich App 425, 429 n 1; 705 NW2d 164 (2005), overruled in part on other grounds *Allison, supra* at 438-439. "'Defect' is defined as 'a fault or shortcoming; imperfection.' Damage to the property would constitute an imperfection in the property that would require mending. Therefore, repairing a defect equates to keeping the premises in a good condition as a result of restoring and mending damage to the property." *Allison, supra* at 434. Plaintiff does not identify any defect in the premises that defendant could have "mended" to eliminate the spiders. *Id*. Because plaintiff has not established there was any damage to the premises caused by the spiders or contributing to the presence of the spiders, plaintiff has failed to establish there was a genuine issue of material fact that defendant breached the duty to keep the premises reasonably repaired as required by MCL 554.169(1)(b).

Plaintiff also contends that the provisions of the lease required defendant to eradicate the spiders. "A lease is a conveyance by the owner of an estate of a portion of the interest therein to another for a term less than his own for a valuable consideration. A lease gives the tenant the

possession of the property leased and the exclusive use or occupation of it for all purposes not prohibited by the terms of the lease." *De Bruyn Produce Co v Romero*, 202 Mich App 92, 98; 508 NW2d 150 (1993). "This Court must examine the language of the contract [i.e. lease agreement] and accord the words their ordinary and plain meanings, if such meanings are apparent. If the contractual language is unambiguous, courts must interpret and enforce the contract as written." *Phillips v Homer (In re Smith Trust)*, 274 Mich App 283, 285; 731 NW2d 810 (2007). A term in a contract may be afforded its commonly used meaning. *Id*. A contract must be read as a whole. *Roberts v Titan Ins Co (On Reconsideration)*, 282 Mich App 339, 358; 764 NW2d 304 (2009).

When the contract is read as a whole, the maintenance and habitability clauses required Longfellow Street, after being notified by plaintiff that the habitability of their rented property was adversely affected, to repair the property as needed to return the premises to habitability. The lease does not define "repair" or "habitability." "Dictionary definitions may be used to ascertain the plain and ordinary meaning of terms undefined in an agreement." *Coates v Bastian Bros, Inc*, 276 Mich App 498, 504; 741 NW2d 539 (2007). "Repair" is defined as "to restore to a good or sound condition after decay or damage; mend." *Random House Webster's College Dictionary* (2000), p 1119. Black's Law Dictionary (8th ed) defines "habitability" as "[t]he condition of a building in which inhabitants can live free of serious defects that might harm health and safety." On this record, there is no genuine issue of material fact as to whether the property was decayed, damaged or suffered from a serious defect contributing to the presence of spiders, the trial court's decision to defendant's motion for summary disposition is affirmed.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald