STATE OF MICHIGAN

COURT OF APPEALS

CARLA COUNTERMAN and DONALD COUNTERMAN, Plaintiffs-Appellants, v CONVERSE MANAGEMENT COMPANY and CADCO INVESTMENTS, LLC, Defendants-Appellees.	UNPUBLISHED April 24, 2012 No. 303598 Kalamazoo Circuit Court LC No. 2010-000458-NO

Before: METER P.J., and SERVITTO and STEPHENS, JJ.

PER CURIAM.

Plaintiffs Carla and Donald Counterman appeal as of right the order granting defendants' motion for summary disposition. Because there is no question of material fact that the parking lot at issue was fit for its intended use, we affirm.

In February 2009, Carla and Donald were living in an apartment building at 166 North 28th Street in Kalamazoo. On February 26, 2009, at approximately 5:25 a.m., Carla proceeded toward her car in the parking lot of the building. Carla testified that the light in the parking lot closest to where her car was parked was not working. However, she recalled seeing the blacktop and thought the lot had been recently plowed. According to Carla, she took two or three steps into the parking lot, then slipped and fell on ice, incurring injuries. She did not see ice before she fell, but saw it and felt it with her hands afterward. She thus brought a premises liability action against defendants, alleging that their negligence and violation of statutory duties were the cause of her injuries. Donald Counterman asserted a claim for loss of consortium.

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), claiming that the condition causing Carla's fall was open and obvious and that the parking lot was fit for its intended purpose. Indicating that plaintiffs had stated they were proceeding only on their statutory duty claims, the trial court granted defendants' motion for summary disposition, finding there was no question of material fact that the lot was fit for its intended use.

A trial court's decision on a motion for summary disposition is reviewed de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A motion brought pursuant to MCR 2.116(C)(10) is reviewed "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Id.*

Summary disposition is proper "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.* "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

MCL 554.139(1)(a) requires that "[i]n every lease or license of residential premises, the lessor or licensor covenants . . . [t]hat the premises and all common areas are fit for the use intended by the parties." A parking lot is a common area under MCL 554.139(1)(a). *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 428; 751 NW2d 8 (2008). A lessor's duty under MCL 554.139(1)(a) with regard to the accumulation of snow and ice in a parking lot "would commonly be to ensure that the entrance to, and the exit from, the lot is clear, that vehicles can access parking spaces, and that tenants have reasonable access to their parked vehicles." *Id.* at 429.

The plaintiff in *Allison* fell when walking on one to two inches of snow in the parking lot of his apartment complex and he noticed ice on the ground where the snow had been displaced after the fall. *Id.* at 423. Our Supreme Court noted that the only facts supporting the allegation of unfitness were that the plaintiff fell and that the lot was covered with one or two inches of snow. *Id.* at 430. The Court determined the plaintiff could not establish that the lot was not fit for its intended purpose under such facts. *Id.* The *Allison* Court acknowledged that a landlord could have a duty with regard to ice and snow, but

> it would be triggered only under much more exigent circumstances than those obtaining in this case. The statute does not require a lessor to maintain a lot in an ideal condition or in the most accessible condition possible, but merely requires the lessor to maintain it in a condition that renders it fit for use as a parking lot. Mere inconvenience of access, or the need to remove snow and ice from parked cars, will not defeat the characterization of a lot as being fit for its intended purposes. [*Id.*]

In this case, viewing the evidence in the light most favorable to plaintiffs, there is no question of material fact whether defendants violated their statutory duty. *Latham*, 480 Mich at 111. Carla testified that typically, the middle of the parking lot was plowed, but parking spaces were not plowed. She also testified that area where the snow was piled after plowing sloped down toward a drain in the middle of the lot and that temperatures were above freezing on February 25, 2009, but then dipped below freezing in the nighttime hours of February 26, 2009. Carla also testified, however, that shortly after she fell, her son's girlfriend, Shelly, drove over to get her. Shelly parked in the same lot where Carla fell and Shelly and Carla's husband walked Carla from her apartment back out to the parking lot and into the vehicle without falling. Reasonable minds cannot differ that Carla was able to enter and exit the parking lot, vehicles could be parked in the parking lot, and Carla had reasonable, albeit not ideal, access to her car. *West*, 469 Mich at 183; *Allison*, 481 Mich at 430. Thus, the trial court did not err when it granted summary disposition in favor of defendants.

Affirmed.

/s/ Patrick M. Meter
/s/ Deborah A. Servitto
/s/ Cynthia Diane Stephens