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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000241-MR

CLETUS HANSFORD — APPELLANT

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE KATHLEEN VOOR MONTANO, JUDGE
ACTION NO. 05-CI-007344

WELDON DEWEESE — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON AND VANMETER, JUDGES; KNOPF,[1] SENIOR JUDGE.

CLAYTON, JUDGE: This is an appeal from a decision of the Jefferson Circuit Court which granted summary judgment to Weldon Deweese ("Deweese") in a

[1] Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

negligence action based upon a fall on property owned by Deweese. We affirm the decision of the trial court.

Cletus Hansford ("Hansford") fell on the steps leading to a house located at 516 Compton in Louisville. Deweese owned the property and was rented to a friend of Hansford. Hansford brought an action in Jefferson Circuit Court contending that under the Uniform Residential Landlord and Tenant Act ("URLTA"), Deweese was liable for the injuries he sustained as a result of his fall. The trial court granted summary judgment to Deweese and Hansford now appeals that decision.

In reviewing the granting of summary judgment by the trial court, we must determine "whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law." *Community Trust Bancorp, Inc. v. Mussetter*, 242 S.W.3d 690, 692 (Ky. App. 2007).

A trial court must view the evidence in the light most favorable to the nonmoving party and summary judgment should be granted only when it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor. While the moving party bears the initial burden of proving that no genuine issue of material fact exists, the burden shifts to

the party opposing summary judgment to present "at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.*

Since summary judgment deals only with legal questions as there are no genuine issues of material fact, we need not defer to the trial court's decision and must review the issue *de novo*. *Lewis v. B & R Corporation*, 56 S.W.3d 432, 436 (Ky. App. 2001). With this standard in mind, we will examine the issues on appeal.

First, Hansford argues that Deweese had a duty to keep the property in a safe condition and in compliance with the URLTA, which, he asserts, incorporates the Kentucky Building Code ("the Code"). The trial court held that a landlord is not liable for injuries sustained on property he owns, but is not under his control. The trial court cited *Parson v. Whitlow*, 453 S.W.2d 270, 271 (Ky. 1970), which held that:

> It is the settled law in Kentucky that ordinarily a landlord need not exercise ordinary care to furnish a tenant reasonably safe premises, but the tenant takes the premises as he finds them, and cannot recover for injuries to his person by reason of the defective condition of the premises. (citations omitted).
>
> An exception to this rule is made, where the landlord leases parts of the property to different tenants, retaining control of the stairways, halls, etc., for the common use of all of the tenants. (citations omitted). But this exception does not apply if, under the express or implied contract with the tenant, the part of the premises complained of was for the exclusive use of the tenant, and not for the common use of the other tenants.
>
> . . . .

> . . . the landlord is liable only for the failure to disclose known latent defects at the time the tenant leases the premises.

Id.

The URLTA is for the benefit of landlords and tenants. It was enacted "[t]o encourage landlords and tenants to maintain and improve the quality of housing." Kentucky Revised Statutes (KRS) 383.505 (2)(a). Hansford is not Deweese's tenant and, as such, does not have a cause of action under the URLTA. Hansford, however, has brought an action alleging negligence per se based upon Deweese's alleged failure to keep the property in proper condition as set forth in the URLTA.

In *Miller v. Cundiff*, 245 S.W.3d 786, 789 (Ky. App. 2007), the Court found "that to the extent the URLTA imposes a duty on landlords to make repairs to leased premises, the landlord's liability for breach of that duty does not extend beyond that authorized at common law for breach of a contractual duty to repair." The Court went on to hold that "the remedy for breach of a duty to repair is limited to the cost of repair." *Id.* (citations omitted).

"[A] landlord has a duty to disclose a known defective condition which is unknown to the tenant and not discoverable through reasonable inspection." *Lambert v. Franklin Real Estate Co*., 37 S.W.3d 770, 775 (Ky. App. 2000) (quoting *Milby v. Mears,* 580 S.W.2d 724, 728 (Ky. App. 1979)). This also applies as the duty of a landlord to a guest of the tenant on the leased premises. "Where the tenant has no redress against the landlord, those on the premises in the

tenant's right are likewise barred." *Id.* at 776 (quoting *Clary v. Hayes,* 300 Ky. 853, 190 S.W.2d 657 (Ky. 1945)). In the present action, there is no affirmative evidence that Deweese knew of the defective condition. The tenant would not have had an action against Deweese for injuries that came about as a result of a fall on the steps, so Hansford does not have a remedy either. Thus, we affirm the decision of the trial court granting summary judgment to Deweese.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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