

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS McCONNELL, Personal Representative of
the Estates of Brandi McConnell and Dennis
McConnell; DENNIS CHOJNACKI, Personal
Representative of the Estates of Sunni Jo Chojnacki
and Chelsea Chojnacki,

UNPUBLISHED

Plaintiffs-Appellants,

v

MITCHELL SMITH,

Defendant-Appellee.

No. 200769

Alpena Circuit Court

LC No. 95-001526 NO

Before: Neff, P.J., and Jansen and Markey, JJ.

NEFF, P.J. (dissenting).

I respectfully dissent and would reverse the trial court's grant of summary disposition and remand for further proceedings.

Generally, landlords owe their invitees a duty to "maintain [their] property in a reasonably safe condition and [have] a duty to exercise due care to protect invitees from conditions that might result in injury." *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 90; 485 NW2d 676 (1992). The extent of the landlord's duty in each particular case depends on the extent of his possession and control over the premises. *Orel v Uni-Rak Sales Co*, 454 Mich 564, 568; 563 NW2d 241 (1997). In the present case, there is conflicting deposition testimony regarding the extent of defendant's possession and control over his home after his sister, her children and Chojnacki moved into the home. Giving the benefit of reasonable doubt to plaintiffs, I find that reasonable minds could differ on this factual issue. *Bertrand v Alan Ford, Inc.*, 449 Mich 606, 617-618; 537 NW2d 185 (1995). Accordingly, summary disposition was improper on this basis.

The trial court also erred in determining that, even if defendant had a duty to repair and maintain the premises, Chojnacki assumed control of the smoke detectors and thus relieved defendant of his duty. Without question, a property owner may loan one or more of his possessory rights to another,

thus conferring the duty to make the premises safe on another while simultaneously absolving himself of liability. See, e.g., *Orel, supra* at 568-569; *Quinlivan v Great Atlantic & Pacific Tea Co*, 395 Mich 244, 269; 235 NW2d 732 (1975). Here, the record contains undisputed testimony that Smith and Chojnacki assumed maintenance of the smoke alarms by testing and replacing batteries, and ultimately shopping for new smoke alarms. However, the record does not unequivocally establish that defendant “loaned” to Smith and Chojnacki his possessory rights in the premises in general, let alone the smoke alarms in particular. Only then would defendant have absolved himself of this duty. *Id.*

Because a question remains regarding the extent of defendant’s possession and control of the premises at the time of the fire, and because this issue is critical to the issue of whether the duty to maintain the premises, including the smoke alarms, was on defendant, Smith and Chojnacki, or both, I would reverse the trial court’s grant of summary disposition to defendant.

/s/ Janet T. Neff