S T A T E   O F   M I C H I G A N

C O U R T   O F   A P P E A L S

THOMAS CRAMER,

        Plaintiff-Appellant,

v

SOUTHLAND II APARTMENTS and
SELIGMAN & ASSOCIATES, INC.,

        Defendants-Appellees.

No. 198077
Wayne Circuit Court
LC No. 95-521139 NO

Before: Young, Jr., P.J., and Kelly and Doctoroff, JJ.

KELLY, J. (dissenting).

        I respectfully dissent.

        As a social guest of one of defendants' tenants, defendants owed to plaintiff, with regard to the common areas, those duties owed an invitee. *Petraszewsky v Keeth (On Remand),* 201 Mich App 535, 540-542; 506 NW2d 890 (1993). A premises owner is subject to liability for physical harm caused to his or her invitees by a condition on the premises if, but only if, the premises owner (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger. *Betrand v Alan Ford, Inc,* 449 Mich 606, 609; 537 NW2d 185 (1995).

        In my opinion, whether the condition of the sidewalk and the lawn abutting it created an unreasonable risk of harm in light of all the facts and circumstances and, therefore, whether defendants owed plaintiff a duty to repair the sidewalk are questions for the jury. See e.g., *Rule v City of Bay City,* 387 Mich 281, 282; 195 NW2d 849 (1972), adopting *Harris v City of Detroit,* 367 Mich 526, 529; 117 NW2d 32 (1962) (Adams, J., dissenting) (whether a municipality is negligent in failing to remedy height disparities of less than two inches between adjoining sections of sidewalk is a jury question); *Dora v Kroger Co,* 1 Mich App 286, 289; 136 NW2d 47 (1965) (whether it was unreasonable for the defendant to permit a ¼inch rise between the parking lot and the sidewalk is a question for the jury).

Therefore, I would reverse the summary dismissal of plaintiff's premises liability action.

/s/ Michael J. Kelly