

STATE OF MICHIGAN
COURT OF APPEALS

RENE GARCIA, Personal Representative of the Estate
of CHRISTOPHER RENE GARCIA, Deceased,

UNPUBLISHED
December 18, 1998

Plaintiff-Appellant,

v

No. 203477
Washtenaw Circuit Court
LC No. 95-002087 NO

ANN ARBOR XIII, LTD Partnership,

Defendant-Appellee.

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

The trial court did not specify whether it granted defendant's motion under MCR 2.116(C)(8) or (10), but we find that summary disposition was proper under either subrule. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Smith v Kowalski*, 223 Mich App 610, 612; 567 NW2d 463 (1997). This Court reviews the trial court's decision de novo to determine if the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery. *Id.* at 612-613. The trial court's grant or denial of a motion for summary disposition under MCR 2.116(C)(10) is also reviewed de novo. *Paul v Lee*, 455 Mich 204, 210; 568 NW2d 510 (1997). The court must review the documentary evidence and determine whether a genuine issue of material fact exists. *Id.* Summary disposition is appropriate only if the court is satisfied that it is impossible for the nonmoving party to support his claim at trial. *Id.*

In a negligence action, summary disposition pursuant to MCR 2.116(C)(8) is proper if it is determined, as a matter of law, that the defendant owed no duty to the plaintiff. *Terrell v LBJ Electronics*, 188 Mich App 717, 719; 470 NW2d 98 (1991). Duty has been defined as an "obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct towards another." *Schanz v New Hampshire Ins*, 165 Mich App 395, 402; 418 NW2d 478 (1988).

Every accident is foreseeable in retrospect. In the present case, however, the combination of events that led to the death of plaintiff's decedent was not "foreseeable" so as to impose liability on defendant. See *Buczowski v McKay*, 441 Mich 96, 101, n 4; 490 NW2d 330 (1992). Because defendant did not owe a duty to plaintiff's decedent, summary disposition was proper under MCR 2.116(C)(8).

MCL 554.139(1)(a); MSA 26.1109(1)(a) requires that a lessor of residential premises warrant that "the premises . . . are fit for the use intended by the parties." "The liability of a landlord to a tenant for injuries resulting from defects existing at the time premises are leased extends only to defects which he knows or which he should know [of], and which are not open to the observation of the tenant." *Heward v Borieo*, 35 Mich App 362, 363-364; 192 NW2d 668 (1971) (emphasis supplied). The owner of a building is "under no duty so to construct its building as to prevent careless persons from hurting themselves." *Cole v Keeler Brass Co*, 281 Mich 441, 446; 275 NW2d 201 (1937) (emphasis supplied).

The apartment was safe for the use "intended by the parties." Plaintiff's reliance on *Williams v Melby*, 699 P2d 723 (Utah, 1985) is misplaced. Unlike the situation in *Williams*, plaintiff's expert here did not testify that a defect in the design of the apartment increased the probability that an occupant would fall against the window.

We agree with the trial court that plaintiff cannot establish that the glass window constituted a defective or dangerous condition. Therefore, summary disposition pursuant to MCR 2.116(C)(10) was also proper.

Affirmed.

/s/ Michael R. Smolenski

/s/ Gary R. McDonald

/s/ Martin M. Doctoroff