

Don't Look Up: Prior Landowner Must Have Actual Knowledge of Defect to Be Liable

By Cleveland B. Simmons

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In *Lycette v Joseph P. Early, LLC*, unpublished decision of the Michigan Court of Appeals, the Personal Representative of the Estate of Timothy Lycette filed a lawsuit against several Defendants arising out of fatal injuries sustained by the decedent, Timothy Lycette. The decedent was an electrician who was working for a subcontractor. At some point while decedent was working, electrical equipment separated from the wall and fatally injured Timothy Lycette.

Defendants Leitrim Corporation, Joseph P. Early, LLC, and Joseph Early (Early Defendants) filed a Motion for Summary Disposition arguing they had no relationship with Mr. Lycette that would give rise to any duty of care and that Plaintiff's claim was one of premises liability not negligence. The Early Defendants also argued that they did not own, possess, or control the subject property and were not liable under a theory of premises liability. The trial court agreed and granted their Motion for Summary Disposition, but denied their request for prevailing party costs and case evaluation sanctions.

Plaintiff never disputed that the Early Defendants did not have possession or control of the property at the time of Mr. Lycette's accident. Leitrim sold the property to Defendant Midtown Charlotte 10 months before the accident. However, Plaintiff argued that the Early Defendants were liable because they knew or should have known of the dangerous condition on the property and should have disclosed that fact to Midtown Charlotte during the sale.

Generally, a seller of land who surrenders title, possession, and control of property shifts all responsibility for the land's condition to the purchaser. However, there are two exceptions. A seller has a duty to disclose any concealed condition known to him which involved an unreasonable danger. A seller is also liable to those outside the land for a dangerous condition on the land after the sale until the purchaser discovers or should have discovered it. Under both exceptions, knowledge of the defect on the part of the purchaser relieves the prior owner of any duty or liability.

The Court of Appeals held that the Early Defendants did not owe a duty of care to the decedent. The property was sold "as is" and Midtown Charlotte took title and possession after an inspection of the property. Also, Midtown

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Unless narrow exceptions apply, when property is sold, the purchaser takes on all responsibility for the land's condition. Also, a former property owner must have *actual knowledge* of dangerous conditions on the property before that former owner has liability or owes a duty to a third-party injured on the property.

Charlotte began renovation of the property, including electrical work, after the purchase. Plus, the Early Defendants did not have possession or control of the property and were not in any position to prevent the accident.

The Court of Appeals denied Plaintiff's argument that the Early Defendants *should* have known of the dangerous condition. The Court reaffirmed that Plaintiff is required to show that the former owner had *actual knowledge* of the dangerous condition and either failed to disclose it to the buyer or actively took steps to conceal it. Here, there was no liability since there was no actual knowledge.

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