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Michigan Supreme Court Opens the Door to Common-Law Premises Liability Claims Against Condominium Associations

By Matthew T. Nicols **July 12, 2024**

On July 11, 2024, the Michigan Supreme Court, in a 5-2 decision, issued its decision in *Janini v London Townhouses Condominium Association*, ___ Mich ___; ___ NW3d ___ (2024) (Docket No. 164158), overturning *Francescutti v Fox Chase Condo Ass'n*, 312 Mich App 640 (2015), which established a rule that an owner of a condominium unit ("co-owner") could not pursue common-law premises liability claims against the Association because the co-owner was neither a licensee nor an invitee, and thus there was no duty owed. In overturning *Fracescutti*, the Supreme Court's majority, led by Justice Bernstein, held that Michigan's Condominium Act (MCL 559.101 *et seq*.) does not displace or preclude a co-owner from maintaining common-law premises liability claims against the Association in this slip-and-fall matter. The majority further held that when the co-owner cedes control (and maintenance tasks) of common elements to the Association, and the co-owner has a pecuniary interest in the Association, that co-owner's status becomes that of an invitee with respect to premises liability claims. As a result, condominium associations now face increased risk and exposure to common-law premises liability claims that had previously been rejected.

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The Michigan Supreme Court ruled that co-owners of condominium associations are no longer limited to breach of contract and injunctive relief lawsuits against their associations. Now, co-owners may sue their associations in common-law premises liability claims which, for the last decade, were not viable because by the nature of one's ownership interest in a condo unit they were a co-owner and thus could not sue themselves. The Supreme Court gives co-owners an "Invitee" status, who are owed the highest duty owed by land possessors and has allowed a common-law premises liability claim to proceed against the association.

The facts and procedural history of this case read like many premises liability cases involving condo associations. Here, the Plaintiff owned a condo unit within Defendant's Association. *Janini*, ___ Mich ___; slip op at 2. In March 2019, the Plaintiff left the condo unit to take garbage to the dumpster. *Id*. While walking down the snow- and ice-covered sidewalk (i.e., a common element of the Association), Plaintiff slipped and fell, causing him to hit his head. *Id*., slip op at 2-3. As a result, the Plaintiff suffered a brain injury. *Id*., slip op at 3. Plaintiff sued the Association "alleging that defendant breached its duty to maintain the sidewalk by failing to […] remove snow and ice …" *Id*. The Association Defendant sought summary disposition and dismissal of all claims pursuant to MCR 2.116(C)(10). *Id*. The trial court dismissed all of the Plaintiff's claims except the common-law premises liability claim. *Id*.

On Defendant's interlocutory appeal, the Court of Appeals reversed. *Janini v London Townhouses Condo Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued February 1, 2022 (Docket No. 355191). The Court of Appeals panel relied on *Francescutti*, 312 Mich App 640, a 2015 case, which held that a plaintiff who is a co-owner in a condo association who slips and falls on snow or ice in common areas cannot bring a premises liability claim against the condo association. *Id.* 312 Mich App at 643. Plaintiff sought leave to appeal to the Supreme Court which, in lieu of granting leave, ordered oral argument on the application. *Janini*, slip op at 4.

The majority's opinion leads with the recognition that real estate ownership interests in condominium units are creatures of statutory law, not common law, and that ownership interests are further governed by the Master Deed, Bylaws and other governing documents. *Id.*, slip op at 5-6. Recognizing that ownership of condo units is governed by both the Condominium Act and the Bylaws and Master Deed, the majority further recognized that in many situations, so long as provided for in the governing documents, "co-owners may hold an undivided interest in the common elements…" *Id.*, at slip op 6 (citing MCL 559.103(7)). Yet, under the Condominium Act, an association is a separate legal entity, which is capable of facing suit. *Id.*

The majority immediately took issue with the dissenting opinion authored by Justice Zahra and joined by Justice Viviano. In disagreement with the dissent's position that condo associations are not capable of being sued in premises liability because the existence of condo associations and co-owners' property interests are creatures of pre statutory principles, the majority points to a lack of legislative intent – that when enacting the Condominium Act, the Legislature did not intend to displace common-law principles (and avenues for recovery of damages in tort) and limit co-owners from availing themselves of common-law claims. *Id.*, slip op at 6-8. Remaining consistent, the majority also found that the Condominium Act did not displace association defendants from relying on common-law defenses. *Id.* The majority also held that co-owners were not limited to only breach of contract and injunctive relief claims against associations. *Id.* Thus, the majority concluded that "plaintiff's common-law cause of action is not precluded by the Condominium Act." *Id.*, slip op at 8.

Having determined that neither the Condominium Act, nor the Legislature, preclude co-owners from maintaining common-law claims against their associations, the majority turned to the traditional elements of premises liability claims, and whether a special relationship exists between the co-owner and the association. Relying on well-established principles of premises liability, such as the duty a land owner, or land possessor, owes to persons entering on their land, the majority turned to the concept of possession and control. *Id.*, slip op at 10 (citing *Kubczak v Chem Bank & Trust Co*, 456 Mich 653, 660 (1998)). Here, the Court acknowledged that common elements are owned collectively by the co-owners, but that co-owners rarely exercise control over those areas within the project. *Id.* Instead, it is common place among condo associations that co-owners cede control of common elements (including responsibility for maintenance and repair) to the association. *Id.* Co-owners ceding control of common elements to the association, per the majority, is akin to the relationship (and status) between a Landlord and a Tenant, where it is common that the Landlord (lessor) is typically in control of and responsible for maintaining common areas. *Id.*, slip op at 11-12.

Here, the majority likens the co-owners ceding control of the common elements to the Association, as similar to a Landlord's traditional responsibilities of maintaining common areas of an apartment complex. Based upon this similarity, the majority held that "the relationship between a condo association and [its] co-owner[s] is similar to the special relationship between a land possessor and its guests." *Id.*, slip op at 12. Thus, the Court's decision with respect to condo associations imported and relied upon concepts traditionally reserved for landlord-tenant cases. *See, e.g., Bailey v Schaaf*, 494 Mich 595, 604 (2013). Following this conclusion, the majority then held that Plaintiff's status in this case was that of an invitee. *Janini*, slip op at 12-13. This was based on several factors such as Plaintiff paying money to the Association for the maintenance of the common elements, the condo Association taking responsibility for maintenance of the common elements as set forth in the Bylaws, and the co-owner's inability to alter the common elements. *Id.*, slip op at 12-14. Accordingly, with respect to co-owners in condo associations, "[t]he landowner has a duty of care, not only to warn the invitee of any known dangers,

but the additional obligation to also make the premises safe." *Id.*, slip op at 13 (quoting *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597 (2000), as amended (Sept. 19, 2000)).

A key takeaway from the majority's opinion is that "land of another" – an integral phrase in premises liability claims – is not solely determined by "ownership." The Court has thus clarified that "the proper inquiry when considering the duty owed in a premises-liability context is who holds possession and control over the land where a person was injured and not merely who owned the land." *Janini*, slip op at 15.

It is worth noting that Justice Zahra's dissenting opinion would have affirmed the Court of Appeals' decision, and *Francescutti*. Here, Justice Zahra's dissent analyzed the historical context in which condominium ownership in real estate principles began in the 1950s, the statutory framework enacted by Michigan's Legislature, and that under our state's framework, the relationship between a co-owner and a condo association "has always been, and should remain the product of statutory law." *Janini*, supra (Zahra, J., dissent); slip op at 4. According to Justice Zahra, while the common law is a product of "judicial decisions, rather than from statutes of constitutions…[,]" and that "there has never been any Michigan common law that defined the relationship between a condominium co-owner and their condominium association." *Id*. (Zahra, J., dissent), slip op at 6. Moreover, with respect to the principle that by joining a condo association, the co-owner agrees to several covenants, restrictions and rules pursuant to the Condominium Act and the association's Bylaws, which may, in most cases, limit the types of claims that may be brought against the association. *Id*., slip op at 9.

The real and practical implications of the majority's decision in *Janini* will likely have wide-scale implications in premises and tort litigation against condominium associations. Now, associations have a clear increased risk to common-law premises liability claims which, in the past, would typically be dismissed under *Francescutti*. Associations would be wise to consult with their insurers to confirm adequate coverages. Moreover, associations will likely face more scrutiny for even the slightest defects in common elements, which may give rise to an injury such as a slip-and-fall, amongst others.

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