

## “Perfection is Neither Practicable Nor Required by the Law”

By Benjamin P. Rizza

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In front of the Court in *Jacobs v Truman Vill, LLC*, unpublished opinion of the Court of Appeals, issued November 25, 2024 (Docket No. 368649), was the relatable and all too common occurrence of a height difference between sidewalk slabs. Not just any sidewalk, but one at the apartment complex Plaintiff, Ms. Jacobs, had been living at for the past 15 years. Ms. Jacobs tripped, fell, and injured her leg. This is the sidewalk she identified in her deposition as the cause of her fall:



### Secret Wardle Notes

Plaintiffs will often attempt to sue for the mundane obstacles of everyday life, and motions for summary disposition are still an effective means to dismiss these cases, even post *Kandil-Elsayed v F & E Oil, Inc*, 512 Mich 95 (2023).

Ms. Jacobs’ Complaint alleged multiple theories of liability including issues of statutory duties under MCL 554.139 (for a residential lease) and premises liability. Defendant moved for summary disposition on all counts but was denied. In a two-to-one decision, the Court of Appeals reversed and remanded for entry of summary disposition in favor of Defendants.

### I. Liable under MCL 554.139 — Fit for Intended Use

MCL 554.139(1)(A) specifically states, “[i]n every lease or license of residential premises, the lessor or licensor covenants [t]hat the premises and all common areas are fit for the use intended by the parties.” However, MCL 554.139 only requires a lessor to maintain common areas in a condition fit for their intended purpose, and not “**in an ideal condition or even in the most accessible condition possible.**” A sidewalk is well-established as a

common area under MCL 554.139(1)(a) and therefore the analysis rested on whether it was fit for its intended purpose, i.e., walking.

Here, the Court compared Ms. Jacobs' sidewalk to cases involving snow and ice. When a sidewalk is completely covered in snow and ice, it is no longer fit for its intended purposes. Conversely, where the sidewalk is only *partially* covered, it still meets the criteria of fit for its intended purpose because it is still useable. "The uneven sidewalk joint in this case is more akin to the patches of ice" and therefore did not render the sidewalk unfit for walking.

## II. Premises Liability Concerning the Sidewalk

Doing away with the other claims of liability, the Court of Appeals arrived at the crux of Ms. Jacobs' Complaint — *premises liability concerning the sidewalk*.

The general elements required to prove liability are as follows, citing *Estate of Trueblood*, 327 Mich App at 285 (quotation marks and citation omitted):

In a premises liability action, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty, (3) the breach was the proximate cause of the plaintiff's injury, and (4) the plaintiff suffered damages.

As a tenant, Ms. Jacobs was an invitee, and therefore the Defendant owed a duty of reasonable care to protect her from unreasonable risks of harm posed by dangerous conditions on the land. However, while it was undisputed that the sidewalk at issue was slightly elevated at the edge, the Court firmly stated that "[p]erfection is **neither practicable nor required by the law**." The courts cannot impose requirements on a landowner to make ordinary conditions "foolproof." Imperfections exist everywhere. For example, "because steps are the type of everyday occurrence that people encounter, under most circumstances, a reasonably prudent person will look where he is going, will observe the steps, and will take appropriate care for his own safety."

Like with steps, the Court found nothing unusual about an imperfect sidewalk. Ms. Jacobs did not present evidence of an unusual occurrence rising to the level of a dangerous condition. The trial court therefore erred when it denied Defendant's Motion for Summary Disposition.

## III. Conclusion

Despite this Court of Appeals case being an unpublished opinion, the Court addressed common issues that plaintiffs tend to bring, such as negligence in premises liability claims and deviations in height between sidewalks and other everyday ordinary hazards. The Court makes extensive references to useful published cases, addresses these issues with clarity, and gives a signal to trial courts that just because someone trips and falls does not mean a premises owner is liable for their injuries.

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