

Artful Pleadings Won't Save You: A Premises Case is a Premises Case

By Cleveland B. Simmons

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Plaintiff Bianca Lucarelli bought a new home in Royal Oak, Michigan in 2020 from Defendant Robertson Brothers, the general contractor. Defendant A&R Cement, Inc. installed metal stakes to secure the wooden frames for the poured concrete while it dried.

In July 2020, Lucarelli was injured when she tripped and fell on a metal stake next to the sidewalk at her home. Plaintiff alleged a wide array of actions in her Complaint. For example: (1) that Defendants owned and maintained the property, although it was undisputed that Plaintiff owned the property, (2) that she was an “invitee/tenant” and injured by a hazard in a common area on Defendants’ premises, (3) that Defendants breached implied warranties, statutory duties, and were actively negligent, and (4) that Defendants breached contractual obligations.

Defendants eventually moved for summary disposition. They argued that Lucarelli’s case sounded in premises liability and they were not owners, possessors, or occupiers of the premises. The trial court granted the motions holding that the claim sounded in premises liability and they were not liable because neither was an owner, possessor, or occupier of the premises. The trial court also held that Plaintiff’s “active negligence” claims were vague and insufficient to state a claim for ordinary negligence. However, the trial court permitted Plaintiff to file a Motion for Leave to Amend her Complaint for ordinary negligence only.

Plaintiff subsequently filed a Motion for Leave to Amend, but the trial court denied the motion because Lucarelli did not attach a proposed amended Complaint. She moved for reconsideration, this time attaching a proposed amended Complaint. The Motion for Reconsideration was denied because Plaintiff did not demonstrate palpable error. An appeal followed for the dismissal of her ordinary negligence claim and the denial of her Motions for Leave to Amend and for Reconsideration.

The Court of Appeals disagreed with Lucarelli’s arguments regarding ordinary negligence noting that Plaintiff’s complaints only sounded in premises liability. When it is alleged that a plaintiff’s injury arose from a dangerous condition on land, the claim is one of premises liability rather than ordinary negligence. The same was true of Lucarelli’s Complaint when read as a whole. It is well settled law that a plaintiff may not transform a premises liability claim into an ordinary negligence claim by alleging that the condition was created by a defendant’s action or inaction. Even so, Lucarelli’s Complaint never specified what duty Defendants actually owed the Plaintiff, regardless of their status as premises owners or possessors.

Lastly, the Court of Appeals disagreed with Plaintiff’s argument that the trial court erred in denying her Motion for Leave to Amend and her Motion for Reconsideration. First, the Court of Appeals held that Plaintiff failed to attach the proposed

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Plaintiffs routinely attempt to plead around premises liability in favor of ordinary negligence to avoid defenses that are only applicable to premises liability claims. It is important to use dispositive motions to remove negligence allegations from a true premises liability complaint. Plaintiffs use this strategy to avoid defenses such as possession/ownership, lack of notice, and open and obvious.

Lucarelli v Robertson Bros. Co., although unpublished, affirms the long-held Michigan legal principle that if the injury arises from a condition on the land, then it is a premises liability claim. Artful or vague pleading will not transform a premises liability claim to ordinary negligence.

amended Complaint, failed to provide a specific description of the proposed amendments, and failed to provide a clear statement of the “new” claims. Although the Court Rules do not mandate that the proposed amended Complaint be attached, Plaintiff was required to provide a description or clear statement of new claims. Therefore, the Motion to Amend and Motion for Reconsideration were properly denied.

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