

IN THE SUPREME COURT OF IOWA
NO. 19-1640
Black Hawk County No. LACV130978

KRISTINA LEWIS,

Plaintiff-Appellant,

vs.

JAVIER ESCOBAR FLORES; BENITO RODRIGUES DELA ROSA; HOWARD
L. ALLEN INVESTMENTS, INC.; HOWARD L. ALLEN

Defendants-Appellees

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR BLACK HAWK COUNTY
HONORABLE GEORGE STIGLER
JUDGE OF THE FIRST JUDICIAL DISTRICT

**FINAL BRIEF OF DEFENDANTS-APPELLEES HOWARD L. ALLEN
INVESTMENTS, INC. AND HOWARD L. ALLEN AND REQUEST FOR
ORAL ARGUMENT**


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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO DEFENDANTS ALLEN INVESTMENTS AND HOWARD L. ALLEN AS THESE DEFENDANTS OWED NO DUTY TO THE PLAINTIFF.

ROUTING STATEMENT

This appeal involves the question of whether a contract seller of real estate owes a duty to a tenant of the contract buyer of the subject real estate, a single family home, where the contract seller does not have possession or control of the subject real estate and has never had a contractual relationship with the tenant.

This appeal should be transferred to the Iowa Court of Appeals because it presents issues involving the application of existing legal principles and the issues presented are appropriate for summary disposition. Iowa R. App. P. 6.1101(3)(a) and (b).

STATEMENT OF THE CASE

A. Nature of the Case: The Plaintiff's claims in this case are based in negligence and arise from a fire that occurred at a single-family home located at 323 Archer Avenue, Waterloo, Iowa. The Plaintiff contends that Defendant/Appellee Howard L. Allen Investments, Inc., (hereinafter "Allen Investments"), as the contract seller and deed holder of the subject property, was negligent in its care, custody, maintenance, and control of the premises. The particulars of negligence asserted against Defendant/Appellee relate to an alleged failure to provide smoke/fire detectors and fire extinguishment devices at the property.

Allen Investments has never denied that it was the contract seller and deed holder of the subject property; however, Defendant/Appelle Howard L. Allen has denied having an ownership interest in the property. Howard L. Allen was the president of Allen Investments and he signed the contract for the sale of the subject real estate to Defendants Javier Escobar Flores and Benito Rodrigues dela Rosa in his capacity as the president of the company.

B. Relevant Events of Trial Court Proceedings: On November 3, 2016, the Plaintiffs filed a Petition at Law and Jury Demand claiming Defendants Allen Investments and Howard L. Allen breached common law duties and statutory duties under the Uniform Residential Landlord Tenant Act. On November 21, 2016, Defendants Allen Investment and Howard L. Allen filed their Answer denying the

Plaintiffs' negligence claims. The Plaintiffs filed a Motion for Partial Summary Judgment on August 21, 2018 requesting the trial court to find that Defendant Allen Investments owed a duty to the Plaintiffs to maintain the premises in a fit and habitable condition under Iowa Code §562A.15(1)(a)(2). The Plaintiffs also requested in their Motion for Partial Summary Judgment that the trial court find the Defendant Allen Investments owed common law duties to exercise reasonable care in the maintenance of the subject real estate for the protection of the Plaintiffs.

On September 5, 2018, Defendants Allen Investments and Howard L. Allen filed a Resistance to the Plaintiffs' Motion for Partial Summary Judgment and on September 21, 2018, Defendants Allen Investments and Howard L. Allen filed a Motion for Summary Judgment on all claims made by the Plaintiffs against them on the grounds that Allen Investments and Howard L. Allen owed no duty to the Plaintiffs.

On May 10, 2019, the district court entered a Ruling denying the Plaintiffs' Motion for Partial Summary Judgment and granting the Motion for Summary Judgment filed by Defendants Allen Investments and Howard L. Allen. The Supreme Court of Iowa denied the Plaintiff's Application for Interlocutory Appeal on July 24, 2019. The Plaintiff subsequently dismissed her claims against Defendants Javier Escobar Flores and Benito Rodrigues dela Rosa without

prejudice. This dismissal made the summary judgment ruling in favor of Allen Investments and Howard L. Allen final as to the entire case.

STATEMENT OF FACTS

On November 10, 2009, Allen Investments sold real estate legally described as:

“Lot No. 4 in Meyer’s and Appel Subdivision in Waterloo, Iowa.”,

and locally known as 323 Archer Avenue, Waterloo, Iowa, to Javier Escobar Flores and Benito Rodrigues dela Rosa on a “Real Estate Contract-Installments.” (App. p. 25-29). Javier Escobar Flores and Benito Rodrigues dela Rosa took possession of the subject real estate, pursuant to the contract in November of 2009. Allen Investments did not have possession or control of the subject property, a single-family home, from the time Javier Escobar Flores and Benito Rodrigues dela Rosa took possession of the property following the execution of the Real Estate Contract-Installments on November 10, 2009 through November 7, 2014. (App. p.173-177).

Under the terms of the Real Estate Contract – Installments, the entire contract balance was to be paid by December 1, 2019. The contract also contained an insurance provision which required the buyers to keep in force casualty insurance “in an amount not less than the full insurable value of...improvements and personal property or not less than the unpaid purchase price...whichever amount is smaller”. (App. p. 25-29) The insurance provisions of the Real Estate Contract – Installments

also provided that “In the event of any such casualty loss, the insurance proceeds may be used under the supervision of the sellers to replace or repair the loss if the proceeds be adequate; if not, then some other reasonable application of such fund shall be made; but in any event such proceeds shall stand as security for the payment of the obligations herein.” (App. p. 25-29)

On May 30, 2014, Plaintiff Kristina Lewis and her boyfriend, Stevie Thomas, entered a written lease for the rental of 323 Archer Avenue, Waterloo, Iowa with Benito Rodrigues dela Rosa. Neither Allen Investment nor Howard L. Allen was ever a party to this lease. (App. p.178-179)

On November 7, 2014, a fire started in the kitchen of 323 Archer Avenue, Waterloo, Iowa, as a result of unattended cooking. Plaintiff Kristina Lewis was injured in this fire after she re-entered the house to look for two of her children who resided at the property with Ms. Lewis and her boyfriend, Stevie Thomas.

At the time of the November 7, 2014 fire, the Real Estate Contract-Installments was unfulfilled. At the time of the November 7, 2014 fire, the contract buyers were current on their obligations under the Real Estate Contract-Installments and the seller, Allen Investments, had not initiated any forfeiture or foreclosure proceedings. (App. p.173-177)

ERROR PRESERVATION

Defendants/Appellees Allen Investments and Howard L. Allen agree with the Plaintiff/Appellant's statements on Error Preservation.

SCOPE AND STANDARD OF REVIEW

Defendants/Appellees Allen Investments and Howard L. Allen agree with the Plaintiff/Appellant's statements on the Scope and Standard of Review as set forth in Plaintiff's Brief.

ARGUMENT

- I. THE DISTRICT COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO DEFENDANTS ALLEN INVESTMENTS AND HOWARD L. ALLEN AS THESE DEFENDANTS OWED NO DUTY TO THE PLAINTIFF.

The undisputed facts in the case at bar establish that Defendant Howard L. Allen never held an ownership interest in the property located at 323 Archer Avenue, Waterloo, Iowa. The Plaintiff, in her appeal, does not assert that the district court erred in granting summary judgment in favor of Howard L. Allen, individually.

The Plaintiff concedes that her claims against Defendant Allen Investments are based in negligence. "An actionable claim of negligence requires the existence of a duty to conform to a standard of conduct to protect others, a failure to conform to that standard, proximate cause and damages." *Thompson v. Kaczinski*, 774

N.W.2d 829, 834 (Iowa 2009). “Whether a duty arises out of a given relationship is a matter of law for the Court’s determination.” *Id.*

The particulars of negligence asserted against Defendant Allen Investments by the Plaintiff are:

1. Failure to install adequate smoke/fire detectors and warning devices in 323 Archer Avenue, Waterloo, Iowa;
2. Failure to maintain adequate smoke/fire detectors and warning devices in an operating manner at 323 Archer Avenue, Waterloo, Iowa;
3. Failure to provide or install working and adequate fire extinguishment devices at 323 Archer Avenue, Waterloo, Iowa;
4. Failure to warn Plaintiff of the dangerous and unsafe conditions existing at 323 Archer Avenue, Waterloo, Iowa;
5. Failure to provide fit premises pursuant to Iowa Code Chapter 562A, including but not limited to, failure to maintain and install adequate smoke/fire detectors and warning devices in an operating manner; and
6. Failure to provide fit premises pursuant to Iowa Code Chapter 562A, including the failure to provide or install working and adequate fire extinguishment devices at 323 Archer Avenue, Waterloo, Iowa.

(Petition – App. 30-38)

In *Thompson v. Kaczinski*, the Supreme Court of Iowa adopted the Restatement (Third) of Torts' duty analysis. Under the Restatement (Third) of Torts duty analysis, "[a]n actor ordinarily has a duty to exercise reasonable care when the actor's conduct creates a risk of physical harm." *Thompson* at 834 quoting Restatement (Third) of Torts: Liab. for Physical Harm, Section 7(a), at 90 (Proposed Final Draft No. 1, 2005). While an actor ordinarily has a duty of care under the Restatement (Third) of Torts, "in exceptional cases, the general duty to exercise reasonable care can be displaced or modified. An exceptional case is one in which 'an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases.'" *Thompson* at 834 quoting Restatement (Third) of Torts: Liab. for Physical Harm Section 7(b), at 90.

In the case at bar, Defendant Allen Investments sold the subject single-family dwelling unit on contract to Defendants Javier Escobar Flores and Benito Rodrigues dela Rosa nearly five (5) years before the November 7, 2014 fire giving rise to this lawsuit. The Plaintiff's lease for the property began on June 1, 2014, nearly four and one-half (4 ½) years after the execution of the Real Estate Contract between Allen Investments and Defendants Flores and dela Rosa. (App. p.178-170) The facts of the case at bar establish that this matter falls within the "exceptional" situations where the general duty to exercise reasonable care is displaced.

In its ruling granting Allen Investments' Motion for Summary Judgment, the district court quoted *Junkin v. McClain*, 265 N.W. 362 (1936) extensively. In

Junkin, the Supreme Court of Iowa stated:

It has been repeatedly held by this court that when a landowner enters into a contract of sale whereby the purchaser agrees to buy, and the owner to sell, and whereby the vendor retains the legal title until the purchase money or some part thereof be paid, the ownership of the real estate, as such, passes to the purchaser, and that from such time forth the vendor holds the legal title as security for a debt and as trustee for the purchaser. The interest acquired by the vendee is "land," and the right and interest conferred by the contract upon the vendor is "personal property."...A judgment against the vendee would become a lien on the land, inferior, of course, to the rights of the vendor. A judgment against the vendor would not become a lien upon the land, nor could an execution thereunder be made by levy and sale of the land.

Thus, there can be no doubt that in the case at bar, from and after the date of the real estate contract,..., the purchaser,..., held equitable title to the premises, and the vendor,..., retained the legal title to the real estate as security for the payment of the remainder of the purchase price...The ownership of the real estate, as such, was in the purchaser and not in the vendor. The vendor held the legal title simply as security for the remaining debt, the balance of the purchase price, and as trustee for the purchaser or his assigns or successors. The interest or right acquired by the vendee or purchaser was "land," and the interest or right retained or conferred by the contract upon the vendor was "personal property." *Junkin at 365*.

In *Benson v. 13 Associates, LLC*, 909 N.W.2nd 443 (Iowa App. 2017), an unpublished decision of the Court of Appeals of Iowa, the court noted “[t]he

guiding maxim repeated in our case law is ‘liability’ is ‘premised’ on control.”

Benson v. 13 Associates, LLC, 909 N.W.2d 443 (Iowa App. 2017) (citing *McCormick v. Nikkel & Associates, Inc.*, 819 N.W.2d 368, 372 (Iowa 2012) citing *Van Essen v. McCormick Enterprises Co.*, 599 N.W.2d 716, 720 n.3 (Iowa 1999), quoting *Allison by Fox v. Page*, 545 N.W.2d 281, 283 (Iowa 1996).

In *Stalter by Stalter v. Iowa Resources, Inc.*, 468 N.W.2d 796, 798 (Iowa 1991), the Supreme Court of Iowa stated:

The rationale underlying the general rule that one who has transferred ownership and control is no longer held liable is that the former owner no longer has control and thus may not enter the property to cure any deficiency, and, he/she cannot control the entry of persons onto the property or provide safeguards for them. *Id* at 798.

There is no evidence in the record indicating that Defendant Allen Investments had access to the property or maintained any control or possession of the premises after the property was sold on contract nearly five (5) years before the fire of November 7, 2014.

In *Hollingsworth v. Schminkey*, 553 N.W.2d 591, 599 (Iowa 1996), the Plaintiff claimed that Steven and Susan Woodford were negligent in failing to keep and maintain a driveway in a safe condition. The Woodford’s had sold the property in question on contract to Schminkey over two (2) years before the accident giving rise to the Hollingsworth lawsuit and therefore did not occupy or control the premises. In affirming the trial court’s grant of Woodford’s Motion for

Summary Judgment, the Supreme Court of Iowa stated that, “Woodford’s Motion for Summary Judgment was supported with Affidavits that established they had sold the property on contract to Schminkey in 1991 and that at the time of the accident in February, 1993, Woodfords did not occupy or control the property. The Woodfords were not in possession of the land and they had no duty to keep or maintain the driveway in a good and safe condition. Under these circumstances, the Woodfords are entitled to summary judgment.” *Hollingsworth* at 599. In *Hollingsworth*, the trial court concluded that Schminkey and not the Woodfords had a duty to maintain the property as Schminkey was buying the property on contract and had sole control of the house and property and therefore were responsible for maintaining it. *Hollingsworth* at 599.

Where, as in the case at bar, a party sells real property by an installment contract, the possession of the real property belongs to the buyer. *In Re Estate of Miller*, 119 N.W. 977, 978 (1909). In relinquishing possession of the real property, the seller, in the absence of evidence to the contrary, releases control of the property.

The evidence in this case clearly establishes that Defendant Allen Investments did not have possession or control of the property from November 10, 2009 through the date of the fire, November 7, 2014. Additionally, there is no evidence in the case at bar that establishes that Defendant Allen Investments was a

party to the lease under which Plaintiff Kristina Lewis occupied the premises. Therefore, Defendant Allen Investments owed no duty to Plaintiff Kristina Lewis as Allen Investments had no control or authority to enter the property and the grant of summary judgment in favor of Allen Investments was appropriate.

The Plaintiff argues that Allen Investments owed a duty to the Plaintiff under the Uniform Residential Landlord Tenant Act, Iowa Code Chapter 562A. The Plaintiff contends that because Iowa Code §562A.6(5) defines the term “landlord” as the “owner...of the dwelling unit” and the term “owner” is defined as one in whom “all or part of legal title to property” is vested, Allen Investments owed a duty to maintain a fit and habitable premises pursuant to Iowa Code § 562A.15(1)(a)(1) – (2). On its face, the statute seems to indicate that Allen Investments, because of the legal title it retained to 323 Archer Avenue, Waterloo, Iowa, as the contract seller, is a “landlord” having all duties of a landlord under Chapter 562A; however, it seems unlikely that the legislature used the term “legal title” in Chapter 562A in the same sense as “legal title” in the context of a contract sale. Chapter 562A does not define the term “legal title”, and there is no case law interpreting Iowa Code §562A.6(6)(a).

The term “title” has been used in some context to refer generally to the lawful cause or ground for possessing property. *See Johnson v. Board of Supervisors of Jefferson County*, 24 N.W.2d 449, 452 (Iowa 1946). The Iowa

Supreme Court has recognized that the phrase “legal title” as used in statutes has not often been judicially defined, *see Hutchinson v. Olberding*, 130 N.W. 139, 140 (Iowa 1911), but the court has stated, “[w]hen one having the right of possession has legal title,” and “the words ‘legal title’ were held to mean [in another statute], a title by which the husband had such a seisin of the land as would have entitled his widow to dower under common law.” *Hutchinson* at 140. At common law, a widow is not entitled to dower in lands in which her husband only had an equitable title because there is no seisin in an equitable interest. 28 C.J.S. Dower & Curtesy, Section 32 (March 2017 update).

In *Thompson v. Kaczinski*, the Supreme Court of Iowa stated: “[o]ur goal in interpreting a statute is to ascertain legislative intent. In determining legislative intent, we consider not only the words used by the legislature, but also the statute’s ‘subject matter,’ the object sought to be established, the purpose to be served, underlying policies, ...and the ‘consequences of various interpretations.’”

Thompson at 833. (Citations omitted)

When defining “owner” in Iowa Code §562A.6(6), the statute also defines an owner in subpart b as a “mortgagee in possession.” This would be similar to a bank that has taken possession of property upon the default of a mortgagor. So if a contract seller is more or less a mortgagee as stated in case law cited above, and is not in possession, as was the case with Allen Investments and 323 Archer Avenue,

Waterloo, Iowa, then such a contract seller would not be an “owner” and not a “landlord” for purposes of Iowa Code Chapter 562A.

The Uniform Residential Landlord Tenant Act’s recognition of the control maxim followed by Iowa law is further illustrated by Iowa Code §562A.16(1). This statutory provision states, “[u]nless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to written notice to the tenant of the conveyance.” Iowa Code §562A.16(1). This provision limits the liability of the landlord who sells the property that includes a rental unit from liability under Iowa Code Chapter 562A as to events occurring after written notice is given to the tenant of the conveyance. In the case at bar, there was never a rental agreement Plaintiff Kristina Lewis and Allen Investments. The Plaintiff occupied the single-family rental dwelling pursuant to a written lease nearly four and one-half (4 ½) years after the sale on contract by Allen Investments to Defendants Flores and dela Rosa and there was no need for notice to the Plaintiff as there was never a lessor/lessee relationship between Allen Investments and Kristina Lewis.

In interpreting the provisions of the Uniform Residential Landlord Tenant Act, the court must ask the question as to why would a contract seller who never had a landlord/tenant relationship with a tenant owe a duty to that tenant when the

Code limits the liability of a seller who has a landlord/tenant relationship with a plaintiff after notice is given to the tenant of a sale.

Iowa Code §562A.6 provides that the definitions by this section of the Code are not to be applied if “the context otherwise requires”. In the case at bar, the Plaintiff was occupying the subject property under a rental agreement to which Defendant Allen Investments was not a party. Rent, which is defined by Iowa Code §562A.6(10) as “a payment to be made to the landlord under the rental agreement” was not paid to Allen Investments and Allen Investments had no right to enter the premises to maintain the condition to the property or make necessary repairs.

Under the facts of the case at bar, public policy is contrary to placing duties under the Uniform Residential Landlord Tenant Act on a contract seller who has never had a landlord/tenant relationship for the premises with the plaintiff and who has not had possession or control of the property during the time of the plaintiff’s tenancy.

CONCLUSION

For the reasons stated above, Defendant Allen Investments and Howard L. Allen request that the court affirm the district court’s granting of these Defendants’ Motion for Summary Judgment and the dismissal of the Plaintiff’s claims against Defendants Allen Investments and Howard L. Allen. Defendant Allen Investments

had no control or authority over the premises and had no right to enter the premises to maintain its condition or make any necessary repairs. The court should affirm the district court's ruling dismissing the Plaintiff's liability claims against Defendants Allen Investments and Howard L. Allen.

REQUEST FOR ORAL SUBMISSION

Defendants/Appellees respectfully requests this appeal be granted oral argument.

CERTIFICATE OF COST

I hereby certify that the actual cost of printing the foregoing Defendants/Appellees Proof Brief was \$0.

CERTIFICATE OF ELECTRONIC FILING AND SERVICE

I hereby certify that on January ____, 2020, I, Henry J. Bevel III, the undersigned, did electronically file the foregoing instrument with the Clerk of the Supreme Court, Case No. 19-1640, using the Court ECF System, which will send a notice of electronic filing to the following registered parties per Iowa Ct. R. 16.317(1); whom I understand to be Attorneys and Pro-Se parties of record on the EDMS Service List at the time and date of this filing:

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CERTIFICATE OF COMPLIANCE

1. This Brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Brief contains 3,470 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman.



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