IN THE IOWA SUPREME COURT

NO. 21-0854

SHELLEY BARNES and CAMERON BARNES, Wife and Husband,

Plaintiffs/Appellants,

VS.

CDM RENTALS, LLC., a Limited Liability Corporation,

Defendants/Appellees

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY, IOWA
Case No. LACL149560
THE HONORABLE CELENE GOGERTY

FINAL BRIEF OF APPELLANTS SHELLEY BARNES AND CAMERON BARNES, Wife and Husband

STEVE HAMILTON
MOLLY M. HAMILTON
Hamilton Law Firm, P.C.
12345 University Avenue, Suite 309
Clive, Iowa 50325
(515) 309-3536
(515) 309-3537 (FAX)
steve@hamiltonlawfirmpc.com
molly@hamiltonlawfirmpc.com
ATTORNEYS FOR APPELLANTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Other:

STATEMENT OF ISSUES PRESENTED FOR REVIEW

WHETHER THE TRIAL COURT ERRED WHEN IT CONSIDERED AND APPLIED THE OBLIGATIONS AND CONTENTS OF THE UNDISCLOSED HORIZONTAL REGIME DOCUMENT AND DECLINED TO CONSIDER THE LEASE BETWEEN PLAINTIFFS AND DEFENDANT OR THE IOWA UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT. IOWA CODE 562A

Cases:

Dickson v. Hubbell Realty Company,
567 N.W.2d 427 (1997)
Khan v. Heritage Property Management,
584 N.W.2d 785 (1998)
Walsh v. Nelson,
622 N.W.2d 499 (Iowa, 2001)
Kline v. Southgate Property Management LLC,
895 N.W.2d 429 (2017)
Cohen v. Clark,
945 N.W.2d 792 (2020)

Statutes:

Iowa Code 562A
Iowa Code 562A.6(7)
Iowa Code 562A.10
Iowa Uniform Residential Landlord Tenant Act (IURLTA) Iowa Code 562A

Other:

Animal House, (1978)

ROUTING STATEMENT

Plaintiffs believe this matter should be routed to the Iowa Court of Appeals because it presents no new issues for which the Supreme Court is the appropriate Court under Iowa R. Civ. P. 6.1101(3)(b). The Trial Court committed error when it failed to give any weight to either the residential lease between landlord and tenant or the Iowa Uniform Residential Landlord And Tenant Act when Iowa law clearly requires that. (IURLTA) Iowa Code 562A.

STATEMENT OF THE CASE

This is a suit for damages for personal injuries. (Amended App. Pp. 5-6). It is brought by husband and wife tenants, Cameron and Shelley Barnes, who leased a condominium from Defendant under a written residential lease. (Amended App. Pp. 8-9). On February 19, 2019, a cold winter day, Plaintiff Shelley Barnes slipped and fell because she stepped on some ice in the driveway that had been vented from a roof eavestrough onto a driveway surface rather than to bare ground. Water from the roof was vented down a vertical eavestrough onto the driveway surface. When temperatures dropped, it obviously froze. Plaintiff tenant Shelley Barnes alleged she slipped and fell on the ice vented from the downspout. (Amended App. Pp. 150 & 159).

Defendant CDM Rentals LLC, which leased the unit to Plaintiffs, argued it could not be liable as a matter of law because the condominium it owned and rented to Plaintiffs was subject to a DECLARATION OF SUBMISSION OF PROPERTY TO HORIZONTAL PROPERTY REGIME FOR BROOK RUN PARKS (hereafter DECLARATION) (Amended App. P. 21, et. seq.) which provided that the individual condominium owner had property ownership up to and including the interior walls but not beyond. (Amended App. P. 21).

Defendant argued that the nonparty homeowners' association had ownership of and responsibility for external walls and grounds outside the walls. (Amended App. P. 21, Para. 2). Because Plaintiff Shelley Barnes fell outside the external walls on the driveway, Defendant CDM Rentals argued it had no responsibility for Shelley's physical injuries as a matter of law. (Amended App. P. 14).

Plaintiffs argued that while that might normally be the case, Plaintiffs' relationship with CDM was governed by the landlord-tenant lease that Plaintiffs had agreed to at Defendant's request, as well as the Iowa Uniform Residential Landlord and Tenant Law (Iowa Code 562A), and not the undisclosed horizontal regime agreement.

The lease Plaintiffs signed required that Plaintiff Shelley Barnes park her car in the driveway where she fell.

(Amended App. P. 128). It further incorporated landlord-tenant responsibility under Iowa Code 562A so CDM could not escape liability on the basis of its horizontal regime argument.

Further, Defendant had orally told Shelley Barnes that driveway 107 was part of the lease of condominium unit 107 and parking elsewhere could lead to a financial penalty. (Amended App. 159, Para. 6).

On Defendant's Motion for Summary Judgment, Judge Gogerty recognized the undisclosed horizontal regime limitations and granted summary judgment. (Amended App. P. 164). The Court did not consider the content of the lease or the Iowa Uniform Residential Landlord and Tenant Act as having any effect and found Defendant not liable as a matter of law based upon the DECLARATION.

From this Ruling, Plaintiffs filed a timely notice of appeal.

STATEMENT OF FACTS

Cameron Barnes and Shelley Barnes, husband and wife, entered into a lease arrangement with CDM Rentals LLC on September 17, 2015. (Amended App. Pp. 126-131). The lease was signed by landlord but not signed by tenants. However, the parties operated by it for almost four years as it applied to a condominium unit known as 3799 Village Run Drive #107 in Des Moines, Iowa. Defendant agrees that "a rental agreement" was in effect on February 19,

2019. (Amended App. P. 11, Para. 3) This written lease was the only rental agreement.

Shelley Barnes alleges in her Petition at Law that she slipped in the driveway due to negligence of Defendant, severely injuring herself. (Amended App. P. 5, Para. 4). This fall was caused by the fact that the eavestrough siphoned moisture from the roof onto the driveway where it would be subject to freeze and thaw. On the above date, Shelley stepped on ice from the trough slipping because of the ice that had formed from the drained moisture. (Amended App. P. 151).

She and her husband, Cameron, brought suit against the landlord, Defendant CDM Rentals LLC. (Amended App. Pp. 5-6).

CDM sought to avoid liability claiming that the instant property is a condominium subject to a horizontal regime property agreement. Subject to that agreement, it claims that CDM Rentals LLC only owns the property up to the interior walls. (Amended App. P. 21, Para. 2). Because the eave spout in issue was outside the exterior walls of the unit, CDM Rentals LLC contends it was not responsible for its condition and therefore could not be responsible for damages in this case. (Amended App. Pp. 16-17)

Defendant moved for summary judgment claiming that because it did not own exterior surfaces of the unit or anything

beyond, it could not be held responsible for Shelley's fall in unit #107 driveway. (Amended App. P. 14).

Plaintiffs Cameron and Shelley Barnes resisted, arguing that a rental lease and oral statements describing the rented property as well as Iowa Code 562A, controlled and CDM was liable as a landlord.

The Trial Court ruled that the Horizontal Regime document carried the day and Defendant was not liable because it did not own or control outer walls or beyond. (Amended App. P. 164)

Plaintiff Shelley Barnes had stated in her affidavit that she was told by CDM Rentals, LLC, that driveway marked 107 corresponded to the unit they leased, and it was part of the rented property Unit 107, and she should park there. (Amended App. 159, Para. 4).

This directive is also in her lease. (Amended App. P. 128).

The Trial Court ignored the latter two documents and the IURLTA or at least gave them no credit against the horizontal regime agreement. The Trial Court obviously did not consider the statements in Shelley's Affidavit or the lease and ruled that the Horizontal Regime controlled and because it did not give Defendant control of the outer area of the unit, Defendant had no liability. (Amended App. P. 164).

Plaintiffs filed a timely Notice of Appeal.

STATEMENT OF PRESERVATION OF ISSUE

Plaintiff preserved error on this issue because they filed a Resistance to Defendant's Motion for Summary Judgment and a Surreply to Defendant's Motion for Summary Judgment.

STANDARD OF APPELLATE REVIEW

The standard of review on appeal from summary judgment is for correction of errors at law. Kiesau v. Bants, 686 N.W.2d 164 (2004). Faeth v. State Farm Mutual Automobile Insurance Company, 707 N.W.2d 328 (2005). See also Smith v. Shagnasty's, 688 N.W.2d 67 (2004); and Banwart v. 50th Street Sports LLC, 910 N.W.2d 540 (Iowa, 2018).

Plaintiffs submit that the Trial Court committed error. It failed to recognize the contract-lease right of the Plaintiffs under either the written lease or the IURLTA.

ARGUMENT

THE TRIAL COURT ERRED WHEN IT CONSIDERED AND APPLIED THE OBLIGATIONS AND CONTENTS OF THE HORIZONTAL REGIME DOCUMENT AND DECLINED TO CONSIDER THE LEASE BETWEEN PLAINTIFFS AND DEFENDANT OR THE IOWA UNIFORM RESIDENTIAL LANDLORD TENANT ACT. IOWA CODE 562A.

In its decision, the Trial Court stated, "The issue in this case is whether CDM Rentals had control over the common areas." (Amended App. P. 164). This statement, of course, honors

the Horizontal Regime declaration over the lease that CDM and Barnes operated under as well as any other principal of law.

First of all, there is nothing in the record that indicates that Barnes' were ever informed of the horizontal regime agreement or presented with the opportunity to comply with same, even though the DECLARATION OF PROPERTY SUBJECT TO HORIZONTAL PROPERTY REGIME obligates the unit owner to incorporate that agreement into his/her/its lease. (Amended App. P. 27, Para. C). The lease drafted by CDM does not do this. (Amended App. Pp. 140-145).

On the other hand, the lease drafted by CDM obligates the tenants in many ways. "Tenant shall park no vehicle on the subject property except in the driveway provided." (Amended App. P. 144). This obligation was reinforced in the oral statement to Shelley that she would be required to park in driveway 107. (Amended App. P. 159, Para. 6).

It may appear the lease was not signed by tenants. However, this is of no moment to the case. Iowa Code 562A.10.

The Iowa Uniform Residential Landlord and Tenant Law Iowa Code 562 A defines the premises to be delivered. "'Premises' means a dwelling unit and the structure of which it is a part and facilities and appurtenances of it and grounds, areas and

facilities held out for the use of tenants generally or *whose use is promised to the tenant*." 562A.6(7) (emphasis supplied).

The driveway of unit 107 is, of course, promised to the tenant both orally and in the lease. Tenants have no choice of where to park as dictated by the landlord.

Past precedent in Iowa states that "a lease is a conveyance and a contract". Dickson v. Hubbell Realty Company, 567 N.W.2d 427 (1997). See also Khan v. Heritage Property Management, 584 N.W.2d 785 (1998). "Abandonment clause [in a lease] gave landlord the contractual right to remove and store the property." 584 N.W.2d @728; Walsh v. Nelson, 622 N.W.2d 499 (Iowa, 2001) "Because leases are contracts as well as conveyances, ordinary contract principals apply." 622 @503.

There is little doubt that a landlord-tenant occupancy agreement is subject to the requirements of the Iowa Uniform Residential Landlord Tenant Act. Kline v. Southgate Property Management LLC, 895 N.W.2d. 429 (2017) "In adopting the landmark reform measure, the general assembly prescribed in some detail the obligations landlords and tenants owe to each other." 895 N.W.2d @438.

A more recent case, to wit: Cohen v. Clark, 945 N.W.2d 792 (2020) speaks further and more specifically to this issue,

“Contractual liability is strict lability; a breach is a breach, whether committed in good faith or not.” 945 N.W. 2d. @806.

Here CDM Rentals LLC entered into a lease. That lease is also governed by the Iowa Uniform Residential Landlord and Tenant Act. The lease itself states that where it is found in any part to conflict with the IURLTA, such part must fail. It leaves no doubt that the IURLTA applies both by their written agreement and by statute.

Defendant seeks to out itself from liability because the duties it agreed to assume are not required under the Horizontal Property Regime Agreement. There is a slight element of irony here because CDM is required under the DECLARATION to incorporate same into any lease. It did not do that and now seeks escape on the basis of that document.

This irony has a long history of repetition. “You screwed up..., you trusted us.” Otter, Animal House (1978).

In its ruling the Trial Court failed to consider any of these longstanding contractual rules.

Contractual liability is strict liability. Defendant must perform the acts required of it in the lease as well as under the Iowa Uniform Residential Landlord Tenant Law. The fact that it may be more difficult is not an excuse.

Cohen, supra, is an example. There the landlord acting in good faith between a tenant with an ESA (emotional support animal) and a tenant with an allergy. It was caught between a veritable rock and a hard place. Nonetheless, it got no pass and strict contract-landlord tenant law was applied. In furtherance, the Court stated, "We recognize that Cohen's lease is a residential lease governed by Iowa Code Chapter 562A, the Iowa Uniform Residential Landlord Tenant Act". (IURLTA) 945 @ 807.

Here Defendant drafted and carried out a lease under the above law which lease was continued from September 2015 to February 2019. That lease, by law and by content, contained obligations. The Defendant sought to escape liability by saying the lease obligations were "trumped" by the Horizontal Property Regime Act. Like it or not, contract law is strict liability. Defendant is bound by the obligations in the Iowa Uniform Residential Landlord Tenant Act by contract and by Code. Iowa Code 562A. The undisclosed horizontal regime does not change this.

CONCLUSION

The Trial Court committed error by disregarding the written lease of the parties and the IURLTA which required Defendant to keep a safe premises. The fact that it was made more difficult by the existence of the Horizontal Property Regime is of

no moment. For this reason, this case should be reversed and proceed to trial.

Respectfully submitted,

_/s/__Steve Hamilton_____
STEVE HAMILTON, AT0003128
MOLLY M. HAMILTON, AT0013636
Hamilton Law Firm, P.C.
12345 University Avenue, Suite 309
Clive, Iowa 50325
(515) 309-3536
(515) 309-3537 (FAX)
steve@hamiltonlawfirmpc.com
molly@hamiltonlawfirmpc.com
ATTORNEYS FOR APPELLANTS

REQUEST FOR ORAL ARGUMENT

Appellants, Shelley Barnes and Cameron Barnes, Wife and Husband, request oral argument in this matter.

Respectfully submitted,

_/s/__Steve Hamilton_____
STEVE HAMILTON, AT0003128
MOLLY M. HAMILTON, AT0013636
Hamilton Law Firm, P.C.
12345 University Avenue, Suite 309
Clive, Iowa 50325
(515) 309-3536
(515) 309-3537 (FAX)
steve@hamiltonlawfirmpc.com
molly@hamiltonlawfirmpc.com
ATTORNEYS FOR APPELLANTS

CERTIFICATE OF FILING

I, Steve Hamilton, hereby certify that I have filed the foregoing "Final Brief of Appellants" with the Clerk of the Supreme Court of Iowa through the ECF/EDMS System on November 19th, 2021.

_/s/__Steve Hamilton_____
STEVE HAMILTON, AT0003128
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I, Steve Hamilton, hereby certify that on this same date, I served the attached "Final Brief of Appellants" through the ECF/EDMS System on the following:

Mr. Kelly W. Otto
Attorney at Law
P.O. Box 77055
Madison, WI 53707
kotto@amfam.com
ATTORNEY FOR APPELLEE

_/s/_Steve Hamilton_____
STEVE HAMILTON, AT0003128
ATTORNEY FOR APPELLANT

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs.App.P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

This brief has been prepared in a monospaced typeface using Courier New in 12 characters per inch and contains 236 number of lines of text, excluding the parts of the brief exempted by Iowa R.App.P.6.903(1)(g)(2).

_/s/ Steve Hamilton_____
STEVE HAMILTON, AT0003128
ATTORNEY FOR APPELLANT