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

APPLICATION FOR FURTHER REVIEW

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QUESTIONS PRESENTED FOR REVIEW

I. **DID THE COURT OF APPEALS ADEQUATELY ADDRESS THE CLAIMS OF NEGLIGENCE OF PLAINTIFFS WHEN IT DID NOT CONSIDER THE NEGLIGENT PLACEMENT OF THE DOWNSPOUT THAT SIPHONED MELTING ICE AND SNOW INTO THE DRIVEWAY OF PLAINTIFFS APARTMENT?**

II. **DID THE COURT OF APPEALS COMMIT ERROR BY ELEVATING THE HORIZONTAL REGIME AGREEMENT OVER THE LANDLORD TENANT LEASE?**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

Other:

STATEMENT SUPPORTING FURTHER REVIEW

Appellants Barnes rented a condominium unit from Defendant CDM. The condominium was subject to a horizontal regime agreement. Plaintiff Shelley Barnes fell in the driveway of the condominium unit she and Cameron had rented from CDM Rentals. The drain spout from the roof exited snow and ice melting into the middle of the driveway. She sued CDM Rentals arguing this was negligent. CDM Rentals defended saying that the rented condominium unit was subject to a horizontal regime agreement which limited the owner of the unit's responsibility to the inner walls of the respective unit. The homeowner's association owned outer walls and was responsible for same.

The Trial Court granted Summary Judgment because it ruled that the horizontal regime agreement controlled Defendant CDM Rentals responsibility to Plaintiffs to go only to the inner walls. The Court of Appeals agreed.

The Supreme Court should grant further review because the Court of Appeals decision commits two errors. First, it does not give adequate consideration to the fact that the Iowa Uniform Landlord Tenant Act should control over a horizontal regime creation, and second, the decision fails to address the true negligent claim of the Plaintiffs, which was a downspout emptying

water from the roof into the middle of the driveway instead of emptying same onto the ground.

Further review of the Court of Appeals decision is necessary because the Court of Appeals decision elevates the effect of a horizontal regime agreement to a level above an Iowa Landlord-Tenant Agreement. This is error.

Furthermore, the Court of Appeals ignored the factual argument concerning the negligence of the Landlord in leasing a premises that drained moisture from the roof of the building to the surface of the driveway creating a slippery condition that caused Plaintiff Barnes to fall and be injured. Instead of considering the negligence of the Landlord in providing a premises that drained melting ice and snow to the surface of a driveway by means of an improperly placed eaves spout/downspout, the Court of Appeals considered who was obligated to remove the frozen moisture once it was in the driveway.

The Court of Appeals misunderstood the charge of negligence made by Appellants. The Court of Appeals did not properly interpret the Landlord-Tenant Law in this case. It construed Appellant Barnes argument to be an argument for continued maintenance by the Landlord after execution of the lease when it was an argument for negligence in providing a downspout emptying melting ice and snow onto the driveway as opposed to ground.

ARGUMENT

I. THE COURT OF APPEALS INADEQUATELY ADDRESSED THE CLAIMS OF NEGLIGENCE OF PLAINTIFFS WHEN IT DID NOT CONSIDER THE NEGLIGENT PLACEMENT OF THE DOWNSPOUT THAT SIPHONED MELTING ICE AND SNOW INTO THE DRIVEWAY OF PLAINTIFFS' APARTMENT.

Cameron and Shelley Barnes leased a condominium from CDM Rentals Inc. Defendant CDM prepared a written agreement. (Amended App. 144-148). The lease while not signed, was in effect for a period of just under four years from its incipience (September 2015) to the time Shelley fell on February 19, 2019, in the driveway of the leased condominium. (Amended App. 149-150).

The leased premises had a driveway attached to the garage for Unit 107, the unit Barnes leased. (App. 123). The premises had a drain spout running from the roof to the middle of the driveway that Barnes Unit #107, shared with the adjacent Unit #106. This drain spout would drain water from the roof to the surface of the driveway. (App. 159).

Shelley's Affidavit Resisting Defendant's Motion for Summary Judgment contends she fell because of the moisture draining from the roof to the driveway then refreezing. (Amended App. 149-150).

Plaintiffs contend the written agreement prepared by CDM Rentals Inc., is a lease governed by the Iowa Uniform Landlord Tenant Rental Act (IULTRA). Plaintiffs cited *Cohen v. Clark,* 945 N.W.2d 792 (Iowa, 2020) for the proposition that a Landlord is bound by the Iowa Uniform Landlord Tenant Rental Act.

That is also the holding of *Caruso v. Apts. Downtown, Inc.,* 880 N.W.2d 465 (Iowa, 2016), where the Landlord was not permitted under the IULTRA act, to shift all repair obligations of the premises to the Tenant when the Act says otherwise. "Iowa Code Section 562A.15 requires the Landlord, not the tenant, to maintain fit premises including making all repairs and doing whatever is necessary to put and keep the premises in a fit and habitable condition." 880 N.W.2d 470.

Plaintiffs' Barnes contend that the failure to route the downspout from the roof to the yard, rather than into the middle of the driveway, was a failure to "keep the premises in a fit and habitable condition".

II. THE COURT OF APPEALS COMMITTED ERROR BY ELEVATING THE HORIZONTAL REGIME AGREEMENT OVER THE LANDLORD TENANT LEASE.

The premises leased by the Landlord, CDM Rentals, was a condominium. Because it was a condominium, it was subject to a horizontal regime. Defendant contends that the fact there is a horizontal regime document exonerates the Defendant from any responsibility for the downspout and driveway because the horizontal regime agreement made the condominium owner responsible for property up to the inner walls of the particular unit, and the HOA or Homeowners Association was responsible for the outer walls and grounds.

However, it is Plaintiffs' argument that by entering into the lease agreement, the terms of the Iowa Uniform Landlord and Tenant Rental Act are incorporated and the Landlord assumes responsibility dictated by the Iowa Uniform Landlord Tenant Rental Act. In other words, the Landlord Tenant relationship supercedes the Homeowners Association. Certain lease contents are illegal and impermissible in a Landlord Tenant relationship. *Walton v. Gaffey,* 895 N.W.2d 422 (Iowa, 2017).

In this case, Defendant CDM entered into a landlord tenant agreement with Plaintiffs Shelley and Cameron Barnes. The leased property had an eave spout/downspout that emptied into the middle of the driveway. (Amended App. 162). The condition existed before the lease was entered into.

One winter day Shelley slipped on ice that accumulated at the base of the downspout which had vented from the roof. (App. 148). Her suit was based on this defective downspout.

The Barnes suit was based on the claim that the eave spout was an unsafe condition.

CONCLUSION

The Supreme Court should grant further review so that it may confirm that a horizontal regime agreement does not trump a Landlord Tenant lease agreement regarding maintenance of conditions of the premises of the property subject to the

horizontal regime. The Court should also consider Plaintiff's argument that the downspout siphoning melting snow and ice from the roof to the driveway was arguably negligent.

Respectfully submitted,

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REQUEST FOR ORAL ARGUMENT

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

Respectfully submitted,

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CERTIFICATE OF FILING

I, Steve Hamilton, hereby certify that I have filed the foregoing "Application for Further Review" with the Clerk of the Supreme Court of Iowa through the ECF/EDMS System on May 31, 2022.

_/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 "Application for Further Review" through the ECF/EDMS System on the following:

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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 121 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_____
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IN THE COURT OF APPEALS OF IOWA

No. 21-0854
Filed May 11, 2022

SHELLEY BARNES and CAMERON BARNES,
Plaintiffs-Appellants,

vs.

CDM RENTALS, LLC,
Defendant-Appellee.

Appeal from the Iowa District Court for Polk County, Celene Gogerty, Judge.

Tenants appeal the grant of summary judgment for a rental company in this premises liability action. **AFFIRMED.**

Steve Hamilton and Molly M. Hamilton of Hamilton Law Firm, P.C., Clive, for appellants.

Kelly W. Otto, Madison, Wisconsin, for appellee.

Considered by Vaitheswaran, P.J., and Tabor and May, JJ.

MAY, Judge.

Shelley and Cameron Barnes appeal a district court order granting summary judgment for CDM Rentals, LLC (CDM) in a premises liability action. We affirm.

I. Background Facts & Proceedings

Brook Run Village is a condominium community in Des Moines. It is governed by a "Declaration of Submission of Property to Horizontal Property Regime for Brook Run Parks" (the declaration) pursuant to Iowa Code chapter 499B (2021). The declaration created a homeowners' association (HOA). It also divides ownership of the property within the community. Specifically, the declaration separates the community into common elements—which are held by the HOA for the benefit of all tenants—and private apartments. The boundaries of each apartment are "the interior unfinished surface of the walls, floors, and ceilings thereof." In other words, an apartment is limited to the interior walls of an individual dwelling—and everything else in the community is a common element. But some common elements are designated as "limited common elements." The limited common elements are those designed only to serve the residents of a single apartment. For example, garages and driveways.

The declaration also delegates maintenance responsibilities between the HOA and owners of individual apartments. The HOA is responsible for the "maintenance, repair, and replacement"—including "snow removal"—of all common elements. This includes limited common elements, such as the "private driveways" assigned to particular apartments. Individual apartment owners are expressly prohibited from repairing or maintaining these common elements.

CDM owns apartment 107 in Brook Run Village. A private driveway is assigned to apartment 107. The Barneses signed a lease with CDM to rent apartment 107. They lived there and used the assigned driveway.

One day, Shelley allegedly slipped and fell in the driveway. The Barneses sued CDM for negligent failure to clear ice and snow that allegedly caused Shelley's fall. CDM moved for summary judgment. CDM argued that because "it did not own or control" the driveway—a limited common element—CDM had no duty to maintain the driveway. The district court agreed and granted CDM's motion. The Barneses appeal.

II. Standard of Review

"We review summary judgment rulings for correction of errors at law." *Roll v. Newhall*, 888 N.W.2d 422, 425 (Iowa 2016). Summary judgment is appropriate when the record shows "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3).

III. Discussion

Under the common law, "a landlord is not liable for injuries caused by the unsafe condition of the property arising after it is leased, provided there is no agreement to repair." *Allison by Fox v. Page*, 545 N.W.2d 281, 283 (Iowa 1996). But "this rule does not apply where the [landlord] retains control, or the [landlord] and tenant have joint control" over the place where the injury occurs. *Stupka v. Scheidel*, 56 N.W.2d 874, 877 (Iowa 1953). This rule and exception reflect a "common principle: liability is premised upon control." *Allison*, 545 N.W.2d at 283.

As the district court put it, then, a central "issue in this case is whether CDM Rentals had control over the common areas," and particularly the driveway.

Like the district court, we think it is undisputed that CDM did not have control over the driveway's maintenance. *See Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 814 (Iowa 1994) (holding "the issue of [control] is inescapably part of the duty issue, which is necessarily and properly determined as a matter of law by the court"). In their appellate brief, the Barneses do not claim that CDM controlled the driveway's maintenance.[1] Plus, under the plain terms of the declaration, the HOA—not CDM—is responsible for the "maintenance, repair, and replacement" of limited common elements, including "private driveways." Indeed, the declaration literally *prohibited* CDM from maintaining the driveway. And because CDM lacked control over the driveway's maintenance, CDM had no common law duty to keep the driveway clear of snow or ice. *See Allison*, 545 N.W.2d at 283.

Even so, the Barneses argue their lease imposed a *contractual* duty on CDM to maintain the driveway. We disagree. Of course, as the Barneses note, the lease permitted the Barneses to park on the driveway assigned to apartment 107.[2] And the Barneses were not permitted to park on any other driveway. But

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[1] We have not overlooked the Barneses' complaint that—although the declarations required CDM to incorporate the declarations into the Barneses' lease—the lease does not mention the declaration. But the Barneses do not claim this invalidated the declarations. Nor do they explain how this possible violation of the declarations could have provided CDM with the right or responsibility to maintain the driveway.

[2] Thinking again about the control issue under the common law: It is true CDM had "control" over the driveway in the narrow sense that it could have declined to lease the apartment to the Barneses and, by doing so, CDM could have prevented the Barneses from having any right to park on the driveway assigned to the apartment. We suppose every condominium owner with a corresponding driveway has this sort of power. But the Barneses have not cited—and we have not found—authority

the Barneses do not cite any provision of the lease that required CDM to clear snow or ice from the driveway. So we conclude the Barneses have failed to show CDM owed a contractual duty of driveway maintenance.

The Barneses also claim the Iowa Uniform Residential Landlord and Tenant Act (IURLTA) imposed a duty on CDM to maintain the driveway *even though* CDM lacked control over the driveway's maintenance. *See* Iowa Code § 562A.1. But the Barneses cite no provision of the IURLTA that creates this duty. While they make a general claim that "the IURLTA . . . required [CDM] to keep a safe premises," they do not cite any specific *words* that imposed this requirement on CDM. *See Beverage v. Alcoa, Inc.*, No. 19-1852, 2021 WL 1016602, at *2 (Iowa Ct. App. Mar. 17, 2021) ("We find the Code's meaning in its words."); *see also* Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."). Their brief cites only two specific IURLTA provisions: sections 562A.6(7) and 562A.10. But section 562A.6(7) only provides a general definition of the term "premises,"[3] while section 562A.10 only confirms that—although the Barneses did not sign their lease—it is still effective. Neither section obligates a condominium owner to maintain a driveway that the condominium owner has no right to maintain. So we conclude the Barneses have failed to show CDM owed a statutory duty.

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suggesting that this power is sufficient to impose premises liability for an accident that occurs in an area that the condominium owner had no right to maintain.

[3] Section 562A.6(7) defines "premises" as "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." Note, however, that the definitions in section 562A.6 apply "unless the context otherwise requires."

IV. Conclusion

The Barneses have not shown the district court erred in granting summary judgment. We affirm.

AFFIRMED.

IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	**Case Title**
21-0854	Barnes v. CDM Rentals, LLC

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SHELLEY BARNES and CAMERON BARNES, Wife and Husband, Plaintiffs, vs. **CDM RENTALS, LLC, a Limited Liability Corporation,** Defendant.	**Case No. LACL149560** **RULING ON MOTION FOR SUMMARY JUDGMENT**

CDM Rentals moves for summary judgment, claiming they were not responsible for the property where Plaintiff Shelley Barnes fell. The Plaintiffs resist.

CDM Rentals owns a condominium at Brook Run Park which they rented to the Plaintiffs. On February 19, 2019, Ms. Barnes fell on ice that formed from a downspout along the exterior wall of the garage located at Brook Run Park. CDM Rentals claim the condominium association was responsible for the common areas at Brook Run and therefore CDM Rentals is not liable.

Summary judgment is available only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008); *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 483 (Iowa 2007). An issue of material fact occurs when the dispute involves facts that might affect the outcome of the suit under the applicable law. *Wallace v. Des Moines Independent Community School Dist. Bd. of Directors*, 754 N.W.2d 854, 857 (Iowa 2008). An issue is "genuine" when the evidence allows a reasonable fact finder to return a verdict for the non-moving party. *Id*. The burden of showing the nonexistence of a material fact is on the moving party, and every legitimate inference that reasonably can

be deduced from the evidence should be afforded the nonmoving party. *Id.*; *Rodda*, 734 N.W.2d at 483.

Condominiums are governed by Iowa Code Chapter 499B. Pursuant to that chapter, a declaration was made by the owners of Brook Run Park. In that declaration, all portions of the real estate, other than the apartments, are common elements. The declaration defines the boundaries of the apartments as the interior unfinished surface of the walls, floors and ceilings. The declaration also states the condominium association is responsible for maintenance, repair, and replacement of the common elements. No individual apartment owner is allowed under the declaration to perform any of the common area maintenance, repair or replacement.

As a general rule, a landlord is not liable for injuries caused by the unsafe condition of the property arising after it is leased, provided there is no agreement to repair." *Allison by Fox v. Page*, 545 N.W.2d 281, 283 (Iowa 1996); see also Restatement (Second) of Torts § 356, at 240. An exception to this rule "includes circumstances in which the landlord retains control, or the landlord and tenant have joint control over the premises where the injury occurs." *Fouts ex rel. Jensen v. Mason*, 592 N.W.2d 33, 38 (Iowa 1999) (observing this exception generally applies "where the injury is caused by the condition of common areas over which the landlord, alone or jointly with the tenant, has control").

The issue in this case is whether CDM Rentals had control over the common areas. The declaration established that not only the association was responsible for maintenance, repair, and replacement of the common elements but that no individual apartment owner was allowed to perform any of the common area maintenance, repair or replacement. These clauses of the declaration, read together, establishes CDM Rentals did not retain sufficient control over the common areas and therefore not liable for injuries

occurring in those spaces. *See Van Essen v. McCormick Enterprises Co.,* 599 N.W.2d 716 (Iowa 1999).

The Plaintiffs cite the Uniform Residential Landlord and Tenant Act ("ULTA"), which requires landlords to maintain common areas. ULTA, however, must be read in conjunction with the Horizontal Property Act. ULTA requires landlords to maintain common areas but this also presumes a landlord has control over those areas. The Horizontal Property Act and the Brook Run declaration establish the owner/landlord of an individual condominium has no control over the common areas, including the ability to maintain or repair these areas.

As CDM Rentals had no control over the common areas, they are not subject to liability resulting from harm which occurred there. It is therefore the ORDER of the Court the Defendant's Motion for Summary Judgment is SUSTAINED. Costs are assessed to the Plaintiffs.

SO ORDERED.

State of Iowa Courts

Case Number	**Case Title**
LACL149560	SHELLEY BARNES ET AL VS CDM PROPERTIES LLC
Type:	OTHER ORDER

So Ordered

Celene Gogerty, District Judge
Fifth Judicial District of Iowa

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