IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ERIN CIPRIANI,	: NO. 08 – 00,100
Plaintiff	:
	: CIVIL ACTION - LAW
vs.	:
	:
THOMAS W. APPLEGATE, SR. and JAMES APPLEGATE,	:
	:
Defendants	: Motion for Summary Judgment

OPINION AND ORDER

Before the Court is a motion for summary judgment filed by Defendants on December 17, 2008. Argument on the motion was heard February 25, 2009.

In her Complaint, Plaintiff claims she was injured when she fell on the porch of her landlord and neighbor, Defendant James Applegate.[1] Plaintiff alleges Defendants were negligent in failing to keep the porch in good repair and/or to warn of its dangerous condition. In their motion for summary judgment, Defendants argue that Plaintiff knew of the porch's condition and the risk involved in walking upon it, and that she is thus precluded from recovery.

Defendants rely on Section 342 of the Restatement (2d) of Torts, which has been adopted by the Courts of this Commonwealth:[2]

> The possessor of land is subject to liability for physical harm caused to licensees by a condition on the land if, but only if,
>
> (a) the possessor knows or has reason to know of the condition and should realize that it involves an unreasonable risk of harm to such licensees, and should expect that they will not realize or discover the danger, and
>
> (b) he fails to exercise reasonable care to make the condition safe, or to warn the licensees of the condition and the risk involved, and

[1] The evidence produced in discovery shows that Plaintiff and Defendant James Applegate resided in separate first floor apartments in the same building, and that their porches were separate but adjacent. Thomas Applegate, Sr. and James Applegate owned the building.

[2] *See* Keck v. Doughman, 572 A.2d 724 (Pa. Super. 1990)

(c) the licensees do not know or have reason to know of the risk involved.

Restatement (2d) of Torts, Section 342. As Plaintiff's deposition testimony showed that she clearly knew of the condition of the porch and the risk involved, the Court agrees that, if applicable, Section 342 precludes Plaintiff from recovering for her injuries.

Plaintiff argues that Section 342 is not applicable, however, but, rather, that Section 361, the rule applicable to landlord/tenant situations, is applicable, citing Pratt v. Scott Enterprises, Inc., 218 A.2d 795, 798 (Pa. 1966)(emphasis added), for the following:

> A possessor of land, who leases a part thereof and retains in his own control any other part *which is necessary to the safe use of the leased part*, is subject to liability to his lessee … for bodily harm caused to them by a dangerous condition upon that part of the land retained in the lessor's control, if the lessor by the exercise of reasonable care (a) could have discovered the condition and the risk involved therein, and (b) could have made the condition safe.

The Court finds this section inapplicable, however, because the evidence shows that the porch of James Applegate was not necessary to the safe use of Plaintiff's apartment. While counsel argues that Plaintiff had to come across the porch to pay her rent, there is no evidence of record to that effect and, in fact, on the date of her alleged injury, Plaintiff was taking soup to Mr. Applegate, not paying her rent.

Therefore, as Plaintiff is precluded from recovery by her knowledge of the porch's condition and the risk involved in walking across it, summary judgment is appropriate.

ORDER

AND NOW, this 5th day of March 2009, for the foregoing reasons, the motion for summary judgment is GRANTED. Judgment is hereby entered in favor of Defendants and against Plaintiff.

BY THE COURT,

cc: John Bonner, Esq.
Rebecca Penn, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

Dudley N. Anderson, Judge