IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CATHY ALEXANDER.	:	
Plaintiff	:	CV 24-00061
v.	:	
	:	
ECM REALTY MANAGEMENT, INC.	:	
AND EDMUND C. METZGER	:	
Defendants	:	

ORDER ON MOTIONS FOR SUMMARY JUDGMENT

I. Introduction:

This matter came before this Court for argument on the Motion for Summary Judgment filed by the Defendants on March 18, 2025.

II. The Test for Summary Judgment:

In Pennsylvania, a party may move for summary judgement "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action…" Pa.R.C.P. No. 1035.2(1). In response, the adverse party may not rest on denials but must respond to the motion. Pa.R.C.P. No. 1035.3(a). The non-moving party can avoid an adverse ruling by identifying "one or more issues of fact arising from evidence in the record" Pa.R.C.P.1035.3(a)(1).

In considering a motion for summary judgment, it is not the Court's function to decide issues of fact. Rather, is it our function to decide whether an issue of fact exists. *Fine v. Checcio,* 582 Pa. 253, 273, 870 A.2d 850, 862 (2005).

> Summary judgment is appropriate only when the record clearly shows that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. The reviewing court must view the record in the light most favorable to the nonmoving party and resolve all doubts as to the existence of a genuine issue of material fact against the moving party. Only when the facts are so clear that reasonable minds could not differ can a trial court properly enter summary judgment.
> *Hovis v. Sunoco, Inc.,* 2013 Pa.Super. 54, 64 A.3d 1078, 1081, quoting *Cassel-Hess v. Hoffer*, 44 A.3d 84-85 (Pa.Super. 2012).

In the matter of *Accu-Weather, Inc. v. Prospect Commc'ns, Inc.*, 435 Pa. Super. 93, 644 A.2d 1251 (Pa. Super. Ct. 1994), the Court described the proper test for a grant of summary judgment as follows:

> First, the pleadings, depositions, answers to interrogatories, admissions on file, together with any affidavits, must demonstrate that there exists no genuine issue of fact. Pa.R.C.P. 1035(b). Second, the moving party must be entitled to judgment as a matter of law. *Id.* The moving party has the burden of proving that no genuine issue of material fact exists. *Overly v. Kass,* 382 Pa.Super. 108, 111, 554 A.2d 970, 972 (1989). However, the non-moving party may not rest upon averments contained in its pleadings; the non-moving party must demonstrate that there is a genuine issue for trial. The court must examine the record in the light most favorable to the non-moving party and resolve all doubts against the moving party. *Stidham v. Millvale Sportsmen's Club,* 421 Pa.Super. 548, 558, 618 A.2d 945, 950 (1992), *appeal denied,* 536 Pa. 630, 637 A.2d 290 (1993) (citing *Kerns v. Methodist Hosp.,* 393 Pa.Super. 533, 536–37, 574 A.2d 1068, 1069 (1990)). Finally, an entry of summary judgment is granted only in cases where the right is clear and free of doubt. *Ducko v. Chrysler Motors Corporation,* 433 Pa.Super. 47, 48, 639 A.2d 1204, 1205 (1993) (citing *Musser v. Vilsmeier Auction Co., Inc.,* 522 Pa. 367, 370, 562 A.2d 279, 280 (1989)). We reverse an entry of summary judgment when the trial court commits an error of law or abuses its discretion. *Kelly by Kelly v. Ickes,* 427 Pa.Super. 542, 547, 629 A.2d 1002, 1004 (1993) (citing *Carns v. Yingling,* 406 Pa.Super. 279, 594 A.2d 337 (1991).

III. Factual Background:

Many of the facts of this matter appear to be substantially undisputed. The Court will review the facts in the light most favorable to the non-moving party. Plaintiff claims that she suffered serious injury when she slipped and fell on ice and/or snow which accumulated in a small parking area at the rear of real property which her husband, Andrew Alexander, rented from the Defendants. It appears that Plaintiff was formerly a tenant of the Defendants on the lease executed by her and by Andrew (hereinafter the "Lease"), but that she was removed from the Lease by a written agreement attached as Exhibit 3 to the Motion for Summary Judgment.

Section 14 of the Lease provides at Subsection 11 that "Any off-street parking area at the leased property is for tenant's vehicle only." Section 15 of the Lease provides that "Tenant agrees that tenant will remove the snow and ice from the sidewalks within 24 hours."

While it is apparently undisputed that Defendants were landlords out of possession of the apartment which is the subject of the Lease, Plaintiff maintains that Defendants retained control over the parking area.

IV. Question Presented:

Whether Defendants are entitled to summary judgment on Plaintiff's claims, based upon their claim that, as landlords out of possession, they have no duty to the Plaintiff.

V. Brief Answer:

Defendants are not entitled to summary judgment.

VI. Discussion:

Defendants are not entitled to summary judgment on Plaintiff's claims, since the question of whether Defendants owed her any duty present material issues of fact for trial.

Defendants accurately observe that a landlord out of possession ordinarily owes no duty of care to third parties who are injured at the leased premises. *Jones v. Levin*, 2007 Pa.Super. 412, 940 A.2d 451, 454, citing *Dorsey v. Continental Associates*, 404 Pa.Super. 525, 591 A.2d 716, 718 (1991). This rule is based upon the fact that, during the term of the lease, Pennsylvania views the lease transaction as the equivalent of a sale. That general rule, however, is far from absolute.

First, the duty of a possessor land to a third party entering that land depends upon whether that party is a trespasser, licensee, or invitee. *Trude v. Martin*, 442 Pa.Super. 614, 624, 660 A.2d 626, 630 (Pa.Super. 1995), citing *Carrender v. Fitterer*, 503 Pa. 178, 469 A.2d 120 (Pa. 1983). That determination is ordinarily a question of fact for the jury. *Palange v. City of Philadelphia, Law Department*, 433 Pa.Super. 373, 640 A.2d 1305 (1994).

Second, where a landlord leases out some areas of a building, but retains control over others, the landlord may be negligent in the maintenance of the areas over which the landlord retains control. *Trude v. Martin*, 442 Pa.Super. 614, 624, 660 A.2d 626, 631 (Pa.Super. 1995), citing Section 360 of the Restatement (Second) of Torts.

> There are a number of exceptions to the general rule of non-liability of a landlord out of possession, one of which is particularly relevant in the instant case: the landlord may be liable if he or she has reserved control over a defective portion of the leased premises or over a portion of the leased premises which is necessary to the safe use of the property (the "reserved control" exception). *Deeter, supra* at 339; *Smith v. M.P.W. Realty Company, Inc.,* 423 Pa. 536, 539, 225 A.2d 227, 229 (1967); *Dorsey, supra* at 718; *Henze, supra* at 1202–03; Restatement (Second) of Torts § 361. The reserved control exception is most clearly applicable to cases involving "common areas" such as shared steps or hallways in buildings leased to

multiple tenants. *See Pagano v. Redevelopment Authority of Philadelphia,* 249 Pa.Super. 303, 376 A.2d 999, 1007 (1977); *see also Dorsey, supra* at 720. However, the applicability of the exception is not limited to such well-defined "common areas." Our Supreme Court invoked the reserved control exception in a case involving an allegedly defective radiator in one tenant's unit of a building occupied by several commercial tenants, after the landlord-owner of the building was sued for negligence by a tenant who had been seriously burned by steam from the radiator. *See Smith, supra* at 538–39, 225 A.2d at 228–29. Importantly, the entire building was served by a central steam-heating system, which was controlled and operated by the landlord. As our Supreme Court explained,

> where the landlord retains control of a part of the leased premises, which is necessary to the safe use of the leased portion, he is liable to the lessee and others lawfully on the premises for physical harm caused by a dangerous condition existing upon that part over which he retains control, if by the exercise of reasonable care he could have discovered the condition and the risk involved, and made the condition safe. *Smith, supra* at 539, 225 A.2d at 29 (citing Restatement (Second) of Torts § 361 and also noting that § 361 had previously been applied to plumbing and heating systems over which the landlord had retained control).

Jones v. Levin, 2007 Pa.Super. 412, 940 A.2d 451, 454-55.

It is clear that Defendants are landlords out of possession of the apartment occupied by Andrew Alexander. It is equally clear that Plaintiff was injured while exiting a vehicle parked in a parking space adjacent to the apartment, which is owned by one of Defendants. While Defendants contend that the adjacent parking space should be considered a portion of the leased apartment, Plaintiff contends that the parking space is either a "common area" or an area over which Defendants have "reserved control." The Court does not have the discretion to resolve that disputed issue of fact.

ORDER

And now, this 10th day of June, 2025, for the reasons more fully set forth above, Defendants' Motion for Summary Judgment is DENIED.

By the Court,

Hon. William P. Carlucci, Judge

cc: Court Administrator
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