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2012 IL App (3d) 120024-U

Order filed November 28, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

CAITLIN WALSTRA,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
Plaintiff-Appellant,)	Grundy County, Illinois,
)	
v.)	
)	Appeal No. 3-12-0024
THEODORE J. SMITH, CATHY S. SMITH,)	Circuit No. 10-L-12
MARGUERITE SMITH, and)	
MARGUERITE SMITH REVOCABLE)	
TRUST NO. 1451, through its Trustee First)	
Midwest Bank,)	Honorable
)	Lance R. Peterson
Defendants-Appellees.)	Judge, Presiding

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* Tenant's suit against landlords for injuries tenant sustained after jumping out of second-story window was properly dismissed because landlord had no duty to provide more than one means of egress.

¶ 2 Plaintiff Caitlin Walstra was a tenant of property owned by defendant Marguerite Smith Revocable Trust and managed by defendants Theodore, Cathy and Marguerite Smith. Early one

morning, plaintiff was awakened by a burglar alarm on the property. Afraid that there was an intruder, plaintiff jumped out of a second-story window and was injured. Plaintiff filed a complaint against defendants, alleging negligence and breach of contract. Defendants filed a motion to dismiss. The trial court granted the motion. We affirm.

¶ 3 On October 8, 2008, plaintiff entered into a one-year lease for the second-floor apartment of the real estate located at 560 E. Division, Coal City. In order to exit the property, plaintiff had to walk out the door of her apartment to a door that led to a staircase. At the end of the staircase was a small utility room with a door that led outside. Plaintiff installed a burglar alarm on a window next to the first-floor entrance.

¶ 4 On November 27, 2008, plaintiff was home alone. At approximately 5:00 a.m., she was awakened by the burglar alarm. She did not have a telephone to call for help. Believing that an intruder was outside, plaintiff jumped out of a window in her apartment and was injured. After the incident, plaintiff found signs of attempted forced entry to the window next to the first floor entrance, as well as her vehicle, which was parked directly outside of the first floor entrance.

¶ 5 Plaintiff filed suit against defendants. Her second amended complaint alleged that defendants were negligent because they failed to provide (1) reasonable means of egress, (2) adequate lighting, and (3) a residence that complied with local ordinances. She alleged that the property did not comply with a Grundy County ordinance requiring two means of access. She also alleged that the one means of egress from her apartment violated the International Residential Code, Sec. R311.4.1.

¶ 6 Defendants filed a motion to dismiss plaintiff's complaint. The trial court granted the motion and dismissed plaintiff's complaint without prejudice. The court found that "[t]here is simply no duty to provide more than one means [of] egress to plaintiff's residence." The court stated that the

Grundy County ordinance requiring two means of access did not apply to the property at issue because it is located in Coal City, and the county ordinance only applies to properties outside of city limits. Further, the court found that the entrance provided by defendants complied with the International Residential Code.

¶ 7 Plaintiff then filed a motion for leave to file a third amended complaint and a motion for reconsideration. The trial court denied plaintiff's motion for reconsideration but granted her motion for leave to file a third amended complaint.

¶ 8 Plaintiff filed a three-count third amended complaint. Count I alleged common law negligence against defendants for failing to provide plaintiff "a safe environment." Count II alleged negligence based on defendants' alleged violation of the International Residential Code. Count III alleged breach of contract for violating the International Residential Code. Defendants orally moved to dismiss the third amended complaint. The trial court granted defendants' motion and dismissed the complaint with prejudice, finding that the third amended complaint added nothing substantial to the second amended complaint.

¶ 9 ANALYSIS

¶ 10 A cause of action should be dismissed only when it is clearly apparent that no set of facts can be proven that would entitle the plaintiff to relief. *Tedrick v. Community Resource Center, Inc.*, 235 Ill. 2d 155, 161 (2009). In reviewing the sufficiency of a complaint, we accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Id.* We also construe the allegations in the light most favorable to the plaintiff. *Id.* However, the plaintiff must allege facts sufficient to bring a claim within a legally recognized cause of action. *Id.* We review *de novo* a trial court's order granting a motion to dismiss. *Id.*

¶ 12 Plaintiff first argues that the trial court erred in dismissing her complaint because the only means of egress from her apartment did not comply with the International Residential Code.

¶ 13 Coal City enacted an ordinance expressly adopting the International Residential Code (2003 Edition) for one and two-family dwellings. Coal City Code of Ordinances, § 150.01. The pertinent provisions of the International Residential Code are set forth below. Section R311 is entitled "means of egress." Section R311.1 states: "Stairways, ramps, exterior exit balconies, hallways and doors shall comply with this section." Section R311.4.1 provides:

"Not less than one exit door conforming to this section shall be provided for each dwelling unit. The required exit door shall provide for direct access from the habitable portions of the dwelling to the exterior without requiring travel through a garage. Access to habitable levels not having an exit in accordance with this section shall be by a ramp in accordance with Section R311.6 or a stairway in accordance with Section R311.5." International Residential Code, § R.311.4.1 (2003).

Section R202 contains definitions of terms found in the International Residential Code. It defines "habitable space" as follows: "A space in a building for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces." International Residential Code, § R202 (2003).

¶ 14 Ordinances are to be construed in the same way as statutes. *County of Montgomery v. Deer Creek, Inc.*, 294 Ill. App. 3d 851, 856 (1998). The fundamental canon of ordinance or statutory construction is to ascertain and give effect to the drafter's intention. *King v. De Kalb County Planning Department*, 394 Ill. App. 3d 699, 703 (2009). Generally, the language used by the drafter

is the best indication of the drafter's intent. *Id.* A court should not adopt a construction that renders words or phrases superfluous. *County of Montgomery*, 294 Ill. App. 3d at 856. Additionally, courts should not add requirements or impose limitations that are inconsistent with the plain meaning of the enactment. *King*, 394 Ill. App. 3d at 703.

¶ 15 Here, plaintiff's construction of Section R311.1 to require a direct access from the second-floor apartment to the exterior renders the second part of that section, which allows exit by a ramp or stairway, superfluous and meaningless. There is no dispute that there was no doorway directly from the apartment to the outside. However, there was a stairway from the apartment to a utility room containing a door to the outside. Nothing in the Code prohibits such an exit or requires that an additional exit be provided. Thus, the trial court did not err in dismissing plaintiff's third amended complaint.

¶ 16

II

¶ 17 Plaintiff alternatively argues that we should change the common law to require landlords to provide at least two means of egress from their residential properties.

¶ 18 It is generally the role of the legislature to repeal or change the common law. See *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 519 (2000). "Only on rare occasions will courts determine that a change in the common law is needed to reflect societal changes or vindicate public interests." *People v. Gersch*, 135 Ill. 2d 384, 396 (1990).

¶ 19 In *Galayda v. Penman*, 80 Ill. App. 3d 423, 427 (1980), a tenant alleged that his landlord was negligent, in part, for failing to "install a second stairway or means of ingress and egress from the ground floor to the second and third floors of said dwelling house." The trial court dismissed the tenant's complaint, and the appellate court affirmed, finding "no statute, rule or regulation is pleaded

in support of the allegations and we must therefore assume that plaintiff is claiming a common law duty." *Id.* The appellate court stated that there was no duty under common law to provide a fire escape as a second means of egress from the second and third floors of the property. *Id.*

¶ 20 Despite the court's holding in *Galayda* that there is no common law duty to provide more than one means of egress, plaintiff argues that we should adopt a new common law policy requiring all apartments to have more than one means of egress. In support of this position, she cites *Jack Spring, Inc. v. Little*, 50 Ill. 2d 351 (1972). In *Jack Spring*, our supreme court recognized for the first time that residential rental properties possess an implied warranty of habitability. *Id.* at 366. In so holding, the supreme court found that the warranty is fulfilled by substantial compliance with pertinent provisions of the applicable building code. *Id.* Here, the applicable building code requires only one exit. See International Residential Code, § R.311.4.1 (2003) ("Not less than one exit door conforming to this section shall be provided for each dwelling unit"). Because defendants complied with the applicable law, no additional duty is required.

¶ 21 Plaintiff contends that the "special relationship" between a landlord and a tenant should impose a duty on the landlord to provide more than one reasonable means of egress. We disagree. "[T]he landlord-tenant relationship is not a 'special relationship' imposing a general duty on a landlord to protect her tenants against third-party criminal acts." *Bourgonje v. Machev*, 362 Ill. App. 3d 984, 995 (2005). Landlords are not insurers of their tenants' safety. *Id.*

¶ 22 Here, an unfortunate series of events transpired. There was an intruder at or near the only door providing egress from plaintiff's apartment. Fearful that the intruder would somehow get inside her apartment, plaintiff jumped from a second-story window and became injured. While we are not unsympathetic, we cannot alter the common law to require two means of egress from all residential

rental property. The trial court properly ruled that plaintiff has no cause of action against her landlords. See *Galayda*, 80 Ill. App. 3d 423 (landlord not responsible for injuries suffered by tenant who leapt from a window to escape a fire).

¶ 23 The order of the circuit court of Grundy County is affirmed.

¶ 24 Affirmed.