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New Jersey Condominium Act Establishes Association's Duty to Residents

In a December 29 decision, the New Jersey Appellate Division has held that not only does a condominium association have a statutory duty to maintain the common areas of the condominium, but also that this duty includes the identification and correction of dangerous conditions. Further, this duty extends to residents regardless of whether they are characterized as licensees or invitees.

In *Lecher v. 303 Sunset Ave. Condominium Assoc., Inc. and Townsmen Properties, LLC*, plaintiff (a condominium resident) purchased a unit from the developer in 2008. In 2014, as the result of a fall down the center of the condominium's extra-wide (158 inches) staircase, plaintiff suffered a fractured calcaneus (heel bone), which required surgery. In spite of the width of the staircase, it had no center handrail. Evidence showed a center handrail had actually been installed, but it had been subsequently removed. In fact, the bolts which had held the rail in place were still in the bolt holes in the center of the stairs. Plaintiffs, the injured man and his wife, sued the association and the management company on the theory of premises liability.

The master deed provided that the association had "all of the powers, authority and duties permitted pursuant to the [Condominium] Act necessary and proper to manage the business and affairs of [T]he Condominium." In addition, the association's bylaws stated that the board of directors "shall have the powers and duties necessary or appropriate for the administration of the affairs of the association and shall include but shall not be limited to the following: the operation, care, upkeep, maintenance, repair, and replacement of the property and the common elements." Further, the bylaws provided that the "association shall discharge its powers in a manner that protects and furthers the health, safety, and general welfare of the residents of the community." The agreement between the association and its management company required the management company to coordinate the daily property management functions, including maintenance and repair, for the association. Notably, although the act permits a condominium association to adopt a bylaw prohibiting residents from suing the association for negligence, there was no such bylaw in this case.

There was no evidence of previous complaints about the lack of a handrail. Further, the state had inspected the condominium in 2012, and the inspector had not advised that the stairway needed a center handrail.

Plaintiffs' expert testified that pursuant to the Building Officials & Code Administrators International, Inc. (BOCA) code, a central handrail was required for any stairway more than 88 inches wide. The expert also testified that the subcode applicable to renovations prohibited the removal of any item previously installed in accordance with the code and therefore the handrail should have been replaced with a code-compliant handrail. Further, the expert explained that the 2012 inspection was a maintenance inspection, not a building code inspection, and that whereas the maintenance code required only side rails, the building code also required a center rail.

The expert stated that if the property manager had visited the building, the manager would have seen the bolts in the holes and should have inquired why there had previously been a rail there. If the manager had sought professional advice, he or she would likely have been advised that a center rail had previously been installed. The expert testified that the management company should have recommended to the association that the rail be reinstalled, and concluded that had the rail been there, plaintiff would have been able to grasp it when he lost his balance, and thus that the lack of the handrail was a substantial contributing factor in the fall.

Defendants moved for a directed verdict following presentation of plaintiffs' case, arguing that plaintiff knew the stairs lacked a center handrail. The trial court agreed, since plaintiff was a licensee who was aware of the missing handrail. Further, although the trial court acknowledged that the association had a statutory obligation to maintain and repair the common elements, it found no evidence that defendants knew the handrail needed to be replaced.

The Appellate Division, in reversing the trial court, first reviewed the elements required to establish negligence: (1) defendant owed plaintiffs a duty of care; (2) defendant breached that duty; and (3) defendant's breach proximately caused plaintiff's damages. The extent of a landlord's duty has been held to depend on whether plaintiff is an invitee, a licensee or a trespasser. The New Jersey Supreme Court, however, in *Hopkins v. Fox & Lazo Realtors*, 132 N.J. 426, 433 (1993), held that a fact-specific analysis which considers the actual relationship between the parties under the circumstances is required. The Appellate Division explained that although the traditional categories continue to control in cases where the injured party "falls squarely" into one of the categories, where a plaintiff does not fit into one of the common law categories, a court must perform the fact-specific duty analysis of *Hopkins*.

The common law duty owed by a property owner, or one in control of a premises, to a trespasser is only to warn of artificial conditions on the property that pose a risk of serious harm or death. A licensee, by comparison, must be warned of any dangerous conditions of which one in possession of the premises has actual knowledge. There is no duty by one in control of the premises to discover latent defects. One in control of premises, however, owes a licensee the duty to conduct a reasonable inspection to discover any latent dangerous conditions which exist on the premises.

The Appellate Division noted that statutes are evidence of a defendant's duty of care to a particular plaintiff. In this case, plaintiffs clearly fall within the class of persons for whose benefit the Condominium Act was enacted. Additionally, the maintenance and management of the common areas are the association's most significant responsibilities. Further, this responsibility is exclusively that of the association, since the act specifically prohibits unit owners from repairing the common elements. Therefore, the standard for the duty owed to plaintiffs in this case is set by the Condominium Act and not by whether plaintiffs are characterized as invitees or licensees.

The court relied on the express language of the Condominium Act, and on the building code regulations requiring a center handrail for stairs of this width, as evidence of what duty of care was owed to unit residents. The court held that the association had a duty to unit owners to maintain the stairs, and that duty included replacement of the missing rail. Further, the court noted that even though the missing handrail was obvious, the association and the management company were in a better position than a resident to know that the missing handrail was a safety issue in need of attention. Therefore, the association had a duty not only to make safety repairs, but also to determine whether a repair was needed in the first place.

Since the expert's testimony supported plaintiffs' contentions that defendants owed plaintiffs a duty of care, defendants breached that duty and the breach was a proximate cause of plaintiff's injuries, the Appellate Division reversed and remanded to the trial court for the jury to determine whether defendants had fulfilled that duty of care under the facts of the case.

Condominium associations which are not shielded by a bylaw prohibiting residents from bringing a negligence action must be aware of the consequences of this case. Generally, adopting such a bylaw is advisable. Associations choosing not to do so, however, may not rely on the seeming obviousness of any conditions caused by outstanding repairs. If there is a delay in making the repairs, an association must ensure unit owners are informed and repairs are made as soon as possible. All associations, irrespective of the adoption of a shielding bylaw, should proactively seek advice on the condition of common elements and code compliance on a regular basis.

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