STATE OF MICHIGAN

IN THE SUPREME COURT

MARCQUESIA WALKER,

Plaintiff-Appellant,

-vs-

HELA MANAGEMENT, LLC,
and THE D PORTFOLIO, LLC

Defendant-Appellees.
_____/

Supreme Court Case No. 163475
Court of Appeals Case No. 354403
Circuit Ct Case No. 2018-004108-NO

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PLAINTIFF-APPELLANT'S SUPPLEMENTAL BRIEF IN SUPPORT HER APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF JURISDICTION

Pursuant to MCR 7.305, Plaintiff-Appellant seeks leave to appeal *Walker v Hela Management, LLC*, unpublished decision of the Court of Appeals, issued July 15, 2021 (No 354403) (Ex A).

STATEMENT OF SUPPLEMENTAL QUESTIONS PRESENTED

1. Was appellant a protected licensee under MCL 554.139 when the incident occurred?

   The trial court answered, "No."

   The Court of Appeals answered, "No."

   Plaintiff-Appellant answers, "Yes."

   Defendant-Appellees answered, "No"

2. Do *Mullen v Zerfas* and *Allison v AEW Capital Mgt, LLP* require a contract between licensee and licensor in order for MCL 554.139 to apply?

   The trial court answered, "No," but held Plaintiff was not a licensee.

   The Court of Appeals answered, "Yes."

   Plaintiff-Appellant answers, "No."

   Defendant-Appellees have not answered.

INTRODUCTION

This negligence claim arises from an incident in which appellant was injured on a broken stair in the rented home she lived in with her fiancé and their two minor children. Appellees argued to the trial court that appellant could not make a claim under MCL 554.139 because she did not sign the lease agreement, only her fiancé did. Appellant argued the statute does not limit its protections to lease signers, and that she was at least a licensee protected under the statute.

The trial court held appellees owed no duty to appellant under MCL 554.139. In a written Opinion and Order of May 29, 2020, it held appellant was "clearly a social guest" in her home (Ex B, p 7). Appellant filed a motion for reconsideration. The trial court issued another written Order on July 14, 2020, this time finding "no evidence...Defendants were aware that [appellant] was living in the Home," and therefore that she was not a licensee (Ex C, p 3).

The Court of Appeals heard oral argument on July 7, 2021. In an unpublished opinion of July 15, 2021 (Ex A), it held it was bound by *Mullen v Zerfas*, 480 Mich 989; 742 NW2d 114 (2007) and *Allison v AEW Capital Mgt, LLP*, 481 Mich 419; 751 NW2d 8 (2008) to bar appellant's claim because she did not sign the lease and was not a "contracting party" (Ex A, p 4). The Court noted the statute does not mention "contracting parties." It also pointed out that the *Mullen* Court did not discuss the "liberally construed" requirement, and that its peremptory Order suggests children are always unprotected by the statute, as they are not capable of contracting (Ex A, p 3).

This Court entered an Order on January 26, 2022 for supplemental briefing on three issues: 1) the definition of licensee under MCL 554.139; 2) whether *Mullen* and *Allison* further require a contract between licensee and licensor under MCL 554.139; and 3) whether appellant was a licensee under the statute when the incident occurred.

STATEMENT OF FACTS

On March 17, 2018, Marcquesia Walker, her fiancé Jerome Haywood, and their two children moved into 22834 David in Roseville, a single family home owned by appellee D Portfolio and managed by appellee Hela Management. Ms. Walker had recently given birth to their son Destin and the family had been looking for a larger home (Ex D, p 24).

Appellant found the listing on Trulia, a website that lists real estate for sale and rent, and initiated contact with the property management company, appellee Hela (Ex D, p 31). Ms. Walker toured the house twice before moving in; a representative of appellee Hela met her there and let her in (Ex D, pp 31-33). Ms. Walker handled the whole transaction for her family (Ex D, p 31):

> Q. Who would you say was primarily responsible, between you and Mr. Haywood for arranging to become tenants of the house on David Street?
>
> A. As far as the arrangement **I arranged everything.**

At the request of Anne Deleo, who worked for appellee Hela Management, only Jerome Haywood signed the lease because he was the only wage-earner at the time (Ex D, p 41). Prior to moving in, Ms. Walker had text conversations with Ms. Deleo to coordinate the walkthroughs and establish payment methods (Ex D, p 50). Ms. Walker handled all communications with appellees prior to her injury (Ex D, p 57).

A few days after moving in, the family noticed a broken tile on the staircase that leads from the kitchen to the basement of the home (Ex D, p 77). These stairs provide the only access to the basement, where there is a full bathroom and laundry area (Ex D, p 59).

Ms. Walker texted a photo of the broken tile to Anne Deleo via Hela's online maintenance portal and asked that Hela repair the tile (Ex D, pp 44, 49, 59, 77; Ex E, photo dated March 21; Ex

F, written request dated March 21).

At approximately 5:00 a.m. on March 29, Ms. Walker got up to prepare for her daughter's school day and wake up Jerome, who had to leave for work soon (Ex D, p 78). Ms. Walker had to go to the basement to get her daughter's school uniform from the dryer (Ex D, p 79). As she stepped onto second stair from the top, her foot landed on the broken tile (Ex D, pp 80, 84):

> A. When I stepped down, I just – I got this shockwave through my body, and I went tumbling...and I landed on the landing....it's almost like somebody cut my leg from under me...I looked at my foot and it was – it was dangling.
>
> ***
>
> A. My foot stepped on the tile, and it shifted up and sent like a shockwave through my body. That's the best way I can describe it.
>
> Q. And when you say your foot stepped on the tile, you mean the broken tile?
>
> A. Yes.

EMS took Ms. Walker to St. John Hospital, where she underwent surgery implanting hardware in her severely fractured ankle. After the fall, Ms. Walker wrote again to Ms. Deleo and informed her that she had fallen because appellees had not responded to her request to repair the tile (Ex D, pp 69-70).

Anne Deleo testified that appellee Hela Management received the repair request prior to Ms. Walker's fall, but that the repairs took place only after appellant notified Hela of the fall (Ex G, Deleo dep, p 50):

> Q. [W]e do see reflection that there was, as of March 21, 2018 [eight days before the incident], there was a request regarding the broken tiles on the stair by side door; correct?
>
> A. Correct.
>
> Q. Okay. And you understand that landlords have a responsibility to keep rental homes in reasonable repair; correct? [objection omitted]

A. Correct.

Q. And that's why you had your husband go and do these repairs to the stair in April; correct?

A. Correct.

On April 3, 2018, two weeks after the initial request and nearly a week after Ms. Walker's fall, Ms. Deleo hired her husband to replace the ceramic tiles on the stairs with vinyl flooring "so this didn't happen again" (Ex G, p 16).

ARGUMENT

I. Standard of review.

Appellant seeks leave under MCR 7.305(B)(5):

> **(B) Grounds.** The application must show that
>
> (3) the issue involves a legal principle of major significance to the state's jurisprudence....or
>
> ***
>
> (5) in an appeal of a decision of the Court of Appeals,
>
> (a) the decision is clearly erroneous and will cause material injustice, or
>
> (b) the decision conflicts with a Supreme Court decision or another decision of the Court of Appeals.

This Court has held that "[a] finding is 'clearly erroneous' [if] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The Court Rule requires that the Court of Appeals decision be both "clearly erroneous" and that it "will cause material injustice," in order for leave to be granted, or that it "conflicts with a Supreme Court decision or another decision of the Court of Appeals."

II. Appellant had license from appellees to reside in her home and was a protected "licensee" under MCL 554.139.

A. The ordinary meanings of license, licensor, and licensee.

Plaintiff's Complaint asserted a claim under MCL 554.139. The statute requires:

> (1) In every lease or **license** of residential premises, the lessor or **licensor covenants:**
>
> (a) That the premises and all common areas are fit for the use intended by the parties.
>
> (b) To keep the premises in **reasonable repair** during the term of the lease or license, and to comply with the applicable health and safety laws of the state and of the local unit of government where the premises are located...
>
> ***
>
> (3) The provisions of this section **shall be liberally construed**, and the privilege of a prospective lessee or **licensee** to inspect the premises before concluding a lease or license shall not defeat his right to have the benefit of the covenants established herein.

The statute does not define "license," "licensor," or "licensee," but MCL 554.139(1) and (3) entitle a licensee to the protections of MCL 554.139(1)(a) and (b). The statute requires that its provisions "be liberally construed." MCL 554.139(3).

Terms not defined in a statute should be given their plain and ordinary meanings in interpreting the statute's intent. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004).

In broad terms, "[a] license is a privilege granted by a competent authority to do some act which would be prohibited without such authorization." Michigan Law & Practice Encyclopedia, Volume 15, p 459 (1957). One receiving such license is a licensee; the one issuing license is the licensor.

In the context of real property, a license **"grants permission to be on the land** of the

licensor without granting any permanent interest in the realty," *Kitchen v Kitchen*, 465 Mich 654, 659; 641 NW2d 245 (2002), *quoting Forge v Smith*, 458 Mich 198, 210; 580 NW2d 876 (1998). "[A] license may be granted orally." *Kitchen*, at 661.

B. Appellant's license from appellees to reside at the home.

Ms. Walker had license from appellees to reside in the home. She was appellees' only contact person for negotiating and entering into the lease (Ex C, p 31). She met appellees' representatives at the home to tour it (Ex C, p 31-33). She only refrained from signing the lease because Ms. Deleo, acting on behalf of appellee Hela Management, told her it was better she did not sign (Ex C, p 41). Appellant also communicated with appellees on maintenance requests at the home **after** moving in (Ex C, pp 44, 49, 59, 77).

Appellees' many interactions with appellant, both before and after she moved in, show Ms. Walker had license from the appellees to be there, i.e., "permission to be on the land." *Kitchen*, at 659. That is presumably why appellees have never tried to claim otherwise.

C. The license contemplated by MCL 554.139 can only come from the landlord. Appellees' concern that social guests could be covered by the statute is unwarranted.

Appellees have suggested, however, that the concept of a "licensee," at least as defined in *Kitchen*, is too broad to receive statutory protections, and would include the same social guests excluded by *Mullen*. But that is not so.

Under MCL 544.139, a "licensee" can only receive the relevant "license" from the "licensor" / property owner. A resident's social guest has permission to be there from the resident, but ordinarily holds no such license from the landlord, and therefore has no protection under the statute. The language in MCL 544.139 imposing duties on the "licensor" only extends the benefits of those

duties to a "licensee" receiving their license from the landlord.

Ms. Walker and her minor children resided at appellees' home with their affirmative consent, and had such a license from the property owner. Rather than expanding the protections of MCL 554.139, reversing the lower courts' decisions will restore licensees' rights given by the plain language of the statute.

The Court of Appeals' holding that only lease-signers are protected by MCL 554.139 creates potentially far-reaching problems. The most glaring is that it would leave children unprotected in rental homes, as the Court of Appeals recognized. Tenants who stay in a home beyond the terms of the original written lease and continue to pay based on an oral "month-to-month" agreement would also be unprotected. Anyone else renting a home on an oral agreement would be unprotected. And it would create perverse incentives for landlords like the one in this case to manipulate families like the one in this case, and insist that only one person sign the lease to limit liability.

Theoretically, by limiting the number of lease-signers a landlord also limits the number of people from whom it can collect rent, as appellees argue. But if the lower courts' decision stands, sophisticated landlords will likely begin requiring separate rent guarantees (as already happens, for example, with parents of college-aged renters) from residents while not including those guarantors / residents on the lease. Landlords will have every incentive to limit the number of tenants, and in a competitive market, residents will likely go along as asked.

The remedial statute and existing precedent do not require the Court to leave children and other approved residents of rental housing unprotected by the statute. The lower courts were wrong to conclude otherwise. Licensee status is broad, it is not contingent on signing a lease, and licensees are protected under the statute.

III. *Mullen* and *Allison* should not be read as imposing an additional contractual requirement between licensee and licensor.

This Court recognized in *Mullen v Zerfas* that "[t]he covenants created by the statute establish duties of a lessor or licensor of residential property to the lessee or **licensee** of the residential property..." In the very next sentence of its Order, though, the *Mullen* Court stated that "[b]y the terms of the statute, the duties exist between the contracting parties." Similarly, in *Allison v AEW Capital Mgmt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008), this Court held that "a lessor has no contractual relationship with – and therefore, no duty under the statute to – a non-tenant."

These apparently contradictory conclusions – that licensees are protected but that protection under the statute requires a contract – seem to indicate that the Courts in *Mullen* and *Allison* believed licensee status can only be conveyed through a written lease. The Court of Appeals held it was bound by these holdings to bar Plaintiff's claim because she did not sign the residential lease.

A. No contract is required to establish licensee status.

This Court instructed the parties to brief the issue of "whether [*Mullen* and *Allison*] require a licensee to enter a contract with the licensor under MCL 554.139, and if so, what the requirements of such a contract would be." Another way of stating the relevant question may be to ask whether a license **is** a contract, and whether licensee status depends on entry of such a contract. Either way, the answer to the question is no. A license is not a contract; it is a stand alone concept, and once licensee status is established, a resident is protected under the statute. There is no further contractual requirement.

In contrast to a lease, a license grants permission to do something on the land of the licensor without granting an interest in the realty. *McCastle v Scanlon*, 337 Mich 122, 129; 59 NW2d 114 (1953); *Forge v Smith*, 458 Mich 198, 210; 580 NW2d 876 (1998). "[A] license may be granted

orally." *Kitchen*, at 661.

These are old concepts in Michigan law. "[A license] may be given in writing or by parol; it may be with or **without consideration**....the statute of frauds has no application, and the observance of no formality is important." *Morrill v Mackman*, 24 Mich 279, 283 (1872). *See also Evans v Holloway Sand and Gravel, Inc*, 106 Mich App 70, 80; 308 NW2d 440 (1981) (noting "lack of formalities" in license).

A license is different from a lease. A license is not a contract; it does not require consideration. The Legislature addressed the two different categories of protected people in MCL 554.139 separately – lessees and licensees – because they are different. But in their effort to exclude social guests of residents from protection under the act, *Mullen* and *Allison* can be read as condensing the two separate categories of protection into one that only includes contracting lessees, as the Court of Appeals held in this case.

B. Once license is established, the resident is protected under the act.

Given that the Court in *Mullen* and *Allison* referenced the existence of the licensee category, it does not appear to have been the intent of either decision to eliminate licensees as protected individuals under the statute. Nonetheless, the Court of Appeals in this case believed it was compelled by the language of *Mullen* and *Allison* to do just that, and held that only lease-signers are protected by the statute.

To the extent the Court of Appeals in this case properly read *Mullen* and *Allison* as having limited the statutory protections to lease-signers, *Mullen* and *Allison* were wrongly decided. The *Mullen* Court wanted to make clear that social guests of residents were not protected under the statute, but its efforts to do so are now being interpreted to exclude approved residents of rental

homes. The Court should clarify that licensees remain protected under the statute, and that licensee status does not require signing a lease or other contract.

Ms. Walker and her children were known, approved residents of the rental home. Appellees have never attempted to dispute that. The family had license from appellees' to reside there. That entitles Ms. Walker to the protections of the remedial act.

CONCLUSION AND REQUEST FOR RELIEF

Plaintiff-Appellant respectfully requests that this Honorable Court grant leave to appeal so that the issues may be fully briefed and argued before the Court.

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COUNTY OF MACOMB)

Laura Sloan states that on March 28, 2022, I electronically served via E File a copy of Plaintiff-Appellant's Supplemental Brief in Support of Application for Leave to Appeal on the following individuals:

Julie I. Fershtman, Esq.

/s/ Laura Sloan
LAURA SLOAN