

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION**

Elmer Miller,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 21 L 4044
	)	
2013-1 IH Borrower, L.P., and	)	
THR Property Management, L.P.,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION AND ORDER**

The Code of Civil Procedure provides a two-year statute of limitations for personal injury actions and a four-year statute of limitations for injuries arising from the construction of or the improvement to property. Here, the defendants replaced and repaired existing property that allegedly caused the plaintiff's injuries, actions that do not constitute an improvement to property within the meaning of the statute. The defendants' motion to dismiss must, therefore, be granted.

**Facts**

On November 19, 2013, 2013-1 IH Borrower, L.P. ("IH") acquired the property at 105 Sawyer Avenue in LaGrange. The property included a single-family residence. On April 9, 2018, Elmer Miller, a United States Postal Service employee, was delivering mail on his scheduled route. At one point, Miller walked down the brick steps from the front porch at 105 Sawyer Avenue. According to Miller, the brick steps separated and shifted beneath him, causing him to fall backward and injure himself. On the date of the occurrence, THR Property Management, L.P. ("THR") managed the property.

On April 19, 2021, Miller filed a two-count complaint sounding in negligence against IH and THR, respectively. Miller alleges that both defendants owed him a duty of care and that they breached their duty by: (1) improperly designing, planning, operating, maintaining, repairing, constructing, supervising, observing, controlling, and managing the premises; (2) failing to provide a safe and proper means for Miller to exit the premises; (3) allowing the stairway, staircase, and railings to become degraded; and (4) failing to post a warning sign on the stairs indicting they were dangerous, in disrepair, or otherwise constituted a dangerous condition.

The case proceeded to discovery. A July 20, 2017 work order from one of the defendant's regional offices states: "The brick steps by the main entrance are loose and dangerous and need to be glued down. But today it's a rainy day, so we need to go back on Wednesday." Michelle Tecson, an employee for THR, averred that THR neither had an ownership interest in the property nor engaged in the construction, architectural, engineering, masonry, carpentry, or design business. Tecson averred that Google Maps images of the stairway in 2011 accurately depict the stairway's condition when it was purchased by IH in 2013. Tecson stated that on July 26, 2017, a THR maintenance technician was on the property to re-mortar eleven bricks that had become loose. Tecson clarified the configuration of the bricks remained the same as they had been when IH purchased the property. Tecson averred that THR did not alter the structure or design of the front stairway. Tecson confirmed that work was performed on the stairway or railings at the front of the property on November 13, 2013, and April 9, 2018.

On June 8, 2021, IH and THR ("defendants") filed their motion to dismiss. The parties fully briefed the motion.

### Analysis

The defendants bring their motion to dismiss pursuant to the Code of Civil Procedure, 735 ILCS 5/2-619(a). A section 2-619 motion to dismiss authorizes the involuntary dismissal of a claim based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

Code of Civil Procedure section 2-619(a)(5) provides that a defendant is entitled to the dismissal of a complaint if the "action was not commenced within the time limited by law." 735 ILCS 5/2-619(a)(5). Here, the defendants' central argument is that Miller did not timely file his complaint. The defendants assert that actions for damages relating to personal injury are governed by 735 ILCS 5/13-202, which requires a personal injury action be filed within two years from the date the action accrued. The defendants

point out correctly that the alleged injury occurred on April 9, 2018, and Miller did not bring his suit until April 19, 2021—three years and ten days after the action had accrued, and one year and ten days after the running of the two-year statute of limitations.

In response, Miller contends his complaint is timely based on the four-year statute of limitations applicable to construction or improvement to property causes of action. 735 ILCS 5/13-214(a). Section 13-214(a) states in relevant part:

(a) Actions based upon tort, contract or otherwise against any person for an act or omission of such person in the design, planning, supervision, observation or management of construction, or construction of an improvement to real property shall be commenced within 4 years from the time the person bringing an action, or his or her privity, knew or should reasonably have known of such act or omission.

735 ILCS 5/13-214(a). Miller does not appear to refute that the stairway was originally completed before IH purchased the property. Miller argues, however, that the July 2017 replacement of the eleven bricks constituted an “improvement” of the property such that the four-year statute applies. In opposition, the defendants argue the stairway’s construction had been completed several years before IH purchased the property, and the replacement of the eleven bricks occurred nine months before Miller’s fall.

When considering the application of section 3-214(a), the first step a court must take is to determine whether the defendant’s purported act constitutes an improvement to real property. *Morietta v. Reese Constr. Co.*, 347 Ill. App. 3d 1077, 1081 (5th Dist. 2004). Whether a change in a structure constitutes an improvement to real property is a question of law. *St. Louis v. Rockwell Graphic Systems, Inc.*, 153 Ill. 2d 1 (1992). There are four factors to be considered in determining whether an improvement to property falls within the rubric of section 13-214(a): (1) whether the addition was meant to be permanent or temporary; (2) whether it became an integral component of the overall system; (3) whether the value of the property was increased; and (4) whether the use of the property was enhanced. *McGee v. Danz*, 261 Ill. App. 3d 232, 236 (4th Dist. 1994) (citing *St. Louis*, 153 Ill. 2d at 4-5). To be clear, an improvement is an addition to real property amounting to more than mere repair or replacement and substantially enhances the value of the property. *Adcock v. Montgomery Elevator Co.*, 274 Ill. App. 3d 519, 522 (1st Dist. 1995).

The evidence in the record establishes that the defendants merely removed and replaced eleven bricks to an existing stairway. The defendants did not build a new stairway or materially alter the structure or design of the existing stairway. Given similar factual scenarios, courts have consistently held that ordinary repair and maintenance of an existing structure does not constitute an improvement to real property. *Moriotta*, 347 Ill. App. 3d at 1081 (repaired and resurfaced roadway); *Litchfield Cmty. Unit Sch. Dist. No. 12 v. Specialty Waste Services, Inc.*, 325 Ill. App. 3d 164, 167 (5th Dist. 2001) (asbestos remediation); *Schott v. Halloran Constr. Co.*, 2013 IL App (5th) 110428, ¶ 22 (repair to retaining wall). Although the defendants likely considered the brick replacement to be permanent, such maintenance cannot be considered an integral component of the overall system. Moreover, despite Miller's contentions otherwise, it cannot fairly be said that the replacement of eleven bricks substantially enhanced the use and value of the property. Instead, the property was simply returned to the condition it had been in before being damaged. *See Schott*, 2013 IL App (5th) 110428, ¶ 22. The rebuilding of the brick steps did not add anything to the property; the repair simply returned the steps to their prior condition. *Id.* The steps were rebuilt in exactly the same configuration they had been in before falling into disrepair. Thus, because the defendants merely repaired and replaced the bricks at 105 Sawyer Avenue, their actions constituted only maintenance and not an improvement to real property within the meaning of section 13-214(a); consequently, section 13-204(a) does not apply.

Since section 13-214(a) is inapplicable to the facts of Miller's case, the general two-year statute of limitations for personal injury contained in section 13-202 applies. Here, it is undisputed that Miller's injury occurred on April 9, 2018, but that he did not file suit until April 19, 2021—three years and ten days after his action had accrued and one year and ten days after the statute of limitations had expired. Since the two-year statute of limitations expired on April 9, 2020, Miller's cause of action is time barred.

### Conclusion

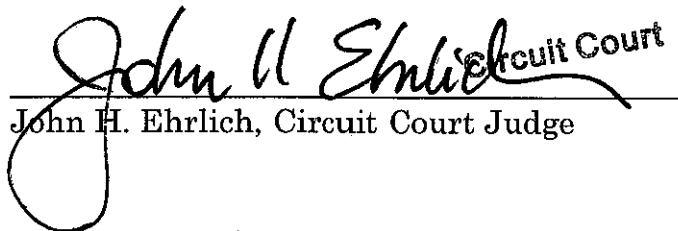
For the reasons presented above, it is ordered that:

1. The defendants' motion to dismiss is granted;
2. This case is dismissed with prejudice.

Judge John H. Ehrlich

JUL 11 2022

Circuit Court 2075

  
John H. Ehrlich, Circuit Court Judge