SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Ladders and licensees

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In *Meier v Zion Evangelical Lutheran Church of Monroe Michigan*, *unpublished* (October 23, 2014) (No. 317127), the Court addressed two issues: (1) whether Plaintiff's claim was for ordinary negligence or premises liability, and (2) whether Plaintiff was a "licensee".

Plaintiff used Defendant's extension ladder to take down banners hanging 20-25 feet high in the Defendant's gym. The ladder slipped, causing Plaintiff to fall 20 feet to the ground and suffer serious injuries. It was later discovered that the ladder did not have any antiskid rubber pads on its feet to prevent from slipping.

Plaintiff filed a negligence action against Defendant. Plaintiff alleged that Defendant failed to provide a safe and non-defective ladder for his use, to properly maintain the ladder, and to warn Plaintiff that the ladder lacked antiskid rubber pads. Defendant argued that (1) Plaintiff's claim sounded in premises liability rather than ordinary negligence, (2) that Plaintiff was a licensee on Defendant's premises at the time of this injury, (3) Defendant did not breach the duty owed to a licensee because Defendant lacked notice that the ladder lacked antiskid rubber pads, and (4) the condition of the ladder was open and obvious. Defendant also argued that, even if the trial court determined that Plaintiff was an invitee, his claim would be barred under the open and obvious danger doctrine. The trial court granted Defendant's motion for summary disposition.

"In a negligence case, the theory of liability determines the nature of the duty owed." *Laier v Kitchen*, 266 Mich App 482, 493 (2005). Michigan law distinguishes between claims arising from ordinary negligence and claims premised on a condition of the land. *Buhalis v Trinity Continuing Care Services*, 296 Mich App 685, 691 (2012). In a premises liability claim, "liability emanates merely from the Defendant's duty as an owner, possessor, or occupier of the land." *Laier*, 266 Mich App at 493. Accordingly, "if the Plaintiff's injury arose from an allegedly dangerous condition on the land, the action sounds in premises liability rather than ordinary negligence; this is true even when the Plaintiff alleges that the premises possessor created the condition giving rise to Plaintiff's injury." *Buhalis*, 296 Mich App at 692. In contrast, a claim of ordinary negligence occurs where a Plaintiff is injured because of the negligent conduct of another. *James*, 464 Mich at 15. This distinction is important because the open and obvious danger defense is available in response to a premises liability claim "where the Plaintiff has pleaded the claim as a failure to warn of a dangerous condition or as a breach of duty in allowing the dangerous condition to exist," but does not extend to a claim of ordinary negligence. *Laier*, 266 Mich App at 489-490. A premises liability claim, however, does not "preclude a separate claim grounded on an independent theory of liability based on defendant's conduct." *Id* at 493.

In *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264 (1995), the Court recognized that premises liability "extends to instrumentalities on the premises that the invitee uses at the invitation of the premises owner." As in *Eason*, Plaintiff

SECREST WARDLE NOTES:

In *Meier*, the Court held that premises liability claims extend to instrumentalities on the premises that the invitee uses at the invitation of the premises owner. Strangely, the Court did not mention the seminal case of *Muscat v Khalil*, 150 Mich App 114 (1986). *Muscat* also involved a worker falling off of a defendant's ladder, but conversely held that it was not a premises liability claim since the ladder was not a fixture on the property.

A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit.

Meier alleged that "his injury arose from the dangerous condition of the ladder, an instrumentality of Defendant's premises, and it is evident that the liability alleged emanates from Defendant's duty as the owner, possessor, and occupier of that instrumentality being used on its premises." Plaintiff argued that Defendant failed to properly maintain the ladder, to provide a safe and fit ladder for his use, and to warn him of the dangers of its ladder. Thus, Plaintiff's claim was based on the alleged condition of the ladder, an instrumentality of Defendant's premises, "and the duties Defendant owed because of its ownership of the ladder, which sounds in premises liability rather than ordinary negligence."

In a premises liability action, the duty that a premises owner or occupier owes to a visitor is dependent on the claimant's status at the time of the injury as a trespasser, licensee or invitee. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597 (2000). The Michigan Supreme Court held that "persons on church premises for other than commercial purposes are licensees and not invitees." *Id*. at 607. The focus of the analysis for determining a visitor's status is "the owner's reason for inviting persons onto the premises." *Kosmalski v St John's Lutheran Church*, 261 Mich App 56, 61 (2004). Under these principles, the Meier Court held there is no genuine issue of material fact that Plaintiff was a licensee at the time of the injury. The undisputed reason for inviting Plaintiff to Defendant's premises was to secure a volunteer to help take down confirmation banners in the gymnasium. Therefore, the invitation was for a noncommercial purpose.

Finally, "a landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the hidden danger involves an unreasonable risk of harm and the licensee does not know or have reason to know of the hidden danger and the risk involved. *Kosmalski*, 261 Mich App at 65. "The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Stitt*, 462 Mich at 596. "A possessor of land has no obligation to take any steps to safeguard licensee from conditions that are open and obvious." *Pippin v Atallah*, 245 Mich App 136 (2001). Defendant's pastor and the school principal did not learn that the ladder's feet lacked antiskid rubber pads until days after the accident, as a result of a MIOSHA inspection, and Plaintiff testified "that he would have observed the lack of antiskid pads had he looked at the feet of the ladder and changed his use of the ladder accordingly."

The Court concluded that the Plaintiff's claim for falling from a ladder while volunteering at the Defendant's sounded in premises liability, and held as a matter of law that Plaintiff was a licensee despite Plaintiff only filing an ordinary negligence claim. Further, there was no evidence that Defendant was on notice (actual or otherwise) of any dangerous condition of the ladder, and Defendant did not breach a duty to warn Plaintiff that the ladder lacked antiskid rubber pads on its feet.

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