SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Trapdoor Becomes Open-Door Argument

By Jack Weston

In Michigan, a subcontractor's employee who is injured on a work site may bring claims under theories of premises liability or contractor liability. See, e.g. *Ghaffari v Turner Construction Co*, 473 Mich 16; 699 NW2d 687 (2005); *Perkoviq v Delcor Homes-Lake Shore Point, Ltd*, 466 Mich 11; 643 NW2d 212 (2002). With that as a backdrop, Plaintiff in *Jones v DaimlerChrysler Corp.* originally sought relief under both theories for injuries stemming from a workplace accident.

Plaintiff was employed as a millwright by a contractor performing a renovation project at Defendant's plant. Plaintiff was injured when he fell through an open trapdoor at the plant. The trapdoor, which was located in the middle of an elevated walkway, had been opened by Plaintiff's co-workers just seconds before the accident and had not yet been barricaded. Plaintiff sued on a premises liability theory, based on Defendant's ownership of the plant where the accident occurred. Plaintiff also sued on a theory of contractor liability, maintaining that Defendant had retained control over the renovation project. Plaintiff ended up stipulating to the dismissal of the latter claim, and proceeded only on the premises liability theory.

SECREST WARDLE NOTES:

This unpublished case demonstrates that the Court of Appeals is not afraid to stretch things to get where it wants to go. Relying on 50 year-old nuisance cases, the Court created an issue of fact (precluding summary disposition) as to whether the use, location, and other circumstances of an aspect of a property constituted a "dangerous condition." While this case is not binding, it has created a persuasive argument that the Plaintiff's bar may try to exploit for other aspects of property, such as drain spouts and drain grates, in opposing motions for summary disposition. Property owners should therefore be vigilant in inspecting for poorly-located grates, drains, downspouts and the like, with an eye towards relocating, revising, or guarding them.

Michigan law holds that, to establish a premises liability claim, a plaintiff must prove the elements of negligence: (1) the defendant owed the plaintiff a duty, (2) the defendant breached that duty; (3) the breach was the proximate cause of the plaintiff's injury; and (4) the plaintiff suffered damages. At the close of discovery, Defendant filed a motion for summary disposition on the grounds that Plaintiff had failed to show that Defendant had breached any duty owed to Plaintiff.

The trial court granted Defendant's motion, noting that the dangerous condition was created by Plaintiff's co-employees, only seconds before the accident occurred. The Court observed that discovery failed to show that Defendant knew or should have known that Plaintiff's co-employees would create such a dangerous condition, nor was there any evidence suggesting that Defendant had notice of the dangerous condition in the short time it had existed before the accident occurred. Finally, the Court observed that the mere fact that similar accidents may have occurred in the past did not establish that Defendant had knowledge that a dangerous condition existed at the time Plaintiff fell.

On appeal, Plaintiff argued that the dangerous condition was Defendant placing a trapdoor in the middle of a walkway. Defendant, on the other hand, argued that the dangerous condition was the fact that the trapdoor was open — a condition created by Plaintiff's co-workers. The Court of Appeals held that these arguments created two separate potentially dangerous conditions for which Defendant could have premises liability, and addressed them separately.

With respect to Defendant's potential liability for the open trapdoor as the dangerous condition, the Court observed that: "It is a general proposition that liability for an injury due to defective premises ordinarily depends upon power to prevent the injury . . . ." Undisputed evidence that one of Plaintiff's co-workers opened the trapdoor moments before Plaintiff fell led the Court to conclude that Defendant had no notice of the dangerous condition and it held that the trial court had properly granted summary disposition on this issue.

With respect to Plaintiff's argument that Defendant was liable because it created a dangerous condition in (1) locating the trapdoor in a place that invitees were free to use; (2) leaving the trapdoor hinged in a manner that left a completely unguarded hole in the grating when open; and (3) failing to give any warning regarding the trapdoor's existence or to provide barricades or other safeguards when the trapdoor was open. The Court observed that, in *Bluemer v Saginaw Cent Oil & Gas Serv, Inc*, 356 Mich 399 (1959), the Michigan Supreme Court had concluded that the liability of a property owner for the dangerousness of a trapdoor based on "its use, location, and other circumstances" was a question separate and apart from its liability based on the lessee's employee's negligence in leaving the trapdoor open, and that liability could be imposed for the former. Further, *Bluemer* cited two nuisance cases, *Dahl v Glover*, 344 Mich 639 (1956) [fall through a manhole] and *Brown v Nichols*, 337 Mich 684 (1953) [struck by a door opening onto a sidewalk], which the Court of Appeals found to be factually similar to the instant case, and accordingly persuasive.

Conceding that the cases it cited were styled as nuisance, as opposed to premises liability claims, the Court of Appeals nevertheless maintained that Plaintiff was *not* required to allege a nuisance to bring forward its claim that the location of the trapdoor created a dangerous condition. Because the Court interpreted *Bluemer* to use nuisance to refer to a premises liability claim, rather than a true nuisance claim, it concluded that whether the use or location of a trapdoor makes it a dangerous condition is a fact question for the jury which precluded granting summary disposition. The Court therefore reversed the grant of summary disposition as to the question of the trapdoor placement, and remanded that issue for trial.

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