SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

5.3.05

"A Little Loose" Threshold Was Open And Obvious

By Stephanie Nawrocki

In *Monroy v Sween,* an unpublished decision of the Michigan Court of Appeals, Plaintiff fell "on a defective loose board threshold and fell after the threshold in the front steps of said residence collapsed." Plaintiff sued Defendant owners, arguing that "while [Plaintiff] may have known that the threshold was a little loose, he had no indication that it would collapse as it did on the date of the incident. . . . In other words, he may have realized a defective condition, but had no idea of the defective condition that eventually caused his injuries." The trial court held that Plaintiff knew the threshold wiggled before the accident. Therefore, Defendants had no duty to warn Plaintiff of what he already knew, and had no duty to protect Plaintiff when they had no reason to anticipate that there was any unreasonable risk posed by the loose threshold.

It is well settled that invitors are not absolute insures of the safety of their invitees. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 614 (1995). "In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp, Inc,* 464 Mich 512, 516 (2001). "'[W]here the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee." Id., quoting *Riddle v McLouth Steel Products Corp,* 440 Mich 85, 96 (1992).

In upholding the trial court's dismissal, the Court of Appeals held Plaintiff was aware that the threshold was unstable. The danger posed by an unstable threshold is that its instability may cause an individual to fall unless the individual was aware of the condition and the hazard it posed. Plaintiff argued that Defendants had a duty to protect and warn him because the "collapse" of the

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The *Monroy* decision reaffirmed the rule that property owners are not absolute insurers of the safety of their guests where dangers are known to the guests or are so obvious that the guests would reasonably be expected to discover them. Property owners also owe no duty to protect or warn their guests, even if the consequences of the "dangerous" condition is not immediately known or contemplated by the guest.

Therefore, a person who has realized or noticed a defective or dangerous condition cannot argue that the consequence of the condition is not open and obvious. Further, in order to have a case that involves "special aspects," there must be a uniquely high likelihood of harm or severe harm if the risk is not avoided, not simply that a particular person may have suffered a severe injury.

threshold was unexpected. However, the Court of Appeals disagreed and held that Plaintiff knew of the "particular risk" at issue, *i.e.,* that the loose threshold would move.

Plaintiff also argued that this case involved "special aspects," which would provide an exception to the open and obvious defense. According to *Lugo,* " if special aspects of a condition make even an open and obvious risk unreasonably dangerous, the landowner has a duty to undertake reasonable precautions to protect his invitees. But only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from open and obvious doctrine."

The *Lugo* Court provided two examples of conditions which could be considered unavoidable or unreasonably dangerous: (1) when the floor of a commercial building with a single exit is covered with water, the open and obvious doctrine would not apply because the condition would be essentially unavoidable; or (2) when an unguarded thirty-foot hole exists in the middle of a parking lot, the open an obvious doctrine would not bar liability because the situation "would present such a substantial risk of death or severe injury to one who fell into the pit that it would be unreasonably dangerous to maintain the condition, at least absent reasonable warning or remedial measures being taken." Notably, the *Lugo* Court held that a fall from a standing height would not be unreasonably dangerous since people are not usually seriously injured by such falls.

Plaintiff argued that his case involved a special aspect due to the severity of his injury (a ruptured Achilles tendon). However, the Court of Appeals reiterated that the likelihood of severe harm from a loose threshold (*i.e.,* a fall from a standing height) was not akin to that posed by a thirty-foot pit. Plaintiff also argued that another special aspect was that there was no indication that the threshold would give way. The Court of Appeals found that this argument also failed to establish a "special aspect" within the meaning of *Lugo* since there was no "uniquely high likelihood of harm or severe harm" if the risk was not avoided.

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