

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Protruding Piece of Molding Near the Top Of A Stairway Was Open and Obvious

By James A. Swaim

In *Kumaraturu v. Weast*, unpublished opinion of the Michigan Court of Appeals, Plaintiff was leaving work for the day when she tripped on a piece of molding protruding from the top of a stairway. The building in which the accident occurred was owned by Defendant and leased by Plaintiff's employer.

Defendant argued that there was no liability since the piece of molding was an open and obvious condition. Plaintiff took the position that the condition was not open and obvious because she had traversed the steps on several prior occasions without observing the condition and, further, a plant near the area hid the condition from plain view. She further argued that if the condition was open and obvious, there were special aspects that made the condition unreasonably dangerous.

The Court of Appeals considered the condition to be "apparent on casual inspection to a reasonable person of average intelligence," noting Plaintiff's admission that she was able to see that the molding was not flush with the floor after she fell. Further, unlike the danger

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Plaintiff in this case was an invitee for purposes of premises liability. Invitees are individuals who are on the property for a business purpose or to confer a benefit to the defendant, and are owed the highest duty under premises liability law. Every landowner has a duty to maintain its property in a reasonably safe condition, but is generally not liable for accidents caused by open and obvious conditions. If there are "special aspects" that make an open and obvious condition unreasonably dangerous (i.e., the condition is unavoidable or gives rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided), the landowner has a duty to take reasonable precautions to protect invitees from that condition.

Property owners and managers should never use the open and obvious defense as a substitute for trying to keep their premises safe. Simple routine inspections and maintenance can avoid costly disruptions in business and avoid unnecessary legal costs.

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posed by a rooftop porch with no railing in *Woodbury v. Bruckner*, 248 Mich App. 684 (2001), the risk presented by the raised molding was not considered to create an unreasonable risk of harm. In fact, there was a railing at the location of the condition to mitigate any danger.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

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CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Editor

Carina Carlesimo

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