SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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No Duty Owed As Plaintiff Had Actual Knowledge Of Condition

By James Molloy

In *McKiddie v Super Bowl of Canton, Inc.,* an unpublished decision of the Michigan Court of Appeals, Plaintiff filed a lawsuit after she slipped and fell at Defendant's bowling alley on the bowling lane approach. Plaintiff fell as she was walking backwards with watching her ball roll down the lane. Plaintiff admitted having actual knowledge that the approach was slippery. The Court concluded that the slippery floor was open and obvious and without "special aspects".

A possessor of land is subject to liability for physical harm caused to its invitees by a condition on the land if the possessor: (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that the condition involves an unreasonable risk of harm to such invitees (*i.e.*, business guests); (b) should expect that invitees will not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect invitees against the danger.

However, a possessor's duty to protect or warn an invitee does not normally include removal of open and obvious dangers "where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them." Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. It is an objective test, regardless of the subjective knowledge or problems of a particular person.

SECREST WARDLE NOTES:

The Michigan Court of Appeals has again made it clear that it is not going to reward people for failing to take care for their own safety. This case presents another example of the application of the open and obvious doctrine to everyday occurrences. Plaintiff had actual knowledge that the approach was slippery, therefore, she should have foreseen the risk. As previously stated by the Michigan Supreme Court, there is no duty for possessors of land to make their premises "fool proof".

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In this case, Plaintiff and other bowlers had actual knowledge that the approach was slippery. Plaintiff admitted that she discovered that the floor was slippery before she fell. Therefore, she should have foreseen the risk and Defendant had no duty to protect Plaintiff.

Furthermore, there were no "special aspects" in this case. If there are "special aspects" of a condition which make an "open and obvious" condition "unreasonably dangerous," the invitor retains the duty to undertake reasonable precautions to protect invitees from such danger. In determining whether a danger presents an unreasonable risk of harm despite being open and obvious, a court must consider whether special aspects exist, such as a condition which is unavoidable (*e.g.,* a puddle of water blocking the only exit to a store) or which poses an unreasonably high risk of severe injury (*e.g.,* an unguarded 30-foot deep pit).

In this case, the Court concluded that the approach was avoidable and the slippery floor did not present an unreasonable risk of harm. Plaintiff could have avoided the approach by choosing not to bowl and could have alerted Defendant to the slippery condition of the approach. Moreover, unlike a commercial building surrounded by water or an unguarded 30-foot deep pit in the middle of a parking lot, given as two examples by the Michigan Supreme Court of conditions involving special aspects, the slippery floor in this case did not present the same level of danger and risk.

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