

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Missing Stairway Handrail Was Open and Obvious and Did Not Cause Accident

By Todd M. Rowe

In an unpublished decision of the Michigan Court of Appeals, *Cremeans v. Home Prop. of New York*, Plaintiff alleged that she fell while descending a stairway in Defendant's building. Plaintiff claimed Defendant never reinstalled the second handrail in the stairway in violation of the local building code. The trial court found the condition of the steps and missing handrail was open and obvious, and there was no evidence to support Plaintiff's claim that a violation of the building code caused Plaintiff to fall. Accordingly, the trial court granted Defendant's motion for summary disposition.

On appeal, Plaintiff argued that the trial court erred by granting Defendant's motion for summary disposition. The Court of Appeals held that "a possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land." However, this duty does not extend to "a condition that is so open and obvious that an invitee could be expected to discover it for himself." Further, "if special aspects of a condition make an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from the risk." The Court of Appeals found the trial court correctly determined that reasonable minds could not differ that the condition of the steps on which Plaintiff fell were open and obvious without any special aspects. Consequently, summary disposition in Defendant's favor was appropriate.

First, the Court of Appeals found that the condition of the steps on which Plaintiff fell were open and obvious.

SECRET WARDLE NOTES:

Violation of a building code may be used as evidence of negligence, but plaintiffs are required to show more than merely the "possibility that a breach of the building code by defendant caused Plaintiff to sustain injuries" to establish causation. While building code violations do not always create a valid case for a Plaintiff, potential legal defenses are no substitute for maintaining a safe and up-to-code building. If a plaintiff can support his or her case with building code violations, then a jury will sympathize even less with a building owner or corporate defendant.

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In finding that Plaintiff's action should be dismissed, the Court of Appeals held that "steps are encountered as an everyday occurrence." Specifically, the steps on which Plaintiff slipped were not blocked and were equipped with at least one handrail. Further, Plaintiff stated she noticed the condition of the steps when she approached them to enter the building, and acknowledged she did not know what caused her to fall from the steps. Accordingly, in addition to the condition of the steps being open and obvious, the Court found that there was no evidence to establish Defendant's fault for Plaintiff's accident.

Second, the Court found that Plaintiff's cause of action premised on an alleged violation of the building code should be dismissed. In response to Plaintiff's claim that Defendant's failure to replace the handrail was in violation of the building code, the Court of Appeals acknowledged that the "open and obvious danger doctrine cannot be relied upon to avoid a specific statutory duty." While noncompliance with a building code may indicate negligence, "not every violation supports a special aspects analysis in avoidance of the open and obvious danger doctrine." When the Court examined the facts of this case, it found "nothing about the character of the steps forced a user to walk on the side that lacked a handrail" or that the height and width of the steps caused Plaintiff to fall. Defendant's possible violation of the building code was insufficient to establish the stairs caused Plaintiff's injuries.

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