

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Carrying a Laundry Basket Was Not a “Special Aspect” Of An Open and Obvious Condition

By Cleo N. Fekaris

In *Pllumbaj v Consolidated Management, Inc.*, unpublished decision of the Michigan Court of Appeals, Plaintiff slipped and fell in a puddle of water in the laundry room of a building owned by Defendant while carrying a laundry basket. Plaintiff alleged that Defendant negligently maintained the premises. Specifically, Defendant failed to keep the premises in a reasonably safe condition by allowing a puddle to exist in the laundry room. The trial court held that the puddle was open and obvious and granted Defendant’s Motion for Summary Disposition.

On appeal, the court explained that if a condition was so open and obvious that it could be expected that Plaintiff would have discovered it, then there was no liability. Determining whether a condition 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. However, if “special aspects” of a condition make an open and obvious risk unreasonably dangerous despite its open and obvious nature, a possessor of land must take reasonable precautions to protect an invitee from that risk and the open and obvious defense is inapplicable. “Special aspects” are defined as an unavoidable condition or a condition which remains unreasonably dangerous despite its open and obvious condition. Here, the court disagreed with Plaintiff’s argument that carrying a laundry basket was a special aspect which precluded summary disposition pursuant to the open and obvious defense.

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Plaintiffs continue to try and stretch the meaning of “special aspects” in order to avoid the open and obvious defense. In this case, Plaintiff went so far as to argue that the laundry basket she was carrying, which partially obstructed her view of where she was walking, was a “special aspect” that precluded application of the open and obvious defense. The Court of Appeals quickly dispensed with this meritless argument, holding that a “special aspect” must be directly related to the defect on the premises and not to something else.

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First, the court found that it was reasonable to conclude that Plaintiff would not have been injured had she been watching her step. The court relied on Plaintiff's admission that she would have seen the puddle if she had been looking where she was walking.

Second, the court found that there were no special aspects that made the condition unreasonably dangerous despite its open and obvious nature. The fact that Plaintiff was carrying a laundry basket did not increase Defendant's liability. The laundry basket was not an aspect of the puddle but simply something Plaintiff was carrying which obstructed her view of the floor and puddle.

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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