

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Abruptly Opening Stuck Door Was Open And Obvious

By Todd M. Rowe

In *Lafuente v. Cherry Hill Lanes North*, an unpublished decision of the Michigan Court of Appeals, Plaintiff filed a lawsuit to recover for her personal injuries when she fell while exiting Defendant's bowling alley. Specifically, Plaintiff claimed she suffered injuries when she encountered a door at the exit of Defendant's building that was stuck. In an effort to open the door, Plaintiff put a box that she had been carrying under her right arm and applied more force to the door with her left arm. The door opened abruptly, causing Plaintiff to fall forward through the doorway and fracture her ankle. The trial court granted Defendant's motion for summary disposition finding that Defendant owed Plaintiff no duty to warn or protect Plaintiff from an open and obvious condition. Plaintiff appealed the decision dismissing her claims arguing that the defect in the door was not open and obvious and, in the alternative, there were special aspects to the door that made the open and obvious doctrine inapplicable to this situation.

The Michigan Court of Appeals found that Defendant was properly granted summary disposition. First, Plaintiff's contention that the open and obvious doctrine was inapplicable to this action was rejected because "[a]n average person of ordinary intelligence would be able to recognize that a door that sticks will abruptly open when more force is applied to it." Additionally, Plaintiff testified that she regularly visited Defendant's property, and while she had never used this particular door, she had used similar doors on other visits. In its finding, the Court of Appeals relied upon *O'Donnell v. Garasic*, 259 Mich App 569 (2003), for the proposition that "a condition is open and obvious if it is reasonable to expect an average person of ordinary

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This case presents another example where the Court's analysis incorporates the frequency at which a person would be expected to encounter a particular condition. For example, the Court of Appeals noted that "pulling a door was an everyday experience and that [Plaintiff] had encountered doors like this before."

A plaintiff in a premises liability action must demonstrate that the condition that is alleged to have caused injury posed a danger that "an average person of ordinary intelligence" would have been incapable of discovering "upon casual inspection." In this regard, the Michigan Court of Appeals has found that a step from the floor of an office to the ground, where both were made of concrete and painted the same shade of grey, did pose a question of fact as to whether the open and obvious doctrine was applicable. *See e.g., Wolfrom v. Hillcrest Memorial Gardens*, unpublished, No. 204746 (February 12, 2002). This test is an objective one and the court must determine whether a reasonable person in the plaintiff's position would have foreseen the danger, and not whether the plaintiff should have known that the condition was dangerous.

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intelligence to discover the danger upon casual inspection.” Therefore, the stuck door constituted an open and obvious condition because Plaintiff “acknowledged that pulling a door was an everyday experience and that she had encountered doors like this before.”

The Court of Appeals also rejected Plaintiff’s second argument that the open and obvious doctrine was inapplicable because special aspects of the door, specifically serrations in the doorjamb, made the door unreasonably dangerous. In this regard, Plaintiff relied on the well-settled principle in Michigan law that “special aspects of a condition can make even an open and obvious risk unreasonably dangerous,” which imposes a duty on the premises owner to “undertake reasonable precautions to protect invitees from that risk.” See *Lugo v. Ameritech Corp.*, 464 Mich 512 (2001). The Court of Appeals found that “the door Plaintiff encountered was a part of everyday experience” and that no special aspect made it unreasonably dangerous. Consequently, the Court of Appeals affirmed the trial court’s order granting Defendant’s motion for summary disposition.

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