

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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“Throw Rug” Near An Entryway Was Not A “Special Aspect”

By Kellie Lecznar

In *Anthony Shine v. MGM Grand Detroit, L.L.C.*, an unpublished opinion of the Michigan Court of Appeals, the Court examined the applicability of the open and obvious defense and the “special aspects” exception to a “throw rug” placed near an entryway. Plaintiff was a patron of MGM Grand Casino who tripped on a “throw rug” placed near the entryway of a Football Frenzy promotions booth. The rug allegedly “entangled” Plaintiff’s right leg, causing him to fall and injure himself.

Plaintiff sued MGM Grand on a premises liability theory. Finding no “special aspects” of the allegedly dangerous condition, the trial court granted MGM Grand’s motion for summary disposition based on the open and obvious defense.

The Court of Appeals upheld the dismissal, stating that MGM Grand owed Plaintiff a duty of exercising reasonable care. This general duty did not encompass warning about or removing open and obvious dangers unless “special aspects” of the condition made the risk unreasonably dangerous. If there were “special aspects” of an otherwise open and obvious condition, then the open and obvious defense did not apply. Such special aspects would have included a condition which was “effectively unavoidable” (*i.e.*, a puddle of water blocking the only known exit to a store) or “unreasonably dangerous” (*i.e.*, a 30-foot deep pit).

Plaintiff argued to the Court of Appeals that “special aspects” existed. First, Plaintiff argued MGM Grand created the danger by placing the rug near the entryway. Next, Plaintiff argued that the rug blocked the only entryway to the booth, making the hazard effectively unavoidable and, therefore, unreasonably dangerous. Finally, Plaintiff argued he was distracted

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The danger of a “throw rug” placed in an entryway did not constitute a “special aspect” of an open and obvious condition, which rendered the condition unreasonably dangerous to an invitee of a property owner.

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by MGM Grand's signage directing him to that area. In regard to Plaintiff's first argument, the Court of Appeals found the hazard and risk posed by the rug was apparent on casual inspection by an average person. The placement of the rug was relevant to notice, not to whether there were "special aspects." Plaintiff's remaining two arguments were not supported by the evidence; therefore, they failed.

Finding no "special aspects," the Court of Appeals affirmed the dismissal by the trial court based upon the open and obvious doctrine.

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