

Black Ice, Bright Warning: Condo Associations on the Hook After *Janini* Shift

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In *Byzewski v Shelby Woods N. Condo Ass'n*, unpublished per curiam opinion of the Court of Appeals, issued August 12, 2025 (Docket No. 371155), Plaintiff slipped and fell on a sidewalk adjacent to his condominium unit. The snowfall that day had ceased between one and four hours prior to the incident. Plaintiff acknowledged that the condominium's maintenance company had plowed and salted portions of the complex earlier that morning. However, Plaintiff argued that the salting covered only the driveway, leaving an invisible layer of ice on the sidewalk. Plaintiff sued for premises liability for failure to remove black ice and for ordinary negligence regarding maintaining the property.

Defendants moved for summary disposition, arguing the premises liability claim was barred by *Francescutti v Fox Chase Condominium Ass'n*, which held a condominium co-owner cannot show injury on "the land of another." Defendants also contended the icy conditions were "open and obvious" under *Lugo v Ameritech Corp.* Defendants further asserted the negligence claim was barred as arising from a "condition of the land." Plaintiff responded that *Francescutti* might soon be overturned and Defendants' failure to salt the walkways supported an ordinary negligence claim.

The trial court disagreed, holding it was bound to apply existing law. Thus, Plaintiff's premises liability claim failed as a matter of law as *Francescutti* remained valid. The Court also concluded that the negligence claim was meritless because the alleged hazard was a "condition of the land." On appeal, Plaintiff argued dismissal was improper since *Francescutti* was later overruled by *Janini v London Townhouses Condo Ass'n*. Plaintiff once again argued that the negligence claim should survive because Defendants affirmatively failed to salt the sidewalks. Defendants countered that dismissal should nevertheless be affirmed because the icy sidewalk was "open and obvious," leaving no genuine issue of material fact regarding breach of duty.

Secret Wardle Notes

As a condominium owner, are you considered a co-owner or simply an invitee? The Court of Appeals' decision in *Byzewski v Shelby Woods* signals that condominium associations can no longer rely on *Francescutti* to bar slip-and-fall claims by co-owners. Following *Janini*, condo residents are now treated as invitees, meaning associations must anticipate and address hazardous conditions in common areas.

However, framing these claims matters as ordinary negligence claims remains unavailable for failure-to-maintain allegations. By refusing to apply the old open and obvious doctrine without *Kandil-Elsayed* briefing, the Court signaled a shift in approach. Trial courts will now conduct a more detailed, fact-specific inquiry into visibility and reasonableness.

I. Premises Liability

Francescutti maintained that condominium owners are co-owners, not invitees. However, *Janini* held that condominium co-owners are invitees because they cede control over common areas to the condominium association. Thus, the Court of Appeals stated that although the trial court did not err in applying *Francescutti* at the time, in light of *Janini* further proceedings were required.

Regarding Defendants' contention that dismissal should nevertheless be affirmed because the icy sidewalks were "open and obvious" under *Kandil-Elsayed*, the Court declined to do so for two reasons. First, because *Kandil-Elsayed* was decided in late July 2023, the parties to this case did not brief the new framework in the trial court. Second, the trial court dismissed the premises liability claim based on *Francescutti* solely on the element of negligence rather than breach. As such, the Court may not decide whether Plaintiff failed to establish a genuine issue of material fact regarding breach. Instead, the Court remanded the issue to trial court.

II. Ordinary Negligence

The Court made clear that Michigan law distinguishes between ordinary negligence claims and negligence that arises from a "condition of the land." Labeling a claim as ordinary negligence is insufficient, especially when an injury does not arise from conduct that created the property condition.

The Court pointed out that Plaintiff cited no authority to suggest that the failure to salt the sidewalk gave rise to ordinary-negligence. In fact, both *Kandil-Elsayed* and *Janini* involved icy/snow-covered paths and were treated as premises liability claims. As such, the Court declined to treat the instant case as anything other than a premises liability case as well.

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