

## Speculation Does Not Establish Notice

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June 30, 2026

In *Bowers v Jacobson Brothers, LLC*, unpublished opinion of the Michigan Court of Appeals, issued June 9, 2026 (Docket No. 374793), the Court of Appeals affirmed summary disposition for Defendants in a residential slip-and-fall case. The Court held that Plaintiff failed to present evidence establishing that Defendants had actual or constructive notice of the specific patch of ice that caused the fall. The Court also rejected Plaintiff's claim that the apartment complex's parking lot was unfit for its intended use under MCL 554.139.

Plaintiff Bowers allegedly slipped on a patch of ice near her parked vehicle after overnight temperatures dropped below freezing. Defendants' maintenance staff had salted the parking lot and common areas the previous day, and there had been no overnight precipitation. Plaintiff acknowledged that she did not know when the ice formed and agreed that it could have developed shortly before her fall.

The Court emphasized that a premises liability plaintiff must establish more than the existence of an icy condition. To prove constructive notice, there must be evidence that the specific hazard existed long enough that the premises owner should have discovered and remedied it. Plaintiff's testimony established only that the ice formed sometime overnight. Without evidence regarding how long the patch of ice existed, any finding of notice would have been speculative.

Plaintiff also argued that Defendants' snow-removal practices caused runoff that refroze into ice. The Court rejected this theory because Plaintiff failed to present evidence connecting Defendants' snow-removal activities to the precise location of the fall. The record supported only speculation that the ice resulted from runoff rather than natural overnight refreezing. Speculation alone was insufficient to establish causation.

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*Bowers* reinforces that, even after *Kandil-Elsayed*, plaintiffs must still produce evidence establishing notice and causation. General winter conditions and speculation regarding when ice formed remain insufficient to survive summary disposition.

The decision also confirms that MCL 554.139 continues to provide limited application to residential tenants. A localized icy condition does not render a parking lot unfit for its intended use absent evidence that the condition prevented ordinary use of the common area.

Finally, the Court rejected Plaintiff's statutory claim under MCL 554.139. Relying on *Allison v AEW Capital Management*, the Court concluded that a localized patch of ice did not render the parking lot unfit for its intended use. Plaintiff was able to access her vehicle, and the parking lot remained usable for parking and ordinary ingress and egress. The statute only requires common areas to remain fit for their intended purpose, not that they must be made perfectly safe.

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