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Michigan Supreme Court Reins in Court of Appeals in Two Premises Liability Cases

By: Sidney A. Klingler **December 4, 2015**

SECREST WARDLE NOTES

A Supreme Court Order is binding precedent if it contains "a concise statement of the applicable facts and reasons for the decision." *DeFrain v State Farm Mut Automobile Ins Co*, 491 Mich 359, 369 (2012). The Orders peremptorily reversing the Court of Appeals in *Stimpson* and *Compau* both constitute binding precedent because the rationale and the relevant factual basis for the Supreme Court's action are set forth therein.

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The Supreme Court in two Orders entered November 25, 2015, reversed the Court of Appeals' plaintiff-favorable decisions in premises liability cases, and reinstated the trial court Orders of summary disposition for the defendants.

Stimpson v GFI Management Services, Inc, et al, involved a premises liability claim against a landlord for ice buildup in a parking lot, which allegedly caused the Plaintiff to fall and sustain injuries. Because Plaintiff admittedly knew of the icy condition of the parking lot, the Court of Appeals held that there was no genuine issue of material fact regarding whether the hazard was open and obvious. However, even an open and obvious hazard can give rise to landowner liability if it has "special aspects" that make the risk unreasonable. Special aspects are held to exist either when the danger is "unreasonably dangerous" or when it is "effectively unavoidable." *Hoffner v Lanctoe,* 492 Mich 450, 463 (2012). Finding the ice accumulation around Plaintiff's truck effectively unavoidable, the panel in *Stimpson* noted that to get to her truck, Plaintiff had to traverse the icy areas, and that she could not throw salt on the area because it might burn her dog's paws. In further support of its finding that a jury could find Plaintiff had no choice but to confront the hazard, the Court of Appeals suggested an exigency of circumstances, noting that the elderly and disabled dog had to be transported to the dog run area, and that Plaintiff had limited time because the dog needed to relieve itself. Under these facts, the Supreme Court was unpersuaded that there was a factual issue regarding effective unavoidability. In its peremptory Order of reversal, the Supreme Court noted that it was undisputed that Plaintiff selected the location where she parked the truck, opted to use that vehicle even

though she had another parked under a carport, and did not attempt to use the salt that was available. The Supreme Court, citing *Hoffner, supra,* emphasized that for a hazard to be "effectively unavoidable," it must be essentially inescapable, characterized by "an inability to be avoided, an inescapable result, or the inevitability of a given outcome." The Supreme Court reversed that portion of the Court of Appeals decision holding that a reasonable jury could find Plaintiff had no choice but to confront the hazard posed by the snow and ice, and remanded for reinstatement of the judgment in favor of the Defendants.

In *Compau v Pioneer Resource Company, LLC*, the question was whether a Plaintiff could recast a premises claim as negligence, thus avoiding application of the "open and obvious" doctrine. In *Compau,* the Plaintiff was injured while attending a lawnmower race. When two lawnmowers collided and began to go through the fence, Plaintiff backed up and tripped over a railroad tie which she had admittedly seen previously and walked around. The trial court rejected Plaintiffs' claims that their case sounded in negligence as well as premises liability, found that the case sounded in premises liability only, and granted summary disposition for Defendants on the ground that the railroad tie was open and obvious and lacked special aspects that would render it unreasonably dangerous. The Court of Appeals affirmed summary disposition of Plaintiff's premises liability claim on the grounds that the railroad tie was open and obvious. However, the Court of Appeals agreed with Plaintiffs that their complaint sounded in ordinary negligence as well. The Court reasoned that the negligence claim concerned the Defendants' conduct in designing the racetrack and conducting the races; claims which did not concern hazards on the land. The Court of Appeals thus held that the trial court erred by granting summary disposition on the entirety of the complaint under the open and obvious doctrine. The Supreme Court did not agree that Plaintiffs' cause of action could sound in negligence as well as premises liability. It noted first that the injury arose when Plaintiff tripped over a railroad tie on Defendants' property. The Court further instructed that when an injury arises from a condition on the land, "the action sounds in premises liability rather than ordinary negligence. . ." The Supreme Court noted that the railroad tie was a condition of the land which was open and obvious, and furthermore that Plaintiffs failed to present any evidence that the races were so distracting as to preclude application of the open and obvious doctrine. The Supreme Court reversed the Court of Appeals decision in part, reinstating the trial court's order which had granted summary disposition for the Defendants.

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Please contact Sidney A. Klingler at

sklingler@secrestwardle.com

or 248-539-2836

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SECREST WARDLE

Troy 248-851-9500
Lansing 517-886-1224
Grand Rapids 616-285-0143
www.secrestwardle.com

CONTRIBUTORS

Premises Liability Practice Group Chair
Mark F. Masters

Editor
Linda Willemsen

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