

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Entrant's Status Revoked

By Sante Fratarcangeli

In order to ascertain the duty owed by a landowner, it is first necessary to determine an entrant's legal status on the landowner's property. The entrant's status as an invitee, licensee, or trespasser on the land is determined "at the time of injury." *Burnett v Bruner*, 247 Mich App 365 (2001). Depending on the circumstances, an entrant's status is subject to change if the entrant exceeds the scope of his or her invitation. "Deviation from an invitation to enter onto the possessor's land occurs when the entrant acts in a manner inconsistent with the scope of an express or implied invitation, thereby demonstrating a change in relationship between the person and the possessor." In other words, because an invitee is expected to use a landowner's premises in the "usual, ordinary, and customary" manner, he or she loses their invitee status by failing to act in this manner. For example, an invitee may exceed the scope of an invitation where he or she departs from the location encompassed by the invitation, or when he or she stays on the property beyond the time permitted by the invitation. *Carreras v Honeggers & Co, Inc*, 68 Mich App 716 (1976). In Michigan, a landowner's duty to an invitee is shaped by the invitation extended, and an individual exceeding the scope of that invitation, whether by geography, time, or activity, is not entitled to the standard of care a landowner owes an invitee.

SECRET WARDLE NOTES:

Prior to addressing the *Open and Obvious Doctrine*, it is necessary to first decide a claimant's status as an entrant on the property in order to ascertain the duty owed by the defendant. The same claimant may have more than one status based on their behavior, location and time at the property, and different duties of care may apply.

The Court of Appeals recently applied these principles in *Bredow v Land & Co.*, _ Mich App _ (2014). In *Bredow*, Plaintiff was employed by a wholesale distributor of plumbing supplies and other items. He worked as a project manager in the company's pricing center. The pricing center was located in a rented warehouse which was part of a facility owned and managed by Defendants. Plaintiff worked "with data," creating spreadsheets and other tools to aid those analyzing commodity and matrix pricing. Plaintiff was using a snow shovel to pry one of the icicles hanging from the warehouse. He sustained injuries when he was hit by snow and ice that fell from the roof of Defendants' premises as he attempted to remove snow and ice, including icicles.

The trial court found that the snow and ice on the roof constituted an open and obvious danger without any special aspects. On appeal, the Court looked past the open and obvious doctrine to consider first whether Defendants can be held liable when, on his own accord and unbeknownst to Defendants, Plaintiff took it upon himself to

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commence the task of removing icicles from the building, thereby acting outside the scope of his purpose and invitation to be on the premises, *i.e.*, employment. The Court held that because Plaintiff exceeded the scope of his invitation, he lost his status as an invitee, instead became a licensee, and Defendant owed “no duty of inspection and no affirmative duty to care to make the premises safe for his activities.”

Plaintiff qualified as an invitee when he initially entered the premises for the purpose of employment and fulfilling his role as a project manager. However, when Plaintiff undertook the unsolicited act of clearing icicles from the building’s roof – a task unrelated to his employment and to his purpose of being on the property – he lost his status as an invitee and became, at best, a mere licensee. By doing so of his own volition, Plaintiff used the property in a manner that could not be considered usual, ordinary, and customary, and he thereby exceeded the scope of his invitation.

Plaintiff knew of the danger posed by falling snow and ice, given that he had heard ice and snow falling from the roof, and he specifically described the process of pushing icicles as ‘dangerous.’ Moreover, aside from the fact that he actually knew of the risks, Plaintiff had ample reason to know of the danger, given that there were massive icicles and large ice chunks on the ground. In these circumstances, Plaintiff had every reason to recognize that snow and ice falling from the roof posed a hazard to those below, particularly if one undertook the removal of icicles on the roof. Because Plaintiff knew *or* had reason to know of the danger posed by falling snow and ice when he undertook the clearing of the icicles, Defendants owed no duty to warn him of the hazard or to safeguard him from the condition.

CONTACT US

Troy

2600 Troy Center Drive, P.O. Box 5025
Troy, MI 48007-5025
Tel: 248-851-9500 Fax: 248-538-1223

Lansing

6639 Centurion Drive, Ste. 100
Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline SE, Ste. 600
Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

www.secrestwardle.com

CONTRIBUTORS

Premises Liability Practice Group Chair

Mark F. Masters

Editor

Linda Willemsen

We welcome your questions and comments.

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