

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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A Light In The Darkness

By Leah Rayfield

In *Schlecht v Doom*, unpublished, Plaintiff was injured after she fell down a dark basement stairwell in Defendants' house. The Court of Appeals reversed the trial court's decision to grant Plaintiff's motion for summary disposition, and remanded for entry of an order granting Defendants' motion for summary disposition based on the objective standard of the Open and Obvious Doctrine.

On October 10, 2009, Plaintiff arrived at Defendants' home for a memorial gathering at approximately 5:30 p.m. After eating a plate of food in the family room, Plaintiff shouted, "Where's the bathroom?" An unknown female answered Plaintiff and indicated that the bathroom was located through the laundry room. Through an open door, Plaintiff entered the laundry room which was lit by a tiny flickering light and some residual light from the family room. Plaintiff saw a washer and dryer and a door inside the dark laundry room, but did not search for any light switches on the wall. Plaintiff then walked to the door located inside the room, which she expected to be the bathroom door. She opened the door and reached for a light as it was "pitch black" on the other side of the door. At the same moment she reached for a light, looking straight ahead and not expecting a stairwell, she stepped forward and fell down the basement stairs.

Social guests are considered "licensees" who assume the ordinary risks associated with their visit. The parties in *Schlecht* agree that Plaintiff was a licensee of Defendants' home. Under Michigan law, a landowner owes a licensee a duty to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the hidden dangers involved. A landowner owes a licensee no duty regarding open and obvious dangers. Under the objective standard of the Open and Obvious Doctrine, the court must consider whether a reasonable person (an average user of ordinary intelligence) would have discovered the danger and the risk presented upon casual inspection.

SECRET WARDLE NOTES:

In determining whether a condition is open and obvious, courts must consider what a reasonable person would have apprehended. The fact that a particular person does not notice a condition is irrelevant.

Schlecht demonstrates an example of the application of the Open and Obvious Doctrine to everyday occurrences. Since the hazard in *Schlecht* would have been open and obvious upon casual inspection, there was no duty for the landowner to warn Plaintiff of the darkness. Even if Plaintiff presents evidence that a condition on the premises violates building and/or residential codes, it is irrelevant if the violations are not directly related to the condition alleged to have caused the injury.

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The Court of Appeals indicated that the alleged hidden danger in this case had two components. First, that the area behind the basement door was “pitch black.” Second, the construction of the basement door and stairwell did not comply with building codes. Here, the Court found that darkness is not a hidden danger. Plaintiff recognized the area behind the door was “pitch black” and still chose to walk through the doorway. Plaintiff failed to provide evidence that a reasonable person could not have appreciated the risk of stepping through an unfamiliar door into an area that was “pitch black,” no matter what was expected on the other side. Further, the evidence indicates that Plaintiff did not attempt to inspect what was behind the door.

With regard to the construction issue, Plaintiff presented expert witness testimony that the basement door and stairwell violated building and residential codes. The Court of Appeals found the evidence did not indicate that the stairwell was a “hidden” danger which could not be revealed to a reasonable person by casual inspection. Further, Plaintiff entered the stairwell looking “straight ahead” and thinking the floor was flat. This evidence does not shed light on whether a reasonable person could have observed the stairwell if looking down while walking through the doorway.

The Court concluded that the condition was open and obvious and that the darkness did not present an unreasonable risk of harm. A reasonable person would have appreciated the risk of entering dark, unfamiliar territory and Plaintiff could have avoided said danger had she casually inspected the area beyond the doorway.

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