

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

03.26.10

Mere Knowledge That Weather Conditions Are Fluctuating Above And Below Freezing Does Not Put Premises Owner On Notice Of Icy Conditions

By: Janet C. Barnes

Secret Wardle successfully defended the premises liability claim that Defendants' tenant brought, in *Anderson v Saddle Creek Apartments, LLC*, Michigan Court of Appeals Docket No. 289952, rel'd 3/23/10, on the grounds that Defendants did not have actual or constructive notice of the icy step that allegedly caused Plaintiff's slip and fall.

Plaintiff claimed that he slipped and fell on a patch of ice on the stairway that he was required to use to exit the apartment building. He also claimed that he did not see the ice because it was dark outside. Plaintiff argued that Defendants were on notice of the potential for ice build up on that step because they regularly tracked weather conditions and the forecast called for temperatures both above and below freezing on the day of Plaintiff's fall. After noting the absence of any precipitation on the day of Plaintiff's fall and the absence of any other indication of the existence of an ice hazard on the steps, the Court of Appeals held that "defendants' duty to inspect did not extend to checking the premises throughout the night and into the early morning hours simply because the weather forecasted temperatures both above and below freezing."

Significantly, the Court of Appeals held that Plaintiff's inability to establish that Defendants had actual or constructive notice of the alleged ice hazard on the step defeated Plaintiff's common-law premises liability claim and Plaintiff's claim the Defendants breached their MCL 554.139(1)(a) statutory duty to keep the premises and

SECRET WARDLE NOTES:

Lack of actual or constructive notice is an important defense to premises liability claims. This defense should be raised in response to common law premises liability claims and to claims that a landlord breached its covenant under MCL 554.139(1)(a) that the premises are fit for the use intended by the parties.

In *Anderson*, the Court of Appeals concluded that fluctuation of temperature, alone, is not sufficient to establish that the defendant landlord, who had a history of reasonably maintaining its property, had notice of the alleged icy step. The result may have been different if there had been evidence of precipitation on the day of Plaintiff's fall or other indications of the existence of an ice hazard on the step. Such indications might include piling snow near where the ice had formed, resulting in melting and refreezing.

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all common areas fit for the use intended by the parties. Accordingly, the Court of Appeals affirmed the summary dismissal of Plaintiff's action.

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