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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Open And Obvious Defense Inapplicable to “Nuisance” Intersection

By Amanda Haverty-Harris

In *Veremis v Gratiot Place, LLC*, a 2-to-1 unpublished decision, the Court of Appeals held that the open and obvious defense does not apply to claims of a “nuisance” on the property. *Veremis* involved a motor vehicle accident, which occurred at an intersection in a shopping plaza.

Plaintiff was a passenger in a co-worker’s vehicle which was struck by another car at the unmarked intersection of Defendant’s shopping plaza. The Court of Appeals opined that “Testimony established that the intersection had no traffic control devices and that the approaches to the intersection were partially obscured by a building, a bank of mailboxes for the plaza’s tenants, a federal mailbox, and a newspaper box.” Plaintiff’s co-worker admitted that she stopped the vehicle “a little past the intersection” because her view was blocked. When she proceeded into the intersection, another vehicle hit her vehicle on the passenger’s side, injuring Plaintiff.

Plaintiff’s complaint included claims of premises liability, public nuisance, nuisance in fact, and intentional nuisance against Defendant Gratiot Place.

The jury found that Defendant’s “creation and maintenance of a hazardous intersection proximately caused 60%” of the injuries Plaintiff sustained.

Upon review, the Court concluded that the trial court should have directed a verdict on Plaintiff’s premises liability claim based on the open and obvious defense. The evidence showed that both Plaintiff and her co-worker knew about the danger posed by the intersection. Plaintiff testified that she was familiar with the area and that she was employed nearby the shopping plaza. Thus, Defendant had no duty to warn either of them about the danger.

SECRET WARDLE NOTES:

Plaintiffs are increasingly pairing premises liability claims with nuisance claims to avoid dismissal under the open and obvious defense. However, nuisance claims are typically defensible on several other grounds. In *Veremis*, there was a narrow victory for Plaintiff in a split decision. This split decision illustrates how the same set of facts and law can be construed differently when outcome determinative judges are involved in the process.

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However, the Court further held that the trial court properly submitted Plaintiff's public nuisance claim to the jury. The evidence showed that Defendant "created the intersection, w[as] responsible for the obstructions at issue or owned or controlled the land on which these features existed." Testimony showed that the intersection was unmarked which created confusion to drivers regarding who had the right-of-way. The Court also opined that "There was also evidence that several accidents and near-accidents had occurred there."

Defendant argued that the danger of the intersection was open and obvious to Plaintiff and her co-worker. The Court held that it was "clear that a condition on land that interferes with the rights of another can constitute a nuisance even when its dangerous character is obvious." The "readily apparent nature of the danger posed by a condition and the ease with which the danger might be avoided are merely factors to be considered by the trier of fact when determining whether a particular hazard constitutes a nuisance."

Judge Murray dissented from the Court's affirming of the order denying a directed verdict on the nuisance claims. Judge Murray reasoned that the few minor accidents that occurred at the intersection, because of the placement of the mailboxes and newspaper stand, did not affect the general public and Defendant did not violate any duty owed to Plaintiff.

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