

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Ice Under Snow is Open and Obvious as a Matter of Law

By Caroline Grech Clapper

In the recently unpublished opinion of *Parsons v HMTC, Inc.*, the Michigan Court of Appeals affirmed the trial court's dismissal in a snow-covered ice case which held that snow-covered ice was open and obvious as a matter of law.

The facts of this case were not clearly stated in the opinion. However, the Court did note that Plaintiff admitted his awareness of the snow, but denied knowledge of ice underneath it. Plaintiff was a lifelong resident of Michigan. Therefore, the Court reasoned that he was familiar with Michigan winters and should have been aware that ice frequently forms beneath snow during winter nights.

The Court of Appeals has previously held that snow-covered ice is not *per se* open and obvious as a matter of law, and that when a person only observed snow, that person would have no reason to believe that there was slippery ice beneath the snow. The Court of Appeals was previously of the opinion that to hold as a matter of law that "where there is snow, there is ice" would be to hold that all accumulations of snow and ice would be open and obvious *per se*. In this case, it is clear that the Court of Appeals did not change its concerns regarding snow-covered ice cases, but noted the Michigan Supreme Court's reversal of two similar cases in which the Court of Appeals previously issued opinions to the contrary.

SECRET WARDLE NOTES:

Ice under snow is no news to Michiganders. The Court of Appeals struggled with this issue for years, but now finally understands. This case is one of several unpublished opinions holding that ice under snow is an open and obvious condition familiar to Michigan residents.

Nevertheless, property owners and managers should not rely on legal defenses as a substitute for promptly clearing snow and ice, and otherwise making their premises safe for visitors. One day the law is on your side, the next day it may not be.

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In this case, the Court of Appeals completely reversed its prior position and conceded that the Michigan Supreme Court has overturned it on two different occasions under similar circumstances. Therefore, because there is a general knowledge in Michigan that "where there is snow, there is ice," ice under snow is open and obvious as a matter of law.

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