

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Temperature Changes Do Not Create Duty to Inspect for Ice

By Nicole Wright

In *Bloss v Sun Communities Operating Limited Partnership, d/b/a White Lake Mobile Home Village*, unpublished decision of the Michigan Court of Appeals, Plaintiff claimed that temperatures fluctuating above and below freezing created a duty for Defendant to inspect for black ice. The Court of Appeals held Plaintiff failed to show that Defendant had sufficient notice of the black ice to trigger a duty to alleviate the condition that allegedly caused Plaintiff to slip and fall.

On December 27, 2002, Plaintiff allegedly slipped and fell on some black ice located on the roadway in Defendant's mobile home park. According to Plaintiff, he exited his truck to assist a co-worker, took a few steps, and allegedly slipped and fell on a patch of black ice that was about six feet by four feet on Defendant's roadway. Defendant's snow removal contractor had plowed and salted the area two days before.

Plaintiff filed a lawsuit claiming Defendant failed to keep its premises in reasonable repair as required by MCL 554.139 by negligently allowing "an unnatural excessive accumulation of black ice". Plaintiff's meteorologist described the patch of black ice as "a very thin layer of ice that is difficult to detect upon casual visual inspection." Further, the meteorologist concluded the temperature fluctuated above and below the freezing point, thereby causing the black ice prior to the day of the incident. The meteorologist's findings were Plaintiff's sole basis for asserting that Defendant owed a duty to Plaintiff to discover and alleviate the black ice that allegedly caused Plaintiff to slip and fall.

In determining whether to grant Defendant's motion for summary disposition, the trial court considered the following: (1) Plaintiff and his co-worker did not slip on the roadway prior to the subject incident, (2) there

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The Court of Appeals declined imposing a duty on possessors of land to inspect for icy conditions continuously when temperatures fluctuate above and below the freezing point. According to the Court, the creation of icy conditions due to fluctuations in temperature did not show negligence.

Possessors of land are not obligated to inspect their roadways for ice continuously when temperatures shift from above and below freezing. Rather, invitees need to take responsibility for their own actions and watch where they walk.

Nevertheless, property possessors have a duty to conduct inspections of the property which are reasonable in frequency and scope. Every property manager knows the "hot spots" on their property which require special attention. These areas should be given a higher priority for the order and frequency of inspections. If a problem is discovered (ice, debris, trip hazards, broken pavement, etc.), barricade the area if possible and fix the problem as soon as practicable.

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was sufficient evidence to show that Defendant's snow removal contractor plowed and salted the road two days before the subject incident, and (3) Plaintiff admitted that the road conditions were clear on said date.

According to the Court, possessors of land are not obligated to inspect and/or alleviate icy conditions on their premises merely because of fluctuations in temperature above and below the freezing point. The Court further held that the evidence presented suggested, at best, that Plaintiff was the victim of a combination of innocent circumstances, not Defendant's negligence.

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