

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Snow and Ice on Patio and Steps does not Constitute a Special Aspect of an Open and Obvious Condition

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In *Filarey-Chandler v. Colonial Court Apartments, et.al.*, (2004), an unpublished decision of the Michigan Court of Appeals, the Court examined the applicability of the open and obvious doctrine with respect snow and ice on a patio and patio steps, which caused injury to a tenant in an apartment complex. Plaintiff, a resident of Defendant's apartment complex, filed suit after she slipped on ice located under snow on the patio and patio steps on the premises. Plaintiff's suit alleged Defendants negligently failed to maintain the premises in a reasonably safe condition and failed to warn of the condition. The trial court granted Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(10), holding that the condition was open and obvious.

The Court of Appeals agreed with the trial court, reasoning that "the duty to protect an invitee does not extend to a condition that is so open and obvious that an invitee could be expected to discover it for himself, unless an unreasonable risk of harm remains." *Id* at 1.

As a general rule, absent special circumstances, hazards presented by ice and snow are open and obvious, and there is no duty on the part of the property owner to warn of or remove such a hazard.

SECRET WARDLE NOTES:

Generally, the danger of snow and ice is open and obvious and alone does not constitute a special aspect which renders the condition unreasonably dangerous to an invitee of a property owner.

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Additionally, the hazard presented by ice and snow is open and obvious when the Plaintiff knew of the condition, or an average person of ordinary intelligence under the circumstances would have been able to discover the condition and associated risk.

Plaintiff acknowledged she observed ice and snow in front of her building and on the patio, that she recognized the danger of falling on the ice and/or snow, and that there were alternative routes available. Based on these facts, the Court of Appeals held there were no special aspects of the condition which made it unreasonably dangerous despite its open and obvious nature. The Court further opined that the risk of falling down several ice-covered steps does not constitute a special aspect of the open and obvious condition of ice and snow.

For these reasons, the Court of Appeals upheld the dismissal of the trial court based on the Open and Obvious Doctrine.

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