

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Five Days With No Snow Maintenance Is Not Reasonable

By Krystal D. Hermiz

The law in Michigan is that a landlord has a duty to take reasonable measures to ensure that the sidewalks are fit for their intended use. *Benton v Dart Properties Inc*, 270 Mich App 437, 440. In *Solomon v Blue Water Vill E*, No. 291780, Mich App, *rel'd* 7/29/10, a recent unpublished opinion of the Michigan Court of Appeals, the Court considered whether salting a sidewalk once, five days prior to Plaintiff's fall, was a reasonable measure. Plaintiff alleged Defendants negligently failed to maintain the property in a condition fit for its intended use pursuant to MCL 554.139, and they negligently allowed an unnatural accumulation of ice to remain on the sidewalk. MCL 554.139(1)(a) states that in every lease of a residential premises, the lessor covenants to keep "the premises and all common areas...fit for the use intended by the parties."

SECRET WARDLE NOTES:

In this case the Court of Appeals reminds landowners how important it is to continuously take reasonable measures in maintaining your property. The problem in this case was that no snow measures were taken for five days before the incident occurred. If it snows, even if temperatures get above freezing, snow measures should be taken, especially if there is a chance of refreeze as there was in this case.

In analyzing MCL 554.139 the Court held that since "different areas of an apartment complex may have different uses, whether there is a breach of the relevant statute depends heavily on the primary intended use of the portion of the premises at issue." *Id* at 6-7. The Court further held that the intended use of a sidewalk is for walking and whether a condition rendered a sidewalk unfit for use would require an evaluation of the specific facts.

In this case, five days before Plaintiff's slip and fall, Defendant had snow removed from the sidewalks and applied salt. No other measures were taken by Defendant leading to the accident. On the day of the accident, weather records indicated that approximately five inches of snow remained on the ground. Plaintiff admitted that he did notice snow and ice on the stairs the morning of the accident. According to weather records, temperatures reached as high as 41 degrees Fahrenheit and such a rise in temperature very likely caused some of the accumulated snow to melt. When Plaintiff left his apartment in the evening, he used the stairs. As he stepped from the last step onto the downward-sloping concrete pad leading to the parking lot, he slipped and fell on a patch of ice. Plaintiff contended that the downward sloping design of the sidewalk and concrete pad produced a concentrated accumulation of melted snow, which turned into ice.

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The Court of Appeals agreed and found that given the existing accumulation on the day of the incident, the rising temperatures, and the downward slope of the area of the sidewalk at issue, “reasonable minds could differ as to whether reasonable measures were taken to keep the area free from ice.”

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