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boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Raised Edge of Floor Mat in Ponderosa Restaurant was Open and Obvious

By James P. Molloy

In *Hart v Wayne Watkins, Inc.,* d/b/a Ponderosa Steakhouse of Mount Morris, an unpublished decision of the Michigan Court of Appeals, Plaintiff filed a lawsuit to recover for personal injuries when she tripped and fell on the raised edge of a floor mat just inside the front door of Defendant's restaurant. The Court affirmed the trial court's dismissal of the lawsuit based on the open and obvious doctrine.

To establish a prima facie case of negligence, a plaintiff must prove that: 1) the defendant owed a duty to the plaintiff; 2) the defendant breached the duty; 3) the defendant's breach of duty proximately caused the plaintiff's injuries; and 4) the plaintiff suffered damages. *Case v. Consumers Power Co,* 463 Mich 1, 6; 615 NW2d 17 (2000).

In general, a premises possessor owes a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Lugo v Ameritech Corp,* 464 Mich 512, 516; 629 NW2d 384 (2001). The open and obvious doctrine attacks the duty element that a plaintiff must establish in a prima facie negligence case. *Bertrand, supra* at 612. Under most circumstances, a possessor of land is not required to warn or protect an invitee from an open and obvious danger. *Lugo, supra* at 517. A condition is open and obvious if it is reasonable to expect than an average person of ordinary intelligence to discover the danger upon casual inspection. *O'Donnell v Garasic,* 259 Mich App 569, 574; 676 NW2d 213 (2003).

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Although the *Hart* decision is an unpublished decision and therefore, non-binding on lower courts, it presents another example of the application of the open and obvious doctrine to everyday occurrences. Once again, the Michigan Court of Appeals has shown that it is not going to reward people for failing to take care for their own safety, especially with respect to readily observable and avoidable conditions. As the Court stated in *Lugo,* there is no duty on the possessor of land to make these ordinary occurrences "foolproof."

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In this case, the floor mat at issue was not obstructed from the view of anyone entering or exiting the restaurant. Plaintiff acknowledged this fact and the fact that a floor mat is an ordinary condition that people encounter every day. In addition, color photographs showed a readily observable contrast between the floor mat and the lobby floor, including the raised edge of the floor mat. The Court opined that it would be reasonable to expect that an average person of ordinary intelligence in Plaintiff's position would notice the contrast and transition and the raised edge. Moreover, Plaintiff had traversed the area in which the floor mat was located, without incident, the previous day. Relying on the *O'Donnell* case, the Court opined that no reasonable juror could conclude that the condition in the instant case and the danger it presented was not open and obvious.

Plaintiff also alleged that despite the openness and obviousness of the condition, there existed special aspects of the floor mat that made it unreasonably dangerous. Relying on *Lugo,* the Court ruled that the facts of this case did not involve special aspects of an open and obvious condition. Over the years, Plaintiff found her way around the floor mat upon entry and exit numerous times. In light of the slight raised edge on the mat and the layout of the restaurant, the condition was not effectively unavoidable.

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