

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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## Ice On Stairway Created By Water Dripping From Roof Is Open and Obvious

By Todd Rowe

In *Gamage v. Canchola*, the Michigan Court of Appeals upheld the trial court's decision that ice covering the rear stairway outside Defendant's building was an open and obvious condition and that there were no special aspects of the icy stairway rendering it unreasonably dangerous. The Court of Appeals found that the trial court properly granted the Defendant's motion for summary disposition.

On appeal, Plaintiff first argued that the trial court erred in its holding that the icy stairway was an open and obvious condition. The test used by Michigan courts to determine whether a condition is an open and obvious danger is "whether an average user with ordinary intelligence would have been able to discover the danger and risk presented upon casual inspection." In *Gamage*, Plaintiff testified that as he ascended the stairs at approximately 11:00 a.m., he noticed: that the steps were wet from water dripping from the roof, that snow was on the ground, and that the temperature had cooled off by the time he descended the stairs later that same day. The Court of Appeals found that the trial court's reliance on the Michigan Supreme Court's decisions in *Joyce v. Rubin*, 249 Mich App 231 (2002), and *Corey v. Davenport College of Business*, 251 Mich App 1 (2002), for the proposition that snow and ice on sidewalks and stairs could constitute an open and obvious danger was proper.

### SECRET WARDLE NOTES:

Dripping gutters and roofs continue to be the bane of many property owners. Leaks and drainage problems often create icy conditions at the most dangerous of places, like entrance areas and walkways. While this case was dismissed because the condition was open and obvious, these conditions are often hard to detect since they usually develop in the evening hours. It is imperative that property owners pay special attention to these areas in order to reduce their exposure to personal injury lawsuits.

## CONTINUED...

Next, applying the reasoning from *Joyce* and *Corey* to the instant case, the Court of Appeals found the dripping water, coupled with the falling temperatures during the day, would have led a reasonable person in Plaintiff's position to have foreseen the danger of slipping and falling on the icy stairway. Consequently, the Court of Appeals found the evidence in the instant matter was sufficient to support the trial court's ruling that the icy stairway was an open and obvious danger.

Finally, Plaintiff argued that the trial court improperly granted summary disposition because the icy stairway possessed special aspects that made the condition unreasonably dangerous. Specifically, Plaintiff contended that the ice on the stairway was effectively unavoidable and, therefore, was excluded from the open and obvious doctrine. The Court of Appeals rejected Plaintiff's argument in this regard. The Court found that the stairway was not "effectively unavoidable" because Plaintiff testified that he could have used an alternate stairway inside the building rather than the ice covered stairway on the exterior of the building. Plaintiff failed to show the stairway possessed any special aspects creating an unreasonable risk of harm.

The Court of Appeals found the icy stairway was an open and obvious condition that did not possess any special aspects rendering it unreasonably dangerous. Consequently, the trial court's decision granting Defendant's motion for summary disposition was affirmed.

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