SECREST SW WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

10.10.06

Slipping On Tile With Bare, Wet Feet Was Open And Obvious

By Tara Hanley Bratton

In *Schnett et al v Shree Krisha Enterprises, Inc.*, unpublished decision of the Michigan Court of Appeals, it was held that the wet tile floor near a swimming pool was an open and obvious condition, avoidable and not an excessive hazard. Therefore, Plaintiff's case was properly dismissed by the trial court.

Plaintiff was a guest at the Defendant's hotel and decided to go for a swim. Plaintiff got out of the pool and, without using the towel provided by the Defendant to dry himself off or putting on the shoes he wore to the pool, started to walk to the restrooms. The flooring on the way to the restrooms was tiled with a combination of slip-resistant and smoother tiles. Plaintiff took two or three steps on the walkway with his bare, wet feet and slipped sustaining injury.

Defendant filed a Motion for Summary Disposition arguing that the risk of walking with bare, wet feet on a tile floor was an open and obvious hazard. The trial court agreed and Plaintiff appealed.

On appeal, Plaintiff argued that the trial court was incorrect in finding the hazard was open and obvious and that it was avoidable. Plaintiff additionally argued that the defense was not applicable because Plaintiff's injuries were due to Defendant's active negligence, rather than a premises liability theory of recovery. The Court of Appeals disagreed with Plaintiff.

Under *Lugo v Ameritech Corp*, 469 Mich 512 (2001), a premises processor owes a duty to invitees to exercise reasonable care to protect against an unreasonable risk of harm caused by dangerous conditions on the premises, but it does not extend to open and obvious hazards. However, also under *Lugo*, the open and

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The Court of Appeals refused to release Plaintiff from any responsibility for his own actions. Plaintiff in this case chose to walk on tile flooring with bare, wet feet and he chose not to dry his feet or put on his shoes. The Court was not willing to allow this matter to proceed to a jury when they could be influenced by factors other than the state of present Michigan premises law.

Poignantly, the Court was not willing to allow Plaintiff to couch this claim in negligence rather than premises liability in a gambit to avoid application of the open and obvious doctrine.

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obvious hazard must not be "effectively unavoidable" or "unreasonably dangerous."

The *Schnett* Court held that an average person of ordinary intelligence knows the risk of slipping on a tile floor with wet feet. The *Schnett* Court further opined that the hazard confronted by Plaintiff was avoidable by either drying his feet with the towel provided by Defendant or by putting on the shoes he wore to the pool. The Court further held that tiling the area did not create an excessive hazard as floors that are likely to become wet are commonly tiled.

Plaintiff also argued that this was a claim of negligence rather than a premises liability claim, thus making the open and obvious doctrine inapplicable. The Court rejected this argument since Plaintiff's injury arose out of a condition on the land rather than out of any activity or conduct that created the condition. The Court held that Plaintiff's injuries arose from wet feet on the tile rather than any action on Defendant's part in replacing carpet with tile or failing to keep mats on the tile at all times. Moreover, Plaintiff had used this same walkway before without incident.

Lastly, the Court indicated that any negligence claim would be unsuccessful because Plaintiff failed to prove any breach of duty by failing to cite any authority that such a breach occurs when there is a removal of carpet or mats or that using tile in a hallway was inappropriate.

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We welcome your questions and comments.

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