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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Whether Lamp Cord Which Blended With Carpeting Was Open And Obvious Was Question For Jury

By Brian M. Thomas

In *Faye Rice v The Trowbridge*, et al, unpublished decision of the Michigan Court of Appeals, Plaintiff allegedly tripped over a lamp cord located in an aisle between an end table and a sofa. The Court held that there were factual questions for the jury to decide regarding (1) whether or not it was an open and obvious condition, and (2) whether the alleged condition caused Plaintiff's fall.

Plaintiff was a tenant at Defendant's senior citizen assisted living facility. On the date of the accident, Plaintiff was walking through an aisle between an end table and a sofa in the lobby of the facility when she allegedly tripped over a lamp cord, fell and injured herself. According to Plaintiff, the lamp cord blended with the color of the carpeting and created an unreasonable hazard in a highly trafficked area. Defendant filed a motion for summary disposition arguing that the open and obvious doctrine required dismissal of Plaintiff's complaint. The trial court agreed and Plaintiff appealed.

On appeal, Plaintiff argued that the trial court erred in resolving questions of fact in a light most favorable to Defendant. Plaintiff also argued that the common law open and obvious defense was unavailable to Defendant because Defendant had breached its statutory duties. Plaintiff further argued that the hazard was not open and obvious.

With respect to Plaintiff's first argument on appeal, the Court of Appeals held that a question of fact existed as to whether the cord and furniture placement were the same as on the date of the alleged incident. Defendant provided photographs taken eight months after the accident which showed a space between the end table and sofa a few inches-wide. Defendant argued that the configuration of the furniture shown in the photographs was the same configuration encountered by Plaintiff when she fell.

A security guard for Defendant initially testified that, other than the position of the coffee table, the photographs showed the same configuration of the furniture as on the date of the fall. The security guard later admitted he could not tell with 100% certainty that the furniture configuration was the same. Plaintiff testified that when she tripped over the lamp cord, she was walking through a "nice big space,"

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The Court of Appeals refused to release Defendant from liability because material questions of fact existed as to the following: (1) whether the lamp cord blended in with the color of the carpeting, and (2) whether photographs taken eight months after the accident accurately depicted the furniture configuration on the date of the accident.

Therefore, it is important for premises owners to not only ensure that common areas are free from potential hazards, but also to immediately investigate when an accident occurs. In this case, if Defendant had immediately taken photographs after the accident, the photographs may have shown that the lamp cord was readily observable and that the furniture configuration was such that one would not expect a person to walk between the sofa and end table.

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one that was "enough to walk by comfortably" when she fell. According to Plaintiff, the photographs depicted a configuration different than what the actual configuration was on the date of her fall.

The trial court concluded that the configuration was the same on the day of the accident as shown in the photographs. The Court of Appeals, in reversing the trial court's decision, noted that the trial court's ruling involved a material factual dispute which was resolved in the light most favorable to Defendant, rather than in the light most favorable to the non-moving party as required by law.

In *Benton v Dart Properties, Inc.*, 270 Mich App 437 (2006), the Court of Appeals held that the open and obvious doctrine could not serve to deny liability with respect to a leased or licensed premises if there was a material breach of a specific statutory duty imposed upon owners of such premises. Plaintiff's complaint alleged breaches of statutory and common law duties. Although the parties briefed and argued the statutory duties issue in the trial court, the trial court did not address the issue. Therefore, the Court of Appeals remanded this issue to the trial court for a determination whether Defendant breached its statutory duties to keep the premises in reasonable repair and fit for its intended use.

Lastly, with respect to the open and obvious doctrine, under *Lugo v Ameritech Corp.*, 469 Mich 512 (2001), a premises owner 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, the open and obvious hazard must not be "effectively unavoidable" or "unreasonably dangerous."

The *Rice* court held that a question of fact existed as to whether the lamp cord was open and obvious on the date of Plaintiff's fall. Plaintiff testified that she had not seen the lamp cord prior to her fall because it blended in with the color of the carpet. Defendant's security guard testified that the lamp cord was not in the walkway, although upon review of the photographs, he admitted that the cord somewhat blended in with the color of the carpeting. The Court concluded that it would be impossible to determine simply by looking at photographs taken eight months after the fall whether the cord was easily observable upon casual inspection at the time of the accident. The Court concluded that summary disposition based upon the open and obvious doctrine would be inappropriate since it involved a factual dispute for the jury to decide.

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