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boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

11.30.06

Landlord Tenant Statute Held Inapplicable to Ice and Snow in Parking Lot (For Now)

By Mark F. Masters

In *Allison v. AEW Capital Management*, __ Mich App __ (2006), the Michigan Court of Appeals was "constrained" to uphold dismissal based on the open and obvious defense of a tenant's lawsuit against his landlord due to a slip and fall on snow and ice in a parking lot at Plaintiff's apartment building.

Plaintiff was a tenant at Defendant's apartment building. He slipped and fell on an accumulation of snow and ice as he attempted to reach his car in the parking lot. Plaintiff filed suit alleging, among other things, that Defendant had breached its common-law duty to protect and warn Plaintiff and its statutory duty as a landlord under MCL 554.139(1).

Defendant moved for summary disposition arguing that Plaintiff's common law claims were barred because the danger was open and obvious. Defendant further argued that Plaintiff could not rely on MCL 554.139(1) because the statute did not apply to natural accumulations of snow and ice. The trial court granted Defendant's motion and Plaintiff appealed.

On appeal, Plaintiff argued that the open and obvious danger doctrine did not bar his claim that Defendant violated the statutory duty imposed by MCL 554.139(1). In *Benton v Dart Properties Inc*, 270 Mich App 437 (2006), the Court stated that a tenant's claim against a landlord resulting from injuries the tenant sustained in a fall on an icy sidewalk in his apartment complex implicated the landlord's duty to keep common areas fit for their intended use under MCL 554.139(1)(a) and that "[b]ecause the intended use of a sidewalk is walking on it, a sidewalk covered with ice is not fit for this purpose." The *Benton* Court explicitly held that the open and obvious danger doctrine did not bar the tenant's claim against the landlord for

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The short rule (for now) is that the open and obvious defense applies to slips and falls on snow or ice in parking lots at apartment buildings, but not to snow or ice on sidewalks.

There is a stated distinction by the Courts between slips and falls on snow and ice in a parking lot or on a sidewalk under MCL 554.139. However, there is no meaningful explanation of the difference by any of the Courts. Until this decision, each of the lead cases addressing these issues has failed to reference the opposing line of cases.

While this case helps landlords in the short-term, it spells out the conflict in the case law and shouts out this Court's disagreement with the controlling case law which favors landlords. It is likely that the Michigan Supreme Court will resolve this conflict in the next year. Unfortunatley, there is no way of telling what they will do, if anything.

Therefore, as always, the best defense to any premises liability claim is a well maintained property.

violating its statutory obligation under MCL 554.139(1)(a). In *Allison*, Plaintiff asked the Court to extend the holding in *Benton* to parking lots and apply the reasoning of *Benton* to the facts of this case.

The *Allison* Court declined Plaintiff's invitation to extend *Benton* to the facts of this case because it was bound by *Teufel v Watkins*, 267 Mich App 425 (2005). *Teufel* also involved a tenant who fell on ice in the parking lot of an apartment complex. The *Teufel* Court reasoned that the landlord's duty to remove snow and ice from the parking lot was not controlled by MCL 554.139(1), and therefore concluded that the open and obvious danger doctrine barred the tenant's claim. Specifically, the *Teufel* Court held:

> The plain meaning of "reasonable repair" as used in MCL 554.139(1)(b) requires repair of a defect in the premises. Accumulation of snow and ice is not a defect in the premises. Thus, a lessor's duty under MCL 554.139(1)(a) and (b) to keep its premises in reasonable repair and fit for its intended use does not extend to snow and ice removal.

Since *Teufel* was a published decision, the *Allison* Court was constrained to rule that an individual who was injured as a result of snow and ice accumulation in the parking lot of an apartment complex could not rely on the statutory duties imposed by MCL 554.139(1)(a) and (b) to avoid application of the open and obvious doctrine.

Notwithstanding its obligation to follow *Teufel*, the *Allison* Court noted its disagreement and observations regarding the holding in footnote 1 of *Teufel*. First, the footnote did not attempt to distinguish or even mention the older case of *O'Donnell v Garasic*, 259 Mich App 569, 581 (2003), which held that a landlord could not use the open and obvious danger doctrine to avoid liability when the landlord had a statutory duty to maintain the premises in accordance with MCL 554.139(1)(a) and (b). Second, the footnote in *Teufel* conclusively asserted that a landlord's "duty under MCL 554.139(1)(a) and (b) to keep its premises in reasonable repair and fit for its intended use does not extend to snow and ice removal" without ever conducting an analysis under both MCL 554.139(1)(a) and MCL 554.139(1)(b) to determine whether the landlord's duty extended to snow and ice removal.

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We welcome your questions and comments.

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