SECREST WARDLE

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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Speculation Does Not Establish Notice

By Cleo N. Fekaris

In *Fountaine v Singh of Northridge Limited Partnership*, et al, Secrest Wardle won summary disposition for the Defendants based on lack of notice in a slip and fall on ice accident at an apartment complex parking lot. The Michigan Court of Appeals recently upheld the dismissal in an unpublished opinion.

To establish negligence, the plaintiff must prove that the defendant owed the plaintiff a duty, the duty owed was breached, there was a causal connection between the breach and the accident, and damages resulted. In a premises liability action, the duty owed to a plaintiff arises out of the relationship between the plaintiff and the premises possessor/defendant.

In *Fountaine*, Plaintiff was not Defendants' tenant and did not pay rent. He was a social guest of a tenant. Michigan case law provides that the duties owed to social guests of tenants are the same as those duties owed to invitees. *Petraszewsky v Keeth* (On Remand), 201 Mich App 535, 540 (1993). A premises possessor has a duty to protect invitees from known, dangerous conditions on the land. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96 (1992). Further, a premises possessor may have knowledge of the dangerous condition through actual or constructive knowledge (i.e., "notice"). *Hampton v Waste Mgt of Michigan, Inc,* 236 Mich App 598, 602 (1999).

In an effort to establish that Defendant had notice of the icy condition, Plaintiff presented the trial court with weather reports which showed that temperatures were below freezing the night before the incident and that there was some precipitation during the preceding week. Plaintiff also presented maintenance records showing that certain areas of the complex were salted a few days before the accident. Plaintiff testified that the ice probably formed from melting snow. However, Plaintiff also admitted that he did not know how long the ice was present before he fell and that he did not know the actual source of the liquid which formed the ice. Additionally, Plaintiff testified that he did not know if someone spilled something in the area before he fell which could have

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Once again, a successful defense was due in large part to the property owners' (1) diligent efforts to keep their premises in reasonably safe condition, and (2) creation and retention of records documenting their efforts.

Judge Helene White disagreed with the decision and issued a dissenting opinion. Judge White would have found that Plaintiff presented sufficient evidence to create a question of fact as to whether the icy condition existed for a sufficient length of time for Defendants to have constructive notice of the condition.

Had this case gone the other way, the Defendants were still in a good position to show the jury employee testimony and records that they acted reasonably and quickly to inspect and abate icy conditions on the property.

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frozen into the ice on which he allegedly slipped and fell.

The Court of Appeals found that Plaintiff did not present any evidence that the icy condition existed for a sufficient length of time before he fell to give Defendants notice and a reasonable opportunity to abate the condition. The weather records and maintenance records were insufficient to establish that Defendants had notice of the icy condition.

Plaintiff's argument that Defendants had notice of the icy condition before Plaintiff fell only amounted to speculation. The Court articulated that it was possible that Defendants' employee salted only the sidewalk because there was no ice in the parking lot where Plaintiff fell until shortly before the incident. Therefore, because there were equally plausible theories regarding why the parking lot was not salted, Plaintiff's theory was speculative.

A theory is speculative when there are other equally plausible explanations for the same event. *Skinner v Square D Co,* 445 Mich 153, 164-165 (1994). In this case, for the reasons explained above, the Court found that Plaintiff's theory to establish notice was mere conjecture and speculation. Plaintiff failed to present evidence that Defendants had actual or constructive knowledge of the alleged icy condition. Therefore, the case was properly dismissed.

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We welcome your questions and comments.

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