

community watch

MONITORING LEGAL ISSUES THAT AFFECT MICHIGAN MUNICIPALITIES

03.03.06

Building Inspector Owed No Duty to Homeowner's Invitee

By Mark F. Masters

In *Rakowski v Sarb*, ____ Mich App ____ (decided February 7, 2006), the Court of Appeals was confronted with a new issue. Specifically, whether a municipal building inspector owed a duty of care in common law negligence to protect a homeowner's guest from personal injury sustained by the guest because of an allegedly defective structure inspected and approved by the building inspector. In a published decision, the Court held that there was no such duty and dismissed Plaintiff's case.

Plaintiff was injured when the railing gave way on a handicap ramp at the home of her parents, Arthur and Virginia Kalis. The City of Dearborn Heights had issued a building permit two years before. The contractor hired to construct the ramp was fired before the ramp and railing were completed. Mr. Kalis died shortly thereafter, and no one completed the ramp or the railing. Several months before the accident, another family member offered to reinforce the railing because he saw that it was bowing and insecure. Plaintiff told him that her husband would reinforce the railing. Still nothing was done.

Mr. Sarb, a Dearborn Heights building inspector, conducted an inspection of the ramp and other building projects at the Kalis house seven months before the accident. Though he had no independent recollection of the inspection, Mr. Sarb acknowledged that he initialed and wrote "okay" on the final inspection of the ramp. It was undisputed that Dearborn Heights building inspectors conducted visual inspections, but did not conduct destructive testing or stress tests to determine whether structures met weight bearing requirements.

Plaintiff originally filed suit against her mother, and later added the original contractor, who was fired during his construction of the ramp, alleging that they negligently built and maintained the ramp and railing. Plaintiff obtained a \$220,000 arbitration award against them, and then filed suit against Mr. Sarb for negligence and gross negligence in conducting his inspection of the handicap ramp and railing.

Preliminarily, the Michigan Court of Appeals found that he was considered an employee (rather than an independent contractor) and an officer of the City of Dearborn Heights for purposes of

SECRET WARDLE NOTES:

Immediately after securing a \$220,000 award against her homeowner-mother and the fired builder, Plaintiff sued the city building inspector who signed off on an allegedly defective ramp and railing.

As is often the case, the best defense is an educated and aggressive one. There was a strong and extensive record developed through discovery which gave the Court of Appeals the information it needed to rule in Defendant's favor on difficult and complicated issues such as duty, governmental immunity and proximate cause.

CONTINUED...

governmental immunity.

The Court then examined whether or not there was a common law duty to support Plaintiff's claims against Mr. Sarb. Plaintiff conceded that there was no statutory duty. In common law negligence cases, a duty is "an obligation, to which the law will give recognition and effect, to conform to a particular standard of conduct toward another."

The Court found that there was no such common law duty owed by Mr. Sarb to Plaintiff, because Plaintiff never owned or lived in the house at issue, she never spoke with Mr. Sarb, she was not present when his inspection took place, and she never talked with anyone at the building department about the ramp. Furthermore, Mr. Sarb's role in conducting the inspection was limited by the City to a visual assessment of the structure. He played no role in the construction or design of the ramp.

The Court also acknowledged that good public policy supports its ruling, stating:

"Moreover, because individual governmental employees like Mr. Sarb can least afford the imposition of litigation costs and large damage awards in personal injury cases, the imposition of a duty on municipal building inspectors would be unfair and ineffectual. To expose a municipal building inspector to such liability would also engender numerous adverse consequences for our local communities. Municipalities may decline to employ building inspectors or may insist on a waiver of liability to avoid exposure for personal injuries occurring on residential premises. Further, municipalities that choose to defend and indemnify inspectors would then bear the cost of damage awards which would undoubtedly be passed on to residents in the form of increased taxes, prohibitively high permit fees, or perhaps further delays in obtaining numerous necessary approvals from municipal inspectors. Indeed, litigation costs and the cost to comply with a duty to warrant the safety and workmanship of all construction projects might very well result in a municipality's decision to discontinue building inspections altogether."

The opinion concluded by also finding that there was no gross negligence by Mr. Sarb. Gross negligence is defined as conduct which is "so reckless as to demonstrate a substantial lack of concern for whether an injury results." There was nothing in the record to suggest that Mr. Sarb was grossly negligent.

CONTACT US

Farmington Hills

30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens

94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing

6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL

2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECRET
SW
WARDLE

Copyright 2006 Secrest, Wardle, Lynch, Hampton,
Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Municipal Practice Group Chair

William P. Hampton

Senior Editor

Steven P. Joppich

Editor

Carina Nelson

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for Community Watch, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at cnelson@secrestwardle.com, or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice

Blueprints – Mapping legal solutions for the construction industry

Boundaries – A guide for property owners and insurers in a litigious society

Contingencies – A guide for dealing with catastrophic property loss

Fair Use – Protecting ideas in a competitive world

In the Margin – Charting legal trends affecting businesses

Industry Line – Managing the hazards of environmental toxic tort litigation

Landowners' Alert – Defense strategies for property owners and managers

No-Fault Newsline – A road map for motor vehicle insurers and owners

On the Beat – Responding to litigation affecting law enforcement

On the Job – Tracking developments in employment law

Safeguards – Helping insurers protect their clients

State of the Art – Exploring the changing face of product liability

Structures – A framework for defending architects and engineers

Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability

Update Illionois - Current trends in Illinois law