

When One Door Closes, a Question of Fact Does Not Automatically Arise

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December 13, 2024

In *Bogorad v Otis Elevator Company*, unpublished opinion of the Court of Appeals, issued November 13, 2024 (Docket No. 364161), the Plaintiffs filed a lawsuit against Otis Elevator Company and Greektown Casino, LLC. The Complaint alleged injuries arising from an “elevator mishap” that was fully captured by a surveillance camera.

The Plaintiffs, Joel and Mary Bogorad, went to Greektown Casino for lunch. To leave the premises, Plaintiffs needed to use the elevator. When the elevator arrived, two passengers exited without incident before Mr. Bogorad entered. Mr. Bogorad stepped into the elevator also without incident. Ms. Bogorad then attempted to enter the elevator as the doors were closing. This resulted in Ms. Bogorad making contact with one of the elevator doors on her right side. Ms. Bogorad’s balance was then shifted into the left door. The doors remained open while Mr. Bogorad pulled Ms. Bogorad into the elevator. The repair records of Otis revealed that, during the incident with Ms. Bogorad, the doors of the elevator were knocked off track.

Secret Wardle Notes

In premises liability cases, the mere fact that a plaintiff was injured is insufficient to establish that the alleged condition was dangerous. It is also insufficient to establish that the premises owner knew or should have known of the allegedly dangerous condition. Here, Plaintiffs did not present sufficient evidence to establish that the elevator was dangerous or that Greektown Casino had notice of the alleged defectiveness of the elevator. Thus, the case was properly dismissed for lack of a genuine issue of material fact.

Plaintiffs’ Complaint alleged, in relevant part, negligence and premises liability against both Defendants. Both Defendants moved for summary disposition under MCR 2.116(C)(10). Defendants primarily argued that Plaintiffs could not establish the existence of an alleged dangerous condition. Defendants secondarily argued that, even if Plaintiffs could establish a dangerous condition, there was no evidence that Defendants had notice. Otis also argued that Plaintiffs could not establish that it breached a duty or caused Plaintiffs’ alleged injuries. The trial court granted summary disposition to both Defendants on all claims.

Negligence

The Court of Appeals dispensed with Plaintiffs’ negligence claim against Greektown Casino. Plaintiffs alleged that their injuries arose from an allegedly defective elevator. In other words, Plaintiffs’ negligence claim sounded in premises liability because the claimed injuries resulted from an allegedly dangerous condition on the land.

Plaintiffs' negligence argument against Otis was that Otis violated its duty to keep the elevator in reasonable repair for safe use. Plaintiffs argued that such violation was established by the doors closing while Ms. Bogorad was in the threshold and not immediately retracting. Plaintiffs further pointed out that the doors closed with enough force to cause them to come off the track. The evidence presented established that Otis had repaired and inspected the elevator within the two months preceding the subject incident. However, there was no evidence that the elevator malfunctioned after Otis's work or that Ms. Bogorad's mishap was due to the elevator being in disrepair. Accordingly, the Court of Appeals held that the trial court did not err because Plaintiffs failed to establish a genuine issue of material fact.

Premises Liability

To be liable under premises liability, the defendant must owe a duty as one in possession and control of the property, or as the owner of a residential rental property. In this case, it was clear that Greektown Casino had possession and control of the premises. Thus, the Court of Appeals affirmed the trial court's grant of summary disposition on this claim in favor of Otis.

As to Greektown Casino, the Court of Appeals held that Plaintiffs failed to present sufficient evidence to establish a genuine issue of material fact on two points. First, that the elevator constituted a dangerous condition. Second, that Greektown Casino had actual or constructive notice.

On the first point, the evidence established that the elevator doors were closing as Ms. Bogorad "approached the elevator and *before* she entered the threshold." Ms. Bogorad's act of stepping between the closing doors resulted in the contact that allegedly caused her injuries. Accordingly, there was no evidence establishing that Ms. Bogorad's injuries resulted because the elevator was defective or dangerous.

As to notice, the evidence established that Otis had repaired and inspected the elevator within the two months preceding the subject incident. There was no evidence that the elevator had malfunctioned in any way after Otis's inspection or before the subject incident. The surveillance video depicted a few dents on the upper half of the elevator doors, but Plaintiffs presented no evidence that established how long the dents were present. Plaintiffs also failed to establish that the dents impacted the elevator's operation. As such, there was no evidence that Greektown Casino knew or should have known of the allegedly dangerous condition of the elevator.

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