PLUNKETT & COONEY
Rapid Report
Legal Updates When You Need Them

Issued by the Litigation Practice Group April 4, 2006

OPEN AND OBVIOUS DOCTRINE CANNOT BAR CLAIMS IF LANDLORD VIOLATES STATUTORY DUTY

Authors:

Patrick D. Ryan
Direct: (586) 466-7602
pryan@plunkettcooney.com

Joseph C. Pagano
Direct: (586) 466-7600
jpagano@plunkettcooney.com

Michigan's ever-changing legal landscape in regard to premises liability recently took another turn that may impact businesses and their insurers.

The Michigan Court of Appeals, in *Bradley S. Benton v Dart Properties, Inc*, decided March 28 that the open and obvious doctrine cannot bar a claim against a landlord for violation of a statutory duty under MCL 554.139.

In *Bradley,* the appellate court held that the plaintiff's slip and fall on an icy sidewalk was not barred by the open and obvious doctrine because the landlord's statutory duty under MCL 554.139 required him to maintain the interior sidewalks within an apartment complex in a condition fit for the intended use.

In that case, the plaintiff saw patchy ice on the sidewalk in the morning, and when he returned to the complex in the evening, he noted the sidewalk had been covered with snow. He fell after slipping on a patch of ice that was hidden under the snow. The trial court granted the defendant's motion for summary disposition based on the open and obvious doctrine. The plaintiff appealed.

When the appellate court made its ruling, it cited *O'Donnell v Garasic*, 259 Mich App 569 (2003), which held that the open and obvious doctrine is not a bar to a landlord's liability where the landlord has a statutory duty to maintain the premises. The court in *O'Donnell* held:

> [t]he open and obvious danger doctrine is not available to deny liability to an injured invitee or licensee on leased or licensed residential premises when such premises present a material breach of the specific statutory duty imposed on owners of residential properties to maintain their premises in reasonable repair and in accordance with the health and safety laws, as provided in MCL 554.139(1)(a) and (b). [*O'Donnell, supra* at 581.]

Therefore, this latest twist in premises liability law means that even though an icy and snowy sidewalk might be open and obvious, if there is a violation of a statutory obligation, the open and obvious doctrine does not bar the plaintiff's claim.

For a complete copy of the Michigan Court of Appeals ruling in *Bradley S. Benton v Dart Properties, Inc*, click here.

For a complete copy of the appellate court's ruling in *O'Donnell v Garasic*, click here.

Blmfield.PD.FIRM.734648-1