PLUNKETT COONEY

Michigan Supreme Court to Define Duty Owed by Residential Landlords

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The Michigan Supreme Court will rule on a case next year that could make defending residential landlords in snow and ice premises liability cases a bit easier.

An article in the August 2007 edition of *In Summary*, the newsletter published by Plunkett Cooney's Litigation Practice Group, discussed the current state of the law pertaining to a landlord's duty in premises liability cases involving accumulations of snow and ice.

At that time, the Michigan Court of Appeals had overturned itself in *Allison v AEW Capital Mgmt. (On Rehearing), 274 Mich App 663 (2007).* The state of the law, with few exceptions, is that whenever a plaintiff sues a landlord for a slip and fall resulting from an accumulation of snow and ice, there is virtually always a "question of fact."

This means that dismissal by way of a motion for summary disposition is very unlikely, and residential landlords who are defendants must either settle the case or take their chances in front of a jury. The basis for this dilemma is MCLA § 554.139, which imposes a duty upon landlords to maintain the "premises" in reasonable repair, and the "common areas" fit for their intended use.

On September 26, 2007, however, the Michigan Supreme Court granted leave to appeal on the *Allison* case, instructing the parties to brief the issues of (1) the precedential value of *Teufel v Watkins, 267 Mich App 425 (2005),* in which the court stated in a footnote that ice and snow accumulations were not subject to the duty imposed by MCLA § 554.139, (2) whether sidewalks and parking lots are "common areas" under the statute, and (3) whether natural ice and snow accumulations should be part of the landlord's duty under the statute.

Although there is no guarantee how the Supreme Court will rule on any one of these issues, the fact that the appeal was accepted is a step in the right direction. Hearing at the Supreme Court is expected in January 2008, with an opinion expected before Aug. 1, 2008.