PLUNKETT COONEY

Supreme Court Rules Open and Obvious Doctrine Unaffected by Contractual Rights in Premises Liability Case

August 20, 2012

In a recent Michigan Supreme Court ruling, the court refused to expand the scope of the "special aspects" exception commonly raised by plaintiffs in premises liability cases to avoid the application of the open and obvious doctrine.

Specifically, the court held that having a contractual right to enter a business does not afford a greater status than any other business invitee, nor does it render ice effectively unavoidable.

In *Hoffner v Lanctoe*, the plaintiff was injured when she slipped and fell on ice in front of a gym to which she belonged, claiming that the hazard was effectively unavoidable "because" she had a contractual right to enter the premises as a paid member. The plaintiff admitted that she "recognized the danger posed by ice on the sidewalk, yet chose to confront the hazard in an ultimately unsuccessful effort to enter the premises."

The court turned to a special aspects analysis to determine if liability could arise despite the admitted open and obvious nature of the ice. The court discussed two instances in which the special aspects of an open and obvious hazard could give rise to liability: (1) when the danger is "unreasonably dangerous;" or (2) when the danger is "effectively unavoidable."

The court described an open and obvious condition as "unreasonably dangerous" only when it "presents an extremely high risk of severe harm to an invitee in circumstances where there is no sensible reason for such an inordinate risk of severe harm to be presented." Moreover, the court explained that an inherently dangerous hazard is "effectively unavoidable" only if a person is inescapably required to confront it under the circumstances. The court offered a parallel conclusion, holding that "situations in which a person has a 'choice' whether to confront a hazard cannot truly be unavoidable, or even effectively so."

With respect to the plaintiff's first argument, the court dismissed the notion that the condition was unreasonably dangerous, holding that no evidence was introduced to show that "the risk of harm associated with the ice patch was so unreasonably high that its presence was inexcusable, even in light of its open and obvious nature."

Likewise, the court rejected the plaintiff's argument that her contractual right to enter the premises made the hazard effectively unavoidable. The court reasoned that the hazard was "not" effectively unavoidable because the plaintiff voluntarily "chose" to confront the ice patch on the sidewalk, despite knowing its open and obvious nature.

This decision now definitively holds that, in Michigan, a business invitee is not owed a greater duty because a preexisting contractual or other relationship exists. This ruling avoids an unwarranted expansion of liability that would otherwise exist if an individual only needed to prove a preexisting contractual relationship to constitute an "unquestionable necessity" to enter a business, thereby making any intermediate hazard effectively unavoidable for the purposes of premises liability law.

In light of this decision, the general rule regarding premises liability still holds that a premises possessor owes a duty to use reasonable care to protect business invitees from an unreasonable risk of harm caused by dangerous conditions on the premises, including snow and ice. However, liability for open and obvious dangers will not arise unless truly "special aspects" of a condition make the open and obvious risk unreasonably dangerous or effectively unavoidable.

For further information about the open and obvious doctrine or general Michigan premises liability law, or if you have any question about how this recent ruling could affect your business, please contact the author or any member of Plunkett Cooney's Litigation Practice Group.