



## No Summary Disposition for Landlord: Jury to Determine Whether Snow-Covered Stairway in Apartment Complex was Fit for Intended Use Under MCL 554.139

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*Foster Swift Property Insurance/Premises E-News*

January 19, 2010

The Michigan Court of Appeals has affirmed a trial court's denial of a landlord's motion for summary disposition, holding that black ice on an apartment complex stairway created a question of fact whether the landlord breached its statutory duty to keep the premises fit for their intended use. *Hadden v McDermitt Apartments, LLC*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (January 12, 2010) (2010 WL 98948).

Plaintiff was a tenant in an upstairs apartment of defendant's building. While climbing the stairs to her apartment, Plaintiff fell on black ice and was injured. The stairs also were covered in two inches of snow, had not been salted, and the gutters above them were overflowing. Plaintiff asserted in the trial court that she had complained at least twice to the landlord about the snow and ice on the stairway and was told that the landlord would "take care of it."

Plaintiff sued, alleging among other things that the landlord breached its duty to keep the premises fit for their intended use under MCL 554.139. The trial court denied the landlord's motion for summary disposition, but the landlord moved for reconsideration based on the Michigan Supreme Court's decision in *Allison v AEW Capital Mtg, LLP*, 481 Mich 419; 751 NW2d 8 (2008). In *Allison*, the Supreme Court held that a snow-covered parking lot was not unfit for its intended use because tenants remained able to park their vehicles in the lot.

The trial court again denied summary disposition, however, and ruled that there was a material question of fact whether the landlord breached its statutory duty to keep the stairs fit for their intended use.

Court of Appeals affirmed, distinguishing *Allison* from *Hadden* on the grounds that, while the intended use of a parking lot is merely to park vehicles, the intended use of a stairway is to "provide pedestrian access to different levels of a building or structure." The Court explained further that "black ice on a stairway presents more than the

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'mere inconvenience' posed by 'one to two inches of snow' in a parking lot." The Court of Appeals emphasized the limited nature of its ruling: "Reasonable minds could conclude that the presence of black ice on a darkly lit, unsalted stairway - possibly caused or aggravated by overflowing ice water from overhead gutters in the presence of freezing rain - posed a hidden danger that denied tenants reasonable access to different levels of the apartment building and rendered the stairway unfit for its intended use."

This case joins the list of recent appellate cases favoring jury determination of claims involving icy conditions on premises.

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