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PARKING LOTS LACKING SIGNS NOT UNIQUELY DANGEROUS, OPEN AND OBVIOUS DOCTRINE APPLIES

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In the first published decision in Michigan involving the application of the open and obvious danger doctrine to the subject of parking lot design, *Richardson v Rockwood Center, L.L.C.*, --- N.W.2d ----, 2007 WL 1110752 (Mich.App.), the Michigan Court of Appeals has held that the danger presented to a pedestrian by a parking lot lacking any signs or traffic control devices is open and obvious.

In this case, the parking lot had two marked lanes of traffic separating the storefronts from the parking spaces. As the plaintiff entered into the second lane of traffic, he was struck by a motor vehicle. The plaintiff subsequently brought a premises liability action against the owner of the shopping center.

At the trial court level, the defendant property owner moved for summary disposition on the ground that, under the open and obvious danger doctrine, it owed no duty to the plaintiff because no reasonable finder of fact could conclude that the condition of the parking lot posed an unreasonable risk of harm. Furthermore, the defendant argued that there were no special aspects of the parking lot that would preclude application of the open and obvious danger doctrine in this case.

The plaintiffs responded that the open and obvious danger doctrine did not apply because the design of the parking lot made the danger to the plaintiff unavoidable and "imposed a uniquely high likelihood of harm or severity of harm."

The trial court declined to grant summary disposition on both the issue of causation and on the basis of the open and obvious doctrine. The defendant appealed.

In a 2 to 1 ruling, the Michigan Court of Appeals reversed the trial court, and granted summary disposition to the defendant on the basis of the open and obvious doctrine.

The appellate court noted that an owner of premises owes a duty to an invitee to exercise reasonable care to protect that invitee from an unreasonable risk of harm from a condition on the land. The court stated that this duty does not generally extend to the removal of dangers that are open and obvious.

An open and obvious danger, the court explained, is one that an average person of ordinary intelligence would have been able to detect upon casual inspection of the premises. The court went on to discuss the "special aspects" exception articulated in *Lugo v Ameritech Corp., Inc.,* 464 Mich. 512, 629 N.W.2d 384 (2001), which may remove a condition from the open and obvious doctrine where special aspects of the condition give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided. The court went on to note that neither a common condition nor an avoidable condition can be considered uniquely dangerous.

Turning to the application of the open and obvious danger doctrine to parking lot design, the appellate court noted that there have been no previous published opinions addressing the issue. The court then looked to the analysis of the court in an unpublished opinion, *Kirejczyk v Hall,* 2002 WL 31474441 (Mich.App.). Like the instant case, *Kirejczyk* involved a parking lot that lacked signs or other traffic controls. The *Kirejczyk* court stated that it is typical for parking lots to lack signs or other traffic controls and ultimately held that the conditions of the parking lot were open and obvious.

Noting that the dangers posed to pedestrians by motor vehicles in a parking lot setting are open and obvious, the appellate court then examined whether there were any special aspects that would preclude the application of the open and obvious doctrine. The court held that the fact that the parking lot lacked signs and control devices did not constitute a special aspect condition. The court concluded, as did the court in *Kirejczyk,* that it is a common condition for parking lots to lack signs or any other traffic control devices and therefore the lot in question was not uniquely dangerous and did not give rise to an unreasonable risk of harm.

For a complete copy of the Michigan Court of Appeals ruling in *Richardson v Rockwood Center, L.L.C.*, --- N.W.2d ----, 2007 WL 1110752 (Mich.App.), click here.

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