

# Supreme Court of Michigan Alters Premises Liability Law Framework and Open and Obvious Doctrine

By John Huffman

On July 28, 2023, the Supreme Court of Michigan significantly changed the framework of premises liability law in Michigan and the open and obvious doctrine, which mainly found application in slip and fall cases. The decision *Kandil-Elsayed v. F & E Oil, Inc.*, No. 162907, 2023 WL 4845611 (Mich. July 28, 2023), represents a significant shift in Michigan law and makes it much more likely that premises owners (both residential and commercial) will face lawsuits in the future.

In a typical premises liability action, a plaintiff must prove (1) that the premises owner owed them a duty of care, (2) that the premises owner breached that duty, and (3) that the plaintiff's injury was proximately caused by that breach. The open and obvious doctrine was traditionally analyzed under the first element, duty. It provided that, as a matter of law, a premises owner had no duty to warn of dangers which are so open and obvious that an average person would have avoided the danger and not sustained the injury unless a special aspect of the condition made it unreasonably dangerous. Premises owners frequently invoked the doctrine as a defense when a person was injured by an open and obvious condition that they willingly chose to confront.

The Supreme Court of Michigan's decision in *Kandil-Elsayed* overrules decades of Michigan case law on the issue. While the court stated that the open and obvious doctrine still exists in Michigan, it removed the ability to obtain a summary disposition on the grounds of the lack of duty. The court now requires the doctrine be considered in the context of breach and comparative fault. The court explained that "[a]s part of the breach inquiry, the fact-finder may consider, among other things, whether the condition was open and obvious and whether, despite its open and obvious nature, the land possessor should have anticipated harm to the invitee. If breach is shown, as well as causation and harm, then the jury should consider the plaintiff's comparative fault and reduce the plaintiff's damages accordingly." Because breach and comparative fault are typically questions of fact rather than law, it will be more difficult to obtain a summary disposition on the issue. This could significantly increase the cost of litigation for premises owners defending claims that arise out of open and obvious conditions.

This decision will make premises liability litigation more costly, and it will become more difficult to succeed at the summary disposition stage. Roetzel Michigan attorneys will continue to monitor the state of the law on this subject and are prepared to assist their clients with defense of premises liability lawsuits. For any questions, please contact any of the listed attorneys.

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