Ontario Court of Appeal holds joint occupiers owe each other a duty of care

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In *Nolet v. Fischer,* 2020 ONCA 155, the Ontario Court of Appeal determined that one occupier can owe a duty to another occupier under the *Occupiers' Liability Act,* RSO 1990, c O1 (the Act).

Background

The appellant, David Nolet (David), and the respondent, Caroline Fischer (Caroline), started dating in 2008. In 2010, David moved into Caroline's house (the premises). The relationship ended, and David moved out in 2012. While in the process of moving out, David, who was carrying his freezer out of the premises, tripped and fell over a ledge caused by two uneven concrete slabs. He injured his left ankle and sued Caroline for damages. David alleged that Caroline owed him a duty of care under the Act because he was a person entering onto the premises.

Lower Court's decision — summary judgment motion (2018 ONSC 5771)

Caroline successfully moved for summary judgment and got David's claim dismissed based on the following grounds:

1. Caroline did not owe David a duty of care under the Act because David also occupied the premises; and
2. Even if Caroline owed David a duty of care, David failed to prove a breach of duty because:
    a. David did not prove, on the balance of probabilities, that there was any unevenness on the sidewalk which constituted a hazard; and
    b. Even if there was a hazard, David was aware of it.

Court of Appeal decision (2020 ONCA 155)

David appealed the motion judge's decision. The Ontario Court of Appeal deferred to the factual findings of the motion judge, dismissing the appeal on this basis – no breach of duty of care as no proof of the existence of a hazard.

However, the Court ruled that the motion judge erred in law in her interpretation of the Act and found the following:

1. On proper interpretation of the Act, one occupier can owe a duty to another occupier because:
    a. The Act does not state that one occupier does not owe the duty of care to another occupier;
    b. There is no language or provision of the Act that states when an occupier enters on the premises they are not a person "entering on premises" for the purposes of the Act; and
    c. There is no basis to read any such legal restriction into the Act.
2. The scarcity of case law on this issue does not undermine the proper interpretation of the Act.

Takeaway

The Act does not preclude one occupier from suing another for breach of the statutory duty to take reasonable care for the reasonable safety of persons entering on the premises; and the property they bring onto the premises.

The Court viewed the Act as a complete code that contains all restrictions, limitations and exceptions to when the occupier's duty of care arises. Courts will not negate the existence of the duty of care owed based on the scarcity of case law where one occupier sued another occupier under the Act. This is because there may be other explanations as to why occupiers often do not recover from other occupiers, such as the unavailability of insurance or the defence of the willing assumption of risk.

By

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