

STATE OF MICHIGAN  
COURT OF APPEALS

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SAMUEL SOLOMON,

Plaintiff-Appellant,

v

BLUE WATER VILLAGE EAST, L.L.C., BLUE  
WATER VILLAGE SOUTH, L.L.C., and FADY,  
INC.,

Defendant-Appellees.

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UNPUBLISHED

July 29, 2010

No. 291780

Eaton Circuit Court

LC No. 08-000797-CK

Before: O'CONNELL, P.J., and METER and OWENS, JJ.

METER, J. (*concurring*).

I agree that this case should be remanded for further proceedings but write separately to raise two points.

First, I note that plaintiff filed both a common-law negligence claim and a claim based on the statutory duty under MCL 554.139(1)(a). The common-law claim, in my opinion, is clearly barred because the hazard was open and obvious and also avoidable. See, e.g., *Janson v Sajewski Funeral Home, Inc*, 486 Mich 934; 782 NW2d 201 (2010).

With regard to the statutory claim, in *Hadden v McDermitt Apartments, LLC*, 287 Mich App 124, 135; 782 NW2d 800 (2010) (METER, J., dissenting), I opined in my dissenting opinion that the icy stairway in question was not unfit for its intended use, given evidence that the plaintiff had recently encountered the same icy conditions on the stairs three prior times and had nonetheless successfully negotiated them. In the present case, there was insufficient evidence that plaintiff had previously encountered the same icy conditions and nonetheless successfully negotiated the area in question. Accordingly, I find this case distinguishable from *Hadden* and join in the decision to reverse and remand.

/s/ Patrick M. Meter