

## Property Owners Owe Duty of Care to Neighbors Even When Use Is Not Inherently or Unreasonably Dangerous

By: Mark T. Mullen

The Maryland Court of Special Appeals recently held in a reported opinion that a property owner owes a duty of care to the owners and occupants of neighboring properties to use and maintain that property in a reasonably safe manner so as to avoid harm to neighboring properties. Where the particular use or condition of the premises is not inherently or unreasonably dangerous itself, the fact finder determines if the duty has been breached if there is evidence that the owner knew, or reasonably should have known, that a dangerous use or condition existed.

The fire originated in a mulched strip of land along a fence bordering two properties. The defendant was a local union and the fire spread on a windy day to the adjacent property used as a storage yard. The fire started when an unknown person discarded a lit cigarette into the mulch. A representative of the union admitted that he saw cigarette butts in the mulch after the fire and was aware that a carelessly discarded cigarette could start a fire in the right situation. The union had no signs or a policy regarding the prohibition or regulation of smoking near the mulch and the fire marshal found hundreds of discarded cigarette butts in the mulch.

At trial, the jury found in favor of three subrogating insurers and the neighboring property owner for a verdict in excess of \$1.3 million. On appeal, the intermediate appellate court affirmed. The court acknowledged that no Maryland case had addressed the specific issues before it in the context of a fire caused by a condition (mulch) that is not itself inherently dangerous but rather is considered to be normal, absent extraordinary circumstances.

The court highlighted that the strip of land near the fence with mulch was used in an ordinary manner but there was evidence from which the jury could determine that the union was aware that hundreds of cigarettes had been discarded in the mulch and it put the union on notice that a dangerous practice was occurring on its property, specifically the disposal of cigarettes in a combustible substance. As such, a duty arose because the otherwise normal condition became dangerous by virtue of the practice of persons tossing cigarette butts into the mulch. The court emphasized that its conclusion rested on the evidence from which the jury could find a large number of cigarette butts were discarded in the mulch over a long period of time before the fire.

The lead attorney at trial and on appeal was Larry Walker of Cozen O'Connor.

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For more information regarding this case, or subrogation issues generally, please contact the authors.



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