Shopping Mall Injury

Kenneth Vercammen & Associates Law Office helps people injured due to the negligence of others. We provide representation throughout New Jersey. The insurance companies will not help. Dont give up! Our Law Office can provide experienced attorney representation if you are injured. Our website njlaws.com provides information on civil cases we can be retained to represent people.

Edited by Kenneth Vercammen, Esq.

Sometimes, store customers are injured in fall downs caused by wet and slippery floors or failure by stores to clean up broken or fallen items. No one plans on being injured in an accident, whether it is a car accident, fall down or other situation. Speak with a personal injury attorney immediately to retain all your rights. The stores are responsible for the maintenance of their premises which are used by the public. It is the duty of the store to inspect and keep said premises in a safe condition and free from any and all pitfalls,

obstacles or traps that would likely cause injury to persons lawfully thereon.

It is further the duty of the store to properly and adequately inspect, maintain and keep the library premises free from danger to life, limb and property of persons lawfully and rightfully using same and to warn of any such dangers or hazards thereon. You may be lawfully upon the premises as a business invitee in the exercise of due care on your part, and solely by reason of the omission, failure and default of the store, be caused to fall down If the store did not perform their duty to plaintiff to maintain the premises in a safe, suitable and proper condition, you may be entitled to make a claim. If severely injured, you can file a claim for damages, together with interest and costs of suit. Injured people can demand trial by jury.

The following information is taken from the old model jury charges dealing with fall downs by store customers:

INVITEE - DEFINED AND GENERAL DUTY OWED

An invitee is one who is permitted to enter or remain on land (or

premises) for a purpose of the owner (or occupier). He/She enters by invitation, expressed or implied. The owner (or occupier) of the land (or premises) who by invitation, expressed or implied, induced persons to come upon his/her premises, is under a duty to exercise ordinary care to render the premises reasonably safe for the purposes embraced in the invitation. Thus, he/she must exercise reasonable care for the invitees safety. He/She must take such steps as are reasonable and prudent to correct or give warning of hazardous conditions or defects actually known to him/her (or his/her employees), and of hazardous conditions or defects which he/she (or his/her employees) by the exercise of reasonable care, could discover.

BUSINESS INVITEE FALL DOWNS:

The basic duty of a proprietor of premises to which the public is invited for business purposes of the proprietor is to exercise reasonable care to see that one who enters his/her premises upon that invitation has a reasonably safe place to do that which is within the scope of the invitation.

Notes:

(1) Business Invitee: The duty owed to a business invitee is no different than the duty owed to other invitees.

(2) Construction Defects, Intrinsic and Foreign Substances: The rules dealt with in this section and subsequent sections apply mainly to those cases where injury is caused by transitory conditions, such as falls due to foreign substances or defects resulting from wear and tear or other deterioration of premises which were originally constructed properly.

Where a hazardous condition is due to defective construction or construction not in accord with applicable standards it is not necessary to prove that the owner or occupier had actual knowledge of the defect or would have become aware of the defect had he/she personally made an inspection. In such cases the owner is liable for failing to provide a safe place for the use of the invitee.

Thus, in Brody v. Albert Lipson & Sons, 17 N.J. 383 (1955), the court distinguished between a risk due to the intrinsic quality of the material used (calling it an intrinsic substance case) and a risk due

to a foreign substance or extra-normal condition of the premises. There the case was submitted to the jury on the theory that the terrazzo floor was peculiarly liable to become slipper when wet by water and that defendant should have taken precautions against said risk. The court appears to reject defendants contention that there be notice, direct or mputed by proof of adequate opportunity to discover the defective condition. 17 N.J. at 389.

It may be possible to reconcile this position with the requirement of constructive notice of an unsafe condition by saying that an owner of premises is chargeable with knowledge of such hazards in construction as a reasonable inspection by an appropriate expert would reveal. See: Restatement to Torts 2d, §343, Comment f, pp. 217-218 (1965), saying that a proprietor is required to have superior knowledge of the dangers incident to facilities furnished to invitees.

Alternatively, one can view these cases as within the category of defective or hazardous conditions created by defendant or by an independent contractor for which defendant would be liable (see introductory note above).

Cases:

Bozza v. Vornado, Inc., 42 N.J. 355, 359 (1954) (slip and fall on sticky, slimy substance in self-service cafeteria which inferably fell to the floor as an incident of defendants mode of operation).

Buchner v. Erie Railroad Co., 17 N.J. 283, 285-286 (1955) (trip over curbstone improperly illuminated).

Brody v. Albert Lifson & Sons, 17 N.J. 383, 389 (1955) (slip and fall on wet composition floor in store).

Bohn v. Hudson & Manhattan R. Co., 16 N.J. 180, 185 (1954) (slip on smooth stairway in railroad station).

Williams v. Morristown Memorial Hospital, 59 N.J. Super. 384, 389 (App. Div. 1960) (fall over low wire fence separating grass plot from sidewalk).

Nary v. Dover Parking Authority, 58 N.J. super. 222, 226-227 (App. Div.

1959) (fall over bumper block in parking lot).

Parmenter v. Jarvis Drug Store, Inc., 48 N.J. Super. 507, 510 (App. Div. 1957) (slip and fall on wet linoleum near entrance of store on rainy day).

Nelson v. Great Atlantic & Pacific Tea Co., 48 N.J. Super. 300 (App. Div. 1958) (inadequate lighting of parking lot of supermarket, fall over unknown object).

Barnard v. Trenton-New Brunswick Theatre Co., 32 N.J. Super. 551, 557 (App. Div. 1954) (fall over ladder placed in theatre lobby by workmen of independent contractor).

Ratering v. Mele, 11 N.J. Super. 211, 213 (App. Div. 1951) (slip and fall on littered stairway at entrance to restaurant).

DUTY TO INSPECT OWED TO INVITEE The duty of an owner (or occupier) of land (or premises) to make the place reasonably safe for the proper use of an invitee requires the owner or occupier to make reasonable inspection of the land (or premises) to discover hazardous conditions.

Cases:

Handelman v. Cox, 39 N.J. 95, 111 (1963) (salesman showing merchandise to employees of defendant fell down cellar stairway partially obscured by carton)

NOTICE OF PARTICULAR DANGER AS CONDITION OF LIABILITY If the jury members find that the land (or premises) was not in a reasonably safe condition, then, in order to recover, plaintiff must show either that the owner (or occupier) knew of the unsafe condition for a period of time prior to plaintiffs injury sufficient to permit him/her in the exercise of reasonable care to have corrected it, or that the condition had existed for a sufficient length of time prior to plaintiffs injury that in the exercise of reasonable care the owner (or occupier) should have discovered its existence and corrected it.

Cases:

Tua v. Modern Homes, Inc., 64 N.J. Super. 211 (App. Div. 1960), affirmed, 33 N.J. 476 (1960) (slip and fall on small area of slipper waxlike substance in store); Parmenter v. Jarvis Drug Store, Inc., 48 N.J. Super. 507, 510 (App. Div. 1957) (slip and fall on wet

linoleum near entrance of store on rainy day); Ratering v. Mele, 11 N.J. Super. 211, 213 (App. Div. 1951) (slip and fall on littered stairway at entrance to restaurant).

Notes:

(1) The above charge is applicable to those cases where the defendant is not at fault for the creation of the hazard of where the hazard is not to be reasonably anticipated as an incident of defendants mode of operation. See: Maugeri v. Great Atlantic & Pacific Tea Company, 357 F.2d 202 (3rd Cir. 1966) (dictum).

(2) An employees knowledge of the danger is imputed to his/her employer, the owner of premises. Handelman v. Cox, 39 N.J. 95, 104 (1963).

NOTICE NOT REQUIRED WHEN CONDITION IS CAUSED BY DEFENDANT

If the jury members find that the land (or premises) was not in a reasonably safe condition and that the owner (or occupier) or his/her agent, servant or employee created that condition through

his/her own act or omission, then, in order for plaintiff to recover, it is not necessary for the jury members also to find that the owner (or occupier) had actual or constructive notice of the particular unsafe condition.

Cases:

Smith v. First National Stores, 94 N.J. Super. 462 (App. Div. 1967)(slip and fall on greasy stairway caused by sawdust tracked onto the steps by defendants employees); Plaga v. Foltis, 88 N.J. Super. 209 (App. Div. 1965) (slip and fall on fat in restaurant area traversed by bus boy); Torda v. Grand Union Co., 59 N.J. Super. 41 (App. Div. 1959) (slip and fall in self-service market on wet floor near vegetable bin). Also see: Thompson v. Giant Tiger Corp., 118 N.J.L. 10 (E. & A. 1937); Wollerman v. Grand Union Stores, Inc., 47 N.J. 426 (1956); Lewin v. Orbachs, Inc., 14 N.J. Super. 193 (App. Div. 1951); Maugeri v. Great Atlantic & Pacific Tea Company, 357 F.2d 202 (3rd Cir. 1966).

BURDEN OF GOING FORWARD

In Wollerman v. Grand Union Stores, Inc., 47 N.J. 426, 429-430

(1966), the court held that where string beans are sold from bins on a self-service basis there is a probability that some will fall or be dropped on the floor either by defendants employees or by customers. Since plaintiff would not be in a position to prove whether a particular string bean was dropped by an employee or another customer (or how long it was on the floor) a showing of this type of operation is sufficient to put the burden on the defendant to come forward with proof that defendant did what was reasonably necessary (made periodic inspections and clean-up) in order to protect a customer against the risk of injury likely to be generated by defendants mode of operation. Presumably, however, the burden of proof remains on plaintiff to prove lack of reasonable care on defendants part. If defendant fails to produce evidence of reasonable care, the jury may infer that the fault was probably his. See also: Bozza, supra, 42 N.J. at 359.

Whether or not defendant has furnished an invitee with a reasonably safe place for his/her use may depend upon the obviousness of the condition claimed to be hazardous and the likelihood that the invitee would realize the hazard and protect

himself/herself against it. Even though an unsafe condition may be observable by an invitee the jury members may find that an owner (or occupier) of premises is negligent, nevertheless, in maintaining said condition when the condition presents an unreasonable hazard to invitees in the circumstances of a particular case. If the jury members find that defendant was negligent in maintaining an unsafe condition, even though the condition would be obvious to an invitee, the fact that the condition was obvious should be considered by the jury members in determining whether the invitee was contributorily negligent (a) in proceeding in the face of a known hazard or (b) in the manner in which the invitee proceeded in the face of a known hazard.

DISTRACTION OR FORGETFULNESS OF INVITEE

Even if the jury members find that plaintiff knew of the existence of the unsafe or defective condition, or that the unsafe or defective condition was so obvious that defendant had a reasonable basis to expect that an invitee would realize its existence, plaintiff may still recover if the circumstances or conditions are such that plaintiffs attention would be distracted so that he/she would not realize or

would forget the location or existence of the hazard or would fail to protect himself/herself against it.

Thus, even where a hazardous condition is obvious the jury members must first determine whether in the circumstances the defendant was negligent in permitting the condition to exist. Even if defendant was negligent, however, if plaintiff knew that a hazardous condition existed, plaintiff could not recover if he/she was contributorily negligent, that is to say, plaintiff could not recover if he/she did not act as a reasonably prudent person either by proceeding in the face of a known danger or by not using reasonable care in the manner in which he/she proceeded in the face of the danger. In considering whether plaintiff was contributorily negligent the jury members may consider that even persons of reasonable prudence in certain circumstances may have their attention distracted so that they would not realize or remember the existence of a hazardous condition and would fail to protect themselves against it. Mere lapse of memory or inattention or mental abstraction at the critical moment is not an adequate excuse. One who is inattentive or forgetful of a known and obvious

danger is contributorily negligent unless there is some condition or circumstance which would distract or divert the mind or attention of a reasonably prudent person.

Note:

In McGrath v. American Cyanamid Co., 41 N.J. 272 (1963), the employee of a subcontractor was killed when a plank comprising a catwalk over a deep trench up-ended causing him to fall. The court held that even if the decedent had appreciated the danger that fact by itself would not have barred recovery. The court said if the danger was one which due care would not have avoided, due care might, nevertheless, require notice of warning unless the danger was known or obvious. If the danger was created by a breach of defendants duty of care, that negligence would not be dissipated merely because the decedent knew of the danger.Negligence would remain, but decedents knowledge would affect the issue of contributory negligence. The issue would remain whether decedent acted as a reasonably prudent person in view of the known risk, either by incurring the known risk (by staying on the job), or by the manner in which he proceeded in the face of that risk.

In Zentz v. Toop, 92 N.J. Super. 105, 114-115 (App. Div. 1966), affirmed o.b., 50 N.J. 250 (1967), the employee of a roofing contractor, while carrying hot tar, tripped over a guide wire supporting an air conditioning tower on a roof. The court held that even if plaintiff had observed the wires or if they were so obvious that he/she should have observed them, the question remained whether, considering the hazard and the work of the employee, he/she was entitled to more than mere knowledge of the existence of the wires or whether he/she was entitled to a warning by having the wires flagged or painted in a contrasting color. This was a fact for the jury to determine. The jury must also determine whether defendant had reason to expect that the employees attention would have been distracted as he/she worked or that he/she would forget the location of a known hazard or fail to protect himself against it. The court also held the plaintiffs knowledge of the danger would not alone bar his/her recovery, but this knowledge goes to the issue of contributory negligence.

In Ferrie v. DArc, 31 N.J. 92, 95 (1959), the court held that there was no reasonable excuse for plaintiffs forgetfulness or inattention

to the fact that a railing was temporarily absent from her porch, as she undertook to throw bones to her dog, and fell to the ground because of the absence of a railing she customarily leaned upon. The court held: When an injury results from forgetfulness or inattention to a known danger, the obvious contributory negligence is not excusable in the absence of some condition or circumstance which would divert the mind or attention of an ordinarily prudent man. Mere lapse of memory, or inattention or mental abstraction at the critical moment cannot be considered an adequate diversion. One who is inattentive to or forgetful of a known and obvious condition which contains a risk of injury is obvious condition which contains a risk of injury to guilty of contributory negligence as a matter of law, unless some diversion of the type referred to above is shown to have existed at the time.

The following discussion in 2 Harper & James, Torts, §27.13, pp. 1489 et seq., (1956), cited with approval in Zentz v. Toop, supra, 92 N.J. Super. at 112, may be helpful in understanding the principles involved in the above charges:

Once an occupier has learned of dangerous conditions on his/her

premises, a serious question arises as to whether he/she may--as a matter of law under all circumstances--discharge all further duty to his/her invitees by simply giving them a warning adequate to enable them to avoid the harm. A good many authorities, including the Restatement, take the position that he/she may. But this proposition is a highly doubtful one both on principle and authority. The alternative would be a requirement of due care to make the conditions reasonably safe--a requirement which might well be satisfied by warning or obviousness in any given case, but which would not be so satisfied invariably.

* * *

1. Defendants duty. People can hurt themselves on almost any condition of the premises. That is certainly true of an ordinary flight of stairs. But it takes more than this to make a condition unreasonably dangerous. If people who are likely to encounter a condition may be expected to take perfectly good care themselves without further precautions, then the condition is not unreasonably dangerous because the likelihood of harm is slight. This is true of the flight of ordinary stairs in a usual place in the daylight. It is

also true of ordinary curbing along a sidewalk, doors or windows in a house, counters in a store, stones and slopes in a New England field, and countless other things which are common in our everyday experience. It may also be true of less common and obvious conditions which lurk in a place where visitors would expect to find such dangers. The ordinary person can use or encounter all of these things safely if he/she is fully aware of their presence at the time. And if they have no unusual features and are in a place where he/she would naturally look for them, he/she may be expected to take care of himself if they are plainly visible. In such cases it is enough if the condition is obvious, or is made obvious (e.g., by illumination). * * *

On the other hand, the fact that a condition is obvious--i.e., it would be clearly visible to one whose attention was directed to it--does not always remove all unreasonable danger. It may fail to do so in two lines of cases. In one line of cases, people would not in fact expect to find the condition where it is, or they are likely to have their attention distracted as they approach it, or, for some other reason, they are in fact not likely to see it, though it could be

readily and safely avoided if they did. There may be negligence in creating or maintaining such a condition even though it is physically obvious; slight obstructions to travel on a sidewalk an unexpected step in a store aisle or between a passenger elevator and the landing furnish examples. Under the circumstances of any particular case, an additional warning may, as a matter of fact, suffice to remove the danger, as where a customer, not hurried by crowds or some emergency, and in possession of his/her facilities, is told to watch his/her step or step up at the appropriate time. When this is the case, the warning satisfies the requirement of due care and is incompatible with defendants negligence. Here again, plaintiffs recovery would be prevented by thatfact no matter how careful he/she was. But under ordinary negligence principles the question is properly one of fact for the jury except in the clearest situations.

In the second line of cases the condition of danger is suchthat it cannot be encountered with reasonable safety even if the danger is known and appreciated. An icy flight of stairs or sidewalk, a slippery floor, a defective crosswalk, or a walkway near an

exposed high tension wire may furnish examples. So may the less dangerous kind of condition if surrounding circumstances are likely to force plaintiff upon it, or if, for any other reason, his/her knowledge is not likely to be a protection against danger. It is in these situations that the bit of the Restatements adequate warning rule is felt. Here, if people are in fact likely to encounter the danger, the duty of reasonable care to make conditions reasonably safe is not satisfied by a simple warning; the probability of harm in spite of such precaution is still unreasonably great. And the books are full of cases in which defendants, owing such a duty, are held liable for creating or maintaining a perfectly obvious danger of which plaintiffs are fully aware. The Restatement, however, would deny liability here because the occupier need not invite visitors, and if he/she does, he/she may condition the invitation on any terms he/she chooses, so long as there is full disclosure of them. If the invitee wishes to come on those terms, he/she assumes the risk.

The Restatement view is wrong in policy. The law has never freed landownership or possession from all restrictions or obligations imposed in the social interest. The possessors duty to use care

towards those outside the land is of long standing. And many obligations are imposed for the benefit of people who voluntarily come upon the land. For the invitee, the occupier must make reasonable inspection and give warning of hidden perils. . . But this should not be conclusive. Reasonable expectations may raise duties, but they should not always limit them. The gist of the matter is unreasonable probability of harm in fact. And when that is great enough in spite of full disclosure, it is carrying the quasi-sovereignty of the landowner pretty far to let him ignore it to the risk of life and limb.

So far as authority goes, the orthodox theory is getting to be a pretty feeble reed for defendants to lean on. It is still frequently stated, though often by way of dictum. On the other hand, some cases have simply--though unostentatiously--broken with tradition and held defendant liable to an invitee in spite of his/her knowledge of the danger, when the danger was great enough and could have been feasibly remedied. Other cases stress either the reasonable assumption of safety which the invitee may make or the likelihood that his/her attention will be distracted, in order to cut

down the notion of what is obvious or the adequacy of warning. And the latter is often a jury question even under the Restatement rule. It is not surprising, then, that relatively few decisions have depended on the Restatement rule alone for denying liability.

2. Contributory Negligence. . . But there are several situations in which a plaintiff will not be barred by contributory negligence although he/she encountered a known danger. . . For another, it is not necessarily negligent for a plaintiff knowingly and deliberately to encounter a danger which it is negligent for defendant to maintain. Thus a traveler may knowingly use a defective sidewalk, or a tenant a defective common stairway, without being negligent if the use was reasonable under all the circumstances.

CONCLUSION These situations show that the invitee will not always be barred by his/her self-exposure to known dangers on the premises.