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WASHINGTON CASE UPDATE

case in point...

Whether Ottoman in Store Aisle was "Open and Obvious" a Jury Question

From the Desk of Kyle D. Riley: Generally, businesses are not liable for harms caused by open and obvious hazards on their property unless the business should anticipate that the condition may harm customers even if they are aware of it. In this case, the Washington Court of Appeals held that whether a business should have anticipated that an ottoman blocking a store aisle could cause physical harm to a customer was a jury question despite its open and obvious nature. Read on to find out why.

Claims Pointer: In this case arising out of a customer tripping over an ottoman, the Court of Appeals reversed the trial court's granting of summary judgment to the business, despite the ottoman being in plain view. The case is stands as a reminder of the courts' strong preference to adjudicate disputes on their merits.

Jonson v. Sears, Roebuck & Co., No. 33869-0-II, Washington Court of Appeals, Div. II (September 27, 2016) (unpublished)

Patricia Jonson (Jonson) was shopping for shoes in Sears when she tripped over an ottoman. A man helped her up and guided her to some chairs so she could sit and collect herself. Afterwards, she tried on a pair of shoes but did not buy them.

She admitted in an interrogatory that she did not look downward into the aisle where the ottoman was located because she was focused on a banner advertising the shoes she wanted that hung above the merchandise. Additionally, her doctor recorded in the chart note that "she wasn't watching where she was going."

Jonson sued Sears for negligence, alleging that the ottoman blocking the aisle was an unreasonable risk of harm to its business invitees and that Sears should have expected invitees would not discover or protect themselves from an obstruction existing below eye level. Additionally, she filed a declaration and report of her expert witness, a human factors engineering consultant specializing in safety and risk management, in which the expert stated that people do not look at the ground in the immediate vicinity of their feet while walking, instead focusing around 25 feet or more ahead.

Sears moved for summary judgment on the grounds (1) that an ottoman is not a dangerous condition, (2) that even if the ottoman was dangerous or hazardous, it was open and obvious, (3) that Jonson failed to show that Sears knew an ottoman in the aisle was dangerous, and (4) that Jonson failed to show that Sears knew the ottoman had been moved to an unsafe position. The trial court granted the motion, and Jonson appealed.

The sole issue before the Court of Appeals was whether the fact that Sears placed the ottoman (or allowed it to be placed) in the aisle where Jonson fell breached a duty it owed to Jonson.

Proprietors of businesses owe a duty to their invitees to make the premises reasonably safe. In Washington, a proprietor breaches its duty and is liable for the harm caused by a physical condition on the premises if it (1) knows or should have known of the condition and should realize that it involved an unreasonable risk of harm to its invitees, (2) should expect that the invitees will not discover or realize the danger or will fail to protect themselves against it, and (3) fails to exercise reasonable care to protect them against the danger.

On appeal, Sears argued that summary judgment was proper because the ottoman was not a dangerous condition. The court noted that Jonson was entitled to expect that Sears employees had exercised reasonable care to provide safe aisle ways, and that her expert's testimony provided a basis for finding that the ottoman constituted a dangerous condition

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Sears next argued that Jonson failed to demonstrate it had actual or constructive knowledge of the condition. However, the court that a plaintiff can establish knowledge of the condition at issue by showing either that the condition was caused by the proprietor or that the proprietor had actual or constructive knowledge of it. There was no dispute that Sears knew the ottoman existed and where it was placed, and Sears even argued that the ottoman was "appropriately placed," thus implying that an employee had positioned the ottoman.

Finally, Sears argued that even if a dangerous condition did exist, such a condition was open and obvious. Proprietors are not liable for harm caused by an open and obvious hazardous condition unless they should anticipate that the condition may harm invitees despite their knowing about it. The court noted that prior decisions imposed liability where customers tripped over low-lying hazards in the aisles of retail stores. Moreover, Jonson's expert had provided an opinion that the danger may not have been reasonably and foreseeably detected. There was therefore a jury question as to whether Sears should have anticipated that an ottoman blocking a store aisle could cause physical harm to a customer despite its obvious nature. Accordingly, it held that summary judgment was inappropriate, and it reversed and remanded to the trial court for further proceedings.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

Case updates are intended to inform our clients and others about legal matters of current interest. They are not intended as legal advice. Readers should not act upon the information contained in this article without seeking professional counsel.

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