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OREGON CASE UPDATE

case in point...

Premises Liability Does Not Require "Unreasonably Dangerous Condition"

From the desk of Ryan McLellan: A possessor of land owes a duty to protect an invitee from an unreasonable risk of harm. But does a plaintiff also have to prove an unreasonably dangerous condition in order to prove an unreasonable risk of harm? Read on to learn about the state of premises liability law in Oregon.

Claims Pointer: In this case arising out of a trip-and-fall, the Oregon Court of Appeals held that the possessor's liability to an invitee is not contingent on the presence of an unreasonably dangerous condition, and that even in the absence of an unreasonably dangerous condition, a possessor may be liable for conditions that pose an unreasonable risk of harm. Further, the Court of Appeals held that where multiple conditions such as location, lighting, and nearby distractions combine, a jury should decide whether the circumstances constituted an unreasonable risk of harm and, if so, what action was necessary to warn or otherwise protect invitees from that risk. The case is an important reminder and clarification of Oregon's premises liability laws.

Ault v. Del Var Properties, 281 Or App 840 (October 26, 2016)

Eagle Point Mini Storage, LLC ("Eagle Point") operates a storage facility and business office in a single-story building owned by Del Var Properties, LLC ("Del Var"). Customers of Eagle Point were permitted to drop off their rental payments in a deposit box that was located near the front door of the office in an area that had various decorations. Although the parking lot at Eagle Point was generally level with the sidewalk, the area directly in front of the front door was raised approximately one to two inches. Tricia Ault ("Ault") rented storage space from Eagle Point. One afternoon, Ault went to Eagle Point's office to deposit a rental payment in a drop box. As she walked from her parked car to the drop box, she tripped over the raised section of the sidewalk. She fell and sustained injuries, and she later sued both Eagle Point and Del Var.

Under a premises liability theory, Ault alleged that Eagle Point and Del Var (collectively "Defendants") were negligent because they knew or should have known that the raised section sidewalk existed in the area where plaintiff fell, that the danger created by the raised section sidewalk was latent and constituted an unreasonable risk of harm to others, and that the raised section of sidewalk was an unreasonably dangerous condition. Additionally, she asserted that Defendants were negligent in failing to discover the raised section of sidewalk, in failing to repair or replace it, in failing to place signs or barriers to prevent customers from encountering it, and in failing to warn customers of the danger and risk of harm.

Defendants moved for summary judgment, arguing that because Ault could not establish the existence of either an "unreasonable risk of harm" or an "unreasonably dangerous condition," the evidence could not support premises liability negligence claim. Ault argued that there was evidence from which a jury could find that the raised pavement edge constituted an unreasonably dangerous condition under the circumstances. Additionally, Ault argued that it was not necessary to establish an unreasonably dangerous condition in order to prevail on a premises liability negligence claim because a property owner or occupier could be liable for failing to protect an invitee from an unreasonable risk of harm that does not constitute an unreasonably dangerous condition. Moreover, Ault argued that the jury could infer from the evidence that the raised pavement edge was a latent defect that posed an unreasonable risk of harm

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to invitees giving rise to a duty to warn, and Defendants had breached that duty.

The trial court granted Defendant's motion for summary judgment, concluding that the record did not establish an unreasonably dangerous condition and, as a result, did not pose an unreasonable risk of harm. Ault appealed. On appeal, the central issue was whether an invitee seeking to establish premises liability must invariably produce evidence of an unreasonably dangerous condition in order to establish an unreasonable risk of harm.

Under Oregon law, the overarching principle in premises liability law is that the possessor owes a duty to invitees to keep its premises in a reasonably safe condition. The possessor is therefore obligated to take reasonable action to protect the invitee against unreasonable risks of harm. What action the possessor must take depends on the circumstances, including the nature of the risk, the possessor's knowledge, and the arrangement or use of the premises.

The Court of Appeals reviewed the state of the law, including recent legislation and appellate decisions, to determine whether Ault was required to demonstrate an unreasonably dangerous condition to prevail on her premises liability claims. The court clarified that two standards of care are applicable to invitees and that the standard of care is dependent on the nature of the alleged condition. If the condition posed only an "unreasonable risk of harm," a possessor of land can satisfy its duty to protect an invitee by either warning of the risk or taking steps to eliminate the risk. However, where the condition is "unreasonably dangerous" – that is, where the condition "cannot be encountered with reasonable safety even if the danger is known and appreciated" by the invitee – a possessor can only satisfy its duty by eliminating the risk. Because of these two standards, the Court of Appeals went on to hold that the possessor's liability to an invitee is not contingent on the presence of an "unreasonably dangerous condition." Even in the absence of an "unreasonably dangerous condition," a possessor can still be liable for conditions that create an "unreasonable risk of harm."

The Court of Appeals further concluded that the raised section of sidewalk did not present an "unreasonably dangerous condition." However, it went on to consider whether the evidence supported a finding that the raised section of sidewalk presented an "unreasonable risk of harm" and concluded that there was sufficient evidence to survive summary judgment. Because the sidewalk was not raised throughout the parking lot, the court concluded that there was evidence that the raised section was in a location that was unexpected. Combined with the fact that were distractions near the drop box that could draw a person's eye away from the raised sidewalk, this evidence created a genuine issue of material fact for the jury as to whether the raised section presented an unreasonable risk of harm. The trial court therefore erred in granting summary judgment, and the case was remanded for additional proceedings.

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