Premises Liability Case Law Update

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PRIOR TRAVERSAL; EQUAL KNOWLEDGE: Restaurant was entitled to summary judgment because Plaintiff had traversed same floor moments prior to her fall and had observed the area was slippery on prior occasions, and defendant did not have constructive knowledge of alleged hazard.

***El Ranchero Mexican Rest., No. 10, Inc. v. Hiner*, A12A0107, 2012 Fulton County D. Rep. 1828 (Ga. App. June 6, 2012)**

Plaintiff Rosemary Hiner slipped, fell, and broke her leg as she walked across a tile floor in front of the kitchen door in Defendant's restaurant. Hiner had noticed the area was slippery and almost lost her footing on her way to the restroom, but she did not notify any restaurant employee that the floor was slippery at that time, nor did she look down to determine why the floor was slippery. On her way out of the restroom, Hiner took "very small steps" and looked down at her feet as she walked, but she fell anyway.

Hiner did not look at the floor after she fell to see what had made her fall, and she did not know whether there was any substance on her clothes after she fell. She also did not notice any defect in or any substance on the floor. Hiner claimed that there was a "film" on the tile, although she admitted that she did not know what had caused her to fall.

Hiner had been to the restaurant many times previously and had "slipped a little bit" on prior occasions because the ceramic tile floor had a "film" on it. She had reported to a waiter that the floor was slippery about three to seven months before her fall.

The restaurant's busboys mopped the tile floor each morning with a degreaser to prevent the floor from becoming greasy and to remove any build-up of grease from employees tracking grease onto the floor from the kitchen. The restaurant's manager inspected the restaurant each morning, including the day of Hiner's fall. Employees of the restaurant also were required to be on the lookout for problems arising during the day and were charged with fixing or reporting any such problems.

The restaurant manager went to the back of the restaurant upon hearing Hiner fall and saw that "the floor was clean" where Hiner had fallen. Hiner's fall was the first accident on the premises in the ten years the manager had worked there.

Hiner contended the restaurant had constructive knowledge that the floor was slippery and hazardous. In this regard, Hiner relied on the testimony that busboys degreased and mopped the floor each morning and her own prior observations of a "film" on the floor.

The trial court denied the restaurant's motion for summary judgment, and the restaurant appealed.

The Court of Appeals reversed, holding that even if Hiner could establish that the subject floor was hazardous and that the alleged hazard was known to Defendant, Plaintiff's claim failed due to her equal knowledge of the hazard. The court cited Hiner's testimony that she had noticed the floor was slippery on prior visits and her successful traversal of the area moments before her fall. The court held that Hiner had actual knowledge of the condition of the floor at the time of her fall and failed to exercise due care for her own safety.

Relying on *Hudson v. Quisc, Inc.*, 205 Ga. App. 840 (1992), the court also held the restaurant did not have constructive knowledge of any slippery condition of the floor. Rather, since the restaurant followed a reasonable cleaning and inspection procedure, "no constructive knowledge of the floors' condition at the time of Hiner's fall can be imputed to the Restaurant."

DOG BITE PREMISES LIABILITY: Plaintiff's failure to show premises owner's superior knowledge of dog's alleged vicious propensities fatal to claim.

***Abundant Animal Care, LLC a/k/a Animal Kingdom Veterinary Hosp. v. Gray*, A12A0571, 2012 Ga. App. LEXIS 516 (Ga. App. June 13, 2012)**

Plaintiff Gray was injured when she was bitten by a dog being boarded at Defendant Animal Kingdom Veterinary Hospital (the "Clinic").

Gray sued the Clinic, alleging claims of negligence, negligence *per se* under various statutes and ordinances, premises liability, and nuisance.

At the time of the incident, Gray was spending the day at the Clinic with her aunt, who worked at the clinic. Gray contended that she was an employee of the Clinic, while the Clinic contended that Gray was "shadowing" her aunt and had not been hired by the Clinic. The Workers' Compensation Board determined, however, that Gray was not an employee at the time of her injury.

On the morning of the incident Gray's aunt showed her how to perform certain tasks such cleaning cages, feeding and watering animals, and taking certain animals into a fenced yard outside to relieve themselves. Gray took a dog named "Drago" outside to a fenced-in exercise yard and left him there while she ate lunch. After lunch, Gray went outside with her aunt to smoke a cigarette and, according to Gray, as soon as she walked out-

side, Drago bit her. Gray's aunt knocked the dog off her, but Drago jumped back up and bit Gray two more times.

According to Gray, her aunt told her several days after the incident that she would not have told Gray to go outside if she had known that Drago was outside.

At the time of the incident, Drago had been boarded with the Clinic for at lest four months, and there was no evidence that Drago had ever bitten anyone else. Gray's aunt believed that Drago might have mistaken Gray's hair for a "tug-of-war" toy when he jumped on her.

The Clinic moved for summary judgment. The trial court denied the clinic's motion based on a general conclusion that there were disputed issues of material fact. The Clinic applied for interlocutory appeal, and the Georgia Court of Appeals reversed.

On appeal, the court held that the Clinic was entitled to summary judgment on Gray's premises liability, negligence *per se*, and nuisance claims because there was no evidence that Drago had a vicious or dangerous propensity. The court rejected Gray's contention that her aunt's purported statement after the incident or her aunt's knowledge that Drago could jump on people supported a finding of superior knowledge on the part of the Clinic that Drago had a vicious or dangerous propensity.

The court also found that Gray's negligence claim failed because she was not aware of any voluntary internal procedures of the Clinic, and, thus, could not have relied on them. Similarly, Gray's claim that the Clinic negligently failed to supervise her failed as a matter of law because there was no evidence that her injuries were caused by any such failure.

ADMISSIBILITY OF EXPERT TESTIMONY: Expert's opinions excluded under Fed. R. Evid. 702 and *Daubert* because expert did not show reliable methodology or acceptance of theory in specific context of facts of case at hand, nor was expert qualified to render opinion on reasonableness of Plaintiff's conduct.

***Jacquillard v. The Home Depot U.S.A., Inc.*, 2012 WL 5275421 (S.D. Ga. Feb. 16, 2012)**

Plaintiff was injured in a slip-and-fall incident that occurred in the outdoor garden center of Home Depot's store. Plaintiff filed suit, alleging negligence on the part of Home Depot and claiming the area where she fell was wet because a vendor had been watering plants nearby.

Both parties identified expert witnesses. Plaintiff's expert, James Steven Hunt, opined that watering during business hours created an unreasonable risk of harm and therefore should only be done at night. Hunt also opined that Home Depot's warnings were inadequate and that Plaintiff did nothing unreasonable to prevent her from

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