

Premises Liability: A Refresher

Related Professionals

Cheryl D. Shoun
843.720.1762
cshoun@maynardnexsen.com

Practices

Insurance Coverage & Bad Faith
Professional Liability
Litigation

12.11.2018

South Carolina's law of negligence is basic: a plaintiff must demonstrate a defendant owed a duty of care, that defendant breached that duty and plaintiff suffered an injury proximately resulting from defendant's breach. A distinct theory of negligence is found in the area of premises liability, which establishes the duty owed to someone injured on property is based upon the condition of or activities conducted upon the property. This area of law has remained essentially unchanged for a substantial time and the United States District Court for South Carolina recently took the opportunity to remind of the relevant duties of a landowner. *Sojourner v. AutoZone Stores LLC and CPTPNGUIN LLC*, 2018 WL 6065381 (November 20, 2018). Generally, a landowner owes a duty to keep the premises in a reasonably safe condition, but not in such condition that no accident could occur to a person using those premises. In *Sojourner*, the court compares and contrasts the duties owed by a landowner to invitees and licensees.

In *Sojourner*, Plaintiff was walking from a bus stop to work, and rather than follow the sidewalk, she cut through the lawn of the property occupied by AutoZone and owned by CPTPNGUIN LLC when she stepped into a hole covered by grass, injuring her leg. Sojourner argued she was an invitee because as a business owner, AutoZone extended an implied invitation to the public to enter upon its property. AutoZone and CPTPNGUIN both argued Sojourner was a licensee. It was uncontroverted Sojourner had no intention to do business with or otherwise confer benefit to AutoZone. There was no evidence to dispute AutoZone's position that its lawn was not intended to be a walkway, it had never witnessed people walking through the lawn and it did not know the hole existed before Sojourner's incident. With no apparent factual conflicts, the matter came before the court on Defendants' motions for summary judgment. Acknowledging the duty owed an invitee is more stringent than that owed to a licensee, the court chose to assess Defendants' potential liability based upon whether Defendants had actual or constructive notice of the hole.



Pursuant to South Carolina law, an invitee is one who enters upon the land of another at the express or implied invitation of the occupant, particularly where the one entering is engaged in a matter of mutual interest or advantage. The duty owed to an invitee is one of reasonable care; a landowner has a duty to warn an invitee only of latent or hidden dangers of which the landowner has actual or constructive knowledge. Constructive notice exists when an occupant has enough reason to believe a danger may exist.

A licensee is one who is granted entry to property by the possessor's consent. A licensee's entry primarily bestows a benefit to the licensee, not the occupant. The duty owed to a licensee is to exercise reasonable care to discover the licensee and avoid causing injury by virtue of activities upon the land. The duty extends to warn the licensee of any concealed dangerous conditions or activities actually known to the possessor, but falls short of requiring the occupant to seek out or discover dangers or to otherwise make the premises safe.

Finding no evidence that Defendants had actual or constructive notice of the hole or that Defendants acted unreasonably in maintaining their premises, the court concluded they did not breach any duty. Additionally, as to CPTPNGUIN, South Carolina has explicitly held a lessor owes no duty to ensure the leased property is maintained in a safe condition following the lessee's possession thereof.

While *Sojourner* offers no new theory of recovery or defense of a premises liability action, it does provide practitioners with a succinct refresher that premises liability is based upon both the status of the person entering upon the property and the level of care owed that individual commensurate with that status.

Click the above link to subscribe to
Nexsen Pruet's TIPS Alert.

Cheryl D. Shoun is a trial attorney and certified mediator whose experience includes construction law, insurance defense, personal injury defense, employment litigation and medical malpractice. As a frequent writer, she serves as editor for Nexsen Pruet's TIPS: Torts, Insurance and Products Blog.