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Premises Liability: Don't Forget the Role of Causation

By William M. Davis October 6, 2016

Recovery in a Georgia premises liability case is premised upon a plaintiff's ability to show injury caused by a hazard on a premises that the owner/occupier should have removed in the exercise of ordinary care for the safety of the invited public. [1]

Georgia's premises liability law tends to be friendly to premises owners/occupiers. Under Georgia law, even if a hazardous condition is demonstrated to exist, an owner/occupier can prevail in litigation by showing that the plaintiff had "equal knowledge" of the hazardous condition. For example, if both an invitee and a store employee witness a drink being spilled on the floor of the premises, they both have equal knowledge of the hazard—that the floor is slippery. If the invitee then traverses the area which he/she knows to be saturated by the spilled drink and is injured in a slip-and-fall, he/she will generally be unable to recover for those injuries under Georgia law.

"Spilled drink" cases are generally clear-cut because there is some immediate evidence that the hazard caused the fall: the invitee's clothes are wet from falling in the liquid. But a tougher subset of premises cases involve injuries which occur *near* hazardous conditions but with limited evidence that the hazardous condition actually caused the injury. For example, consider an invitee who is traversing a large parking lot which has a handful of scattered potholes. A slip-and-fall in such a parking lot can raise the questions as to whether the injury was caused by stepping in a pothole or whether the invitee simply tripped over his or her own shoelace.

Such near-miss cases can be difficult to defend, and a thorough pre-trial investigation is necessary in order to establish the facts. Typically, the outcome of such cases will turn on the availability of video surveillance, eyewitness testimony, or precise measurements of the area in which the injury occurred. Because it may be difficult to obtain such information, many of these cases are litigated using the "equal knowledge" standard rather than focusing on underlying causation issues. After all, if there is a poor record of the facts of the injury, it is tempting to simply *assume* there was a dangerous condition that caused the injury and thus defend the case on the equal knowledge standard. This notion is supported by the fact that there is a paucity of reported Georgia premises cases addressing causation issues.

In *Young v. Richards Homes, Inc.*,[2] a plaintiff complained that she tripped and fell on a staircase. However, she testified that she "did not know what made her fall, and speculated that she had tripped over a plastic water bottle wedged between the stairs."[3] The Court of Appeals explained that "[w]ithout some plausible causal connection between the staircase's defects and her fall, [the plaintiff's] action must fail."[4] The value of demonstrating a lack of causation is powerful in premises litigation. The Georgia Court of Appeals has explained that when the question of whether the allegedly dangerous condition

caused the plaintiff's injuries “remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to grant summary judgment for the defendant.”[5]

Careful practitioners are reminded to take steps to develop evidence of any causation-related issues in premises cases. Good causation evidence provides another powerful tool in a defense lawyer’s toolkit for defending premises cases, as demonstrated by a summary judgment victory by Steve Kyle and Billy Davis in which they represented a gymnastics facility. The plaintiff was injured in a fall from a set of bleachers in an observation area on the property. The plaintiff fell from a seated position on the bleachers and alleged that a lack of handrails to arrest his fall rendered the bleachers unreasonably dangerous. The motion for summary judgment pointed out that there was no evidence that the allegedly unreasonably dangerous condition *caused* the fall; rather, the evidence demonstrated that the invitee simply lost his balance and fell. The court agreed with this analysis, explaining in its order that “there [was] no evidence before the Court that any hazard associated with the bleachers caused the fall [and that] causation must be proven to get past summary judgment.”

Causation issues can augment the defense of a premises case by providing defense attorneys with an alternative argument that can be made side-by-side with “equal knowledge” arguments. The best way to cultivate such arguments is to engage in a thorough investigation as soon as a claim is reported.

Footnotes:

[1] *American Multi-Cinema, Inc. v. Brown*, 285 Ga. 442, 444 (2009) (citing O.C.G.A. § 51-3-1).

[2] 271 Ga. App. 382, 383 (2005).

[3] *Id.*

[4] *Id.* (*citing Mitchell v. Austin*, 261 Ga. App. 585, 586–87 (2003) (though staircase violated building code, summary judgment properly granted where plaintiff could not link violations to fall); *Shadburn v. Whitlow*, 243 Ga. App. 555, 556 (2000) (summary judgment properly granted where plaintiff can only speculate that she tripped on loose carpeting); *Brown v. RFC Mgmt., Inc.*, 189 Ga. App. 603, 605 (1988) (summary judgment properly granted when plaintiff fails to show that poor lighting of stairs caused her fall)).

[5] *Warner v. Hobby Lobby Stores, Inc.*, 321 Ga. App. 121 (2013) (*citing Hardnett v. Silvey*, 285 Ga. App. 424, 426 (2007)).