Weekly Law Resume

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WEEKLY LAW RESUME™
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Imputed Notice of Dangerous Conditions in the Atypical "Slip and Fall" Case

Tom Getchell et al. v. Rogers Jewelry
Court of Appeal, First District February 7, 2012

This is not the typical "slip and fall" case. Plaintiff Tom Getchell ("Getchell") was a business invitee of defendant Rogers Jewelry Store ("RJS"). He worked at RJS as an independent contractor repairing jewelry. At times he worked in the back break room, which was only accessible to Getchell and RJS employees. On the date of the incident, he was setting up his tools in the break room when he slipped on jewelry cleaning solution and fell, sustaining injuries. Getchell filed a personal injury complaint against RJS alleging negligence and premises liability. He alleged that: 1) he slipped in jewelry cleaning solution in the break room of RJS's store and; 2) the solution leaked on the floor from its container or was poured on the floor by an RJS employee. Getchell's wife sued for loss of consortium.

The trial court entered summary judgment in favor of RJS after finding that Getchell failed to establish that RJS had actual or constructive notice of the dangerous condition. Getchell appealed, contending that he was not required to show that RJS had notice because RJS employees created the dangerous condition that caused his injury.

The First District Court of Appeal agreed and reversed the trial court ruling granting summary judgment in favor of RJS. The Court of Appeal noted that in a typical slip and fall case, the cause of the accident is not linked to a premises owner's employee. This case was atypical because the dangerous condition was created by the negligence of an RJS employee over whom RJS had control. Therefore, the notice doctrine for imposition of premises liability was

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governed by the doctrine of respondeat superior. The Court of Appeal ruled that the "dispositive question" was whether the facts create a reasonable inference that the dangerous condition was caused by the negligence of one of RJS's employees, such that RJS could be charged with notice of the dangerous condition.

The Court of Appeal reviewed the evidentiary record and determined that Getchell produced sufficient evidence from which a reasonable inference could be drawn that the dangerous condition was created by RJS and/or its employees. The cleaning solution was stored in a five-gallon bucket in the employee break area, which could only be accessed by Getchell and RJS employees. The bucket had a rotating spigot pump, which had to be rotated over the side of a bucket when used. When not in use, the spigot was to be positioned over the bucket lid to prevent cleaning solution from spilling to the floor. Whenever Getchell used the spigot, he always returned it to a position above the lid. However, on several occasions, he observed RJS employees leave the spigot positioned over the side of the bucket, causing cleaning solution to leak to the floor. On the day of the incident, Getchell had not utilized the spigot pump. On these facts, Getchell argued that RJS and its employees had exclusive control over the premises, including the break room and cleaning solution dispenser, and created the dangerous condition. Therefore, RJS could be charged with constructive notice of the dangerous condition resulting in Getchell's slip and fall.

The Court of Appeal rejected the trial court's argument that there was no evidence of how the cleaning fluid got onto the floor or that the cleaning fluid on the floor was an open and obvious condition. Absent evidence of a defect in the spigot, it could not reasonably be inferred that the cleaning solution leaked onto the floor outside of the actions of RJS employees. The Court of Appeal referred to prior case precedent holding that when the premises owner or its employee create the dangerous condition, the owner may not assert that he has no notice or knowledge of the dangerous condition.

COMMENT

This case illustrates that the relationship between the premises owner and the person(s) who

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create the dangerous condition can determine whether knowledge of the dangerous condition will be imputed to the premises owner. In cases where the premises owner or its employees create the dangerous condition, the premises owner may be charged with knowledge of the dangerous condition based on respondent superior. The determinative issue is whether the premises owner created the dangerous condition or controlled the employee acting in the scope of employment who created the dangerous condition. In typical slip and fall cases, the dangerous condition is created by third parties or conditions outside the direct control of the premises owner, requiring the plaintiff to prove facts establishing actual and/or constructive notice of the dangerous condition to establish liability.

For a copy of the complete decision see:

HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/C065094.PDF

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