

Premises Liability Law

Introduction

“Contractor sues Starbuck’s CEO after slipping on mansion floor.”
“Trespassing teenager falls through skylight, sues property owner.” “Supermarket sued by shopper mugged in parking lot.” Headlines such as these while not common demonstrate the importance of Premise Liability Law in New Jersey. Simply because an accident occurred does not mean that the property or business owner is responsible for the injuries. What rights does a person have when entering onto another’s property? What duty should be imposed on the property owner? Everyone has walked into a business, traveled over public sidewalks, been invited to a neighbor’s house, and perhaps engaged in an occasional trespass. All these routine activities have the potential of placing an individual in foreseeable harm. It follows that the law impose corresponding protections. The New Jersey Supreme Court initially confronted these questions by applying Common Law principles.

Under Common Law a plaintiff must establish the existence of a duty of care that was breached by the property owner, causing injury to plaintiff. *Townsend v. Pierre*, 221 N.J. 36 (2015). To determine if a duty existed the Court examined the relationship between the property owner and the person entering the premises. Why was this person there? Was a benefit conferred on the owner by the person or were both parties mutually benefited? Identifying the status of the parties became a determinative factor in establishing the duty. The extent of the duty depended on

whether the person entering the property was a business invitee, social guest (also referred to as a licensee) or trespasser.

Early Decisions Establishing Standards on Property Owner Liability

The 1954 Supreme Court decision in *Taneian v. Meghrigian*, 15 N.J. 267, discussed the development of these concepts. Plaintiff fell on a dimly lit staircase, after leaving her friend's apartment. After considering why Plaintiff was there, the Court found the tenant friend owed Plaintiff the duty of a social guest and landlord owed a business invitee duty. A social guest enters property for his or her own purpose. A business invitee is permitted on to the property usually for a purpose benefiting the business. A trespasser is neither invited nor allowed on to the property. The duty owed a social guest was therefore greater than for a trespasser but less than a business invitee.

In *Handleman v. Cox*, 39 N.J. 95 (1963), a diner owner knew plaintiff, a salesman, entered areas reserved for diner employees. The Court found plaintiff was a business invitee. Consequently defendant owed a duty to protect plaintiff from dangerous conditions known or reasonably discoverable. The owner had a duty to make reasonable inspections and remedy dangerous conditions such as the accumulated objects that caused plaintiff's fall.

The Supreme Court discussed a social guest duty in *Berger v. Shapiro*, 30 N.J. 89(1959). Plaintiff fell at her daughter's house fracturing her ankle because a

brick was missing from a porch step. The Court held, a social guest had an obligation to become familiar with the condition of the premises. There was no duty to make repairs but the social guest is entitled to the same knowledge of existing dangerous conditions as the owner. While not required to inspect or maintain the premises in a safe condition, the owner must warn of the danger or correct the condition. However, if the guest could reasonably become aware of the danger the owner would not be liable. In *Berger*, the Court found defendants knew of the missing brick and should have warned plaintiff.

Historically an owner owed a duty not to injure a trespasser "...through willful and wanton conduct." *Egan v. Erie Railroad Co.*, 29 N.J. 243 (1959). This "lesser" duty required warning trespassers of artificial conditions posing a risk of death or serious bodily harm. If the owner knew persons trespassed, then the duty increased. *Brett v. Great Am. Recreation Inc.*, 144 N.J. 479, 508 (1996). In *Gonzalez v. Safe and Sound Security*, 185 N.J. 100 (2005) the Court stated an owner who is or should be aware trespassers are entering the premises must use reasonable care for their safety. In this decision the status of the injured party was no longer the sole determinative factor, in establishing the duty.

Evolution of the Common Law on Premises Liability

Change in the analysis was developed over a number of cases. The Supreme Court turned from Common Law to a more flexible approach in *Taylor v. N.J.*

Highway Authority, 22 N.J. 454 (1956). The State through condemnation acquired an apartment building. Plaintiff was visiting a holdover tenant who had refused to vacate. Under Common Law holdover tenants and their guests are considered trespassers. Plaintiff injured herself falling on stairs she claimed were snow covered. Citing “modern concepts of justice” the Court held that the State owed a duty to maintain the premises in a reasonably safe condition.

The relationship of the parties continued to be considered but the Supreme Court began using additional factors. In *Butler v. Acme Markets, Inc.*, 89 N.J. 270 (1982), the Supreme Court held a supermarket could be liable to a customer, mugged in its parking lot, because the supermarket was aware of previous muggings. In *Hopkins v. Fox and Lazo Realtors*, 132 N.J. 426 (1993), a prospective buyer fell visiting an open house sponsored by the broker. Plaintiff sued the broker. The parties attempted to fit themselves into traditional Common Law categories. Plaintiff claimed to be a business invitee. The broker argued it was an agent of the homeowner and had no duty to warn of potentially dangerous conditions. The Court noted the broader issue was “...whether a brokers’ duty of care is to be determined by the traditional Common Law doctrine...or, instead by more general principles that govern tort liability.” (*Hopkins v. Fox*, at p. 433.) In its decision, the Court shifted further from using the identity of the parties and instead emphasized a fundamental fairness approach involving several factors.

Relationship of the parties was still considered but so was the nature of the risk, the opportunity and ability to exercise care and the public interest in the solution.

The Supreme Court was moving away from the Common Law analysis, but in *Parks v. Rogers*, 176 N.J. 491 (2003), the Court as to residential property, returned to Common Law. “The duty of an owner or possessor of land to a third person coming onto his property derives from the Common Law. The scope of the landowner’s duty is defined by that person’s status as a business visitor, social guest or trespasser...” (*Parks v. Rogers* at p497). It appears the Court will use a Common Law approach for residential properties and a more flexible analysis for commercial properties.

The Need for Flexibility in Determining Liability

The Supreme Court applied this flexible analysis in *Rowe v. Mazel Thirty LLC*, 209 N.J. 35 (2012). A police officer was injured inspecting a vacant apartment building. The Court weighed several factors including the risk involved, the opportunity to exercise care and public policy concerns. Using a balancing test the Court determined the officer who entered a “non-public” portion of defendant’s building was entitled to the duty owed a social guest.

This flexible analysis usually expanded the duty. Under the Common Law a property owner was not liable for care of an adjoining public sidewalk. *Yankho v. Fane*, 70 N.J. 528 (1976). With the decision in *Stewart v. 104 Wallace Street*, 87

N.J. 146 (1981), the Court used public policy to impose a duty on a commercial owner to maintain the public sidewalk. The duty expanded in *Mirza v. Fimore Corp.*, 92 N.J. 390 (1983), to require a commercial owner to remove snow and ice from the sidewalk. Residential property owners continue to be considered under Common Law and will only be liable if they created the dangerous condition. *Luchejko v. City of Hoboken*, 207 N.J.191 (2011). A residential owner does not have a duty to clear snow and ice from a sidewalk. *Qian v. Toll Brothers, Inc.*, 223 N.J. 124 (2015). However, in *McDaid v. Aztec West Condominium Association*, 234 N.J. 130 (2018), the Court held a condominium association had a duty to protect residents from dangerous conditions on internal non-public sidewalks.

Publicly-owned Premises

Liability for injuries on public property is determined by the New Jersey Tort Claims Act, N.J.S.A. 59-1 et seq. In *Vincitore v. N.J. Sports & Exposition Authority*, 169 N.J. 119, 125 (2001), the Supreme Court discussed this criteria. A plaintiff has to establish the existence of a dangerous condition. It must be reasonably foreseeable the condition creates a risk of injury. The public owner must have created the condition or knew it existed and was “palpably unreasonable” in failing to address it.

The Supreme Court recently examined the application of “*res ipsa loquitur*” to modern premises. “*Res ipsa loquitur*” a Latin phrase meaning “the thing speaks

for itself,” is an equitable doctrine applied under circumstances that permit negligence to be inferred. Generally a plaintiff has the burden to prove negligence. To apply res ipsa loquitur the incident must be one which will not occur except for someone’s negligence. The cause must have been in the exclusive control of defendant and plaintiff must not have been negligent. In Jerista v. Murray, 185 N.J. 175, the Court held res ipsa loquitur applied to a supermarket automatic door that struck and injured a customer. Relying on its decision in Jerista, the Court in its McDaid decision found res ipsa loquitur also applied to a malfunctioning elevator because elevator doors, though complex, ordinarily do not strike a person.

As technology changes our society, Premises Liability cases will challenge the Supreme Court to determine the existence and extent of a property owner’s duty. Status of the parties, the reasonable probability that an injury will occur and the ability of the property owner to address the condition, will form criteria for establishing the duty owed. The challenge will be met by applying flexible criteria based on Common Law, negligence principles, fundamental fairness, and public policy.