SOUTH CAROLINA
Retail & Hospitality
LAW BLOG
Collins & Lacy
ATTORNEYS AT LAW
CHARLESTON COLUMBIA GREENVILLE MYRTLE BEACH www.collinsandlacy.com

Premises Liability Not Just for Businesses - Homeowners Beware

By Collins & Lacy, P.C. Attorney Bennett Crites
Retail/Hospitality Law, Commercial Transportation, Products Liability
843.714.2504 | bcrites@collinsandlacy.com
Posted September 5, 2012
http://retailhospitalitylaw.com/

I recently came across a premises liability defense verdict from the State of New York. It was an unfortunate case — a 57-year old man was alleged to have died as a result of a fall down some basement stairs. While South Carolina law may differ in some respects from New York law, an important aspect of the case transcends state lines: a "dangerous condition" on one's premises is not always dispositive of the case.

On the evening of Aug. 8, 2008, Plaintiff's decedent John Foley fell down a stairway that led to the basement of a home and sustained a fatal injury of his head. Foley's widow sued the residence's owner, Andrea Garrity, and alleged that Garrity created a dangerous condition that caused her husband's accident when he tripped on a bucket and mop that had been left immediately inside the doorway leading to the basement's stairs. It was argued that Foley, a houseguest, had been wandering about an unlighted hallway and believed he was entering a bedroom and that the mop and bucket created a dangerous condition.

Defense counsel contended Foley died instantly and as a result, there was no conclusive indication that the bucket and mop caused his fall. Defense counsel further asserted the unfortunate accident was a result of Foley's failure to exercise due caution in a dark, unfamiliar foyer in which three doors were present, and not the result of the bucket and mop.

The jury rendered a defense verdict. While the jury did find Garrity negligently created a dangerous condition by the placement of the bucket and mop inside of the doorway, the jury further found Garrity's negligence in creating a dangerous condition was not a substantial cause of the accident. The parties negotiated a high/low stipulation with damages of $900,000 and $75,000. As such, Plaintiff recovered the stipulated minimum of $75,000. There was no mention in the case report about the condition and location of the bucket and mop status post fall, but it was reported by one juror that the jury believed Mr. Foley's fall was a result of mistakenly walking into the wrong doorway as opposed to tripping on the bucket or mop.

The *Wintersteen v. Food Lion* case in South Carolina stands for the proposition that property owners are not insurers of the safety of its patron while on the premises, and an owner is required to use reasonable care to keep the premises in a safe condition for invitees. To overcome a motion for summary judgment in South Carolina, a Plaintiff must establish the owner either created a dangerous condition or had actual or constructive notice of the condition yet failed to remedy it. In the present case, it was established that the premises owner created the condition. However, in New York, just like South Carolina, affirmative defenses were raised which served as a bar to the Plaintiff's claim.

The typical defenses asserted in South Carolina premises cases are comparative negligence, assumption of the risk (which is considered an element of comparative negligence), open and obvious condition, and intervening and superseding negligence. It appears in the present case the jury found the dangerous and condition was not a proximate cause of the unfortunate fall and Foley's own negligence in being unaware of his surroundings was to blame. New York follows a pure comparative negligence system, while South Carolina follows a modified comparative negligence system. Because the jury found the property owner created a dangerous condition, yet found it was not a proximate cause of the fall but his inattentiveness was to blame, this same result would have occurred under South Carolina law.

On its face, the facts of this case certainly presented a risk in moving forward with trial, although the stipulation capping damages provided some relief. However, it was the affirmative defenses which told the rest of the story and ultimately prevailed.

About Bennett Crites

Bennett Crites is a shareholder with Collins & Lacy practicing in products liability, premises liability, automobile negligence, defamation, insurance bad faith and professional liability. Bennett also practices in commercial trucking law and has experience in litigating cases from minor injury to wrongful death and catastrophic injury. Super Lawyers® has identified Bennett as a Rising Star®. Prior to joining Collins & Lacy, Bennett was an attorney with a law firm in Charleston, South Carolina. He also served as a judicial law clerk to the Honorable R. Markley Dennis, Jr. and has corporate experience in the financial sector. Bennett earned his law degree from the University of South Carolina School of Law and his undergraduate degree in Business Administration from the Citadel.

About Collins & Lacy, P.C.

In 2012, Collins & Lacy, P.C., celebrates 28 years of providing legal services to South Carolina. With offices in Charleston, Columbia, Greenville and Myrtle Beach, South Carolina, the firm's primary focus is defense litigation, representing local, regional and national clients in the areas of:

- construction
- employment law
- hospitality/retail & entertainment law
- insurance/bad faith
- products liability
- professional liability
- commercial transportation
- workers' compensation

Collins & Lacy is committed to upholding the highest standards for integrity, civility and community service. For more information, visit www.collinsandlacy.com.