

Premises Liability - Massachusetts

According to well-established law in Massachusetts regarding the standard of care owed to a business invitee, it is the duty of the proprietor:

to use reasonable care to keep the premises in a reasonably safe condition for the use of business invitees . . . or at least to warn them against any danger attendant upon this use which was known or should have been known to . . . [the landowner] and was not known by the business invitees or obvious to any ordinarily intelligent person.

Ventor v. Marianne, Inc., 1 Mass. App. Ct. 224, 225, 294 N.E.2d 870 (1973)(emphasis added). Without evidence that the defect was either caused by the landowner or by those for whom the proprietor is responsible, or that the proprietor or its employees knew of the presence of the defect, “[t]he . . . right to recover therefore depends upon evidence . . . that the [proprietor] . . . should have known of and removed this foreign substance.” Id. at 226; Thurlow v. Shaw’s Supermarkets, Inc., 49 Mass. App. Ct. 175, 177, 727 N.E.2d 532 (2000).

However, the proprietor is not an insurer of safety. Ventor v. Marianne, Inc., 1 Mass. App. Ct. 224 at 226. To that end, the proprietor is allowed “reasonable opportunity to become informed of the danger and to take measures to remedy it.” Id. Further, absent evidence regarding the amount of time the alleged defect was present, a plaintiff cannot recover. Id. at 227. Mere evidence regarding the size, shape and color of the alleged defect is insufficient to prove how long the defect was present or that the proprietor had a reasonable amount of time in which to discover the defect so it could be remedied. Id. The more important query has to do with the opportunity of the proprietor or its employees to discover the alleged defect, including the number of employees, physical proximity to the condition and the likelihood of becoming aware of

the condition in the normal course of their duties, considered on a case-by-case basis.

Locke v. Herb Chambers of Soverville Corporation, Inc., et al., 13 Mass. L. Rep. 679, 2001 Mass. Super. LEXIS 453 @ 8 (2001).

A notable exception exists and reasonable notice may not be required when a customer slips and falls due to a shopkeeper's negligent marketing and display of products. Gilhooley v. Star Market Company, Inc., 400 Mass. 205, 208, 508 N.E.2d 609 (1987). This can be the result of failure to comply with industry standards, inadequate monitoring or "sloppy or precarious stacking of items." Id. However, more must be shown than a mere "sloppy stacking," but that as a result thereof, the item fell on the floor. Id.

As such, the first inquiry is whether the proprietor knew or should have known of the defect. If the proprietor specifically did not know of the defect, liability can be proven by constructive notice, which is evidenced by the surrounding circumstances, including the size, shape, color and length of time the alleged defect existed. Liability can also be proven, without specific knowledge, if the alleged defect was created by the proprietor or by those to whom the proprietor is responsible. Finally, a proprietor can be liable for a defect upon the property if its presence is the result of inadequate stacking, monitoring or even a failure to adhere to industry standards.