

Premises Liability - Florida

Under general principles of premises liability in Florida, a proprietor owes a business invitee two duties,

1) to use ordinary care in maintaining its premises in a **reasonably safe condition**, and 2) to give timely warning of latent or concealed perils which were **known, or by the exercise of due care should have been known** [by the proprietor] and which were not known or would not have been discovered by [the invitee] by the exercise of due care.

Marriott International, Inc. V. Zaira Perez-Melendez, 855 So. 2d 624, 629, 2003 Fla. App.

LEXIS 11146 (2003)(emphasis added). To that end, the duties imposed upon proprietors are not “exclusively limited to detecting dangerous conditions on the premises **after they occur** and then correcting them . . .” Markowitz v. Helen Homes of Kendall Corporation, 826 So. 2d 256, 259, 2002 Fla. LEXIS 1842 (2002)(emphasis added). Rather, “the duty to exercise reasonable care **may** extend to taking actions to reduce, minimize, or eliminate foreseeable risks **before they manifest themselves** as particular dangerous conditions on the premises.” Id.(emphasis added).

A notable exception to the issue of notice is when the cause of the defect can be traced to the conduct of the proprietor. Specifically, “[w]hen the negligence which produces the injury is that of any employee of the [proprietor], then the matter of the employer’s knowledge of the existence of the dangerous condition is inconsequential.” Food Fair Stores, Inc. v. Trusell, 131 So. 2d 730, 732, 1961 Fla. LEXIS 2258 (1961). That is because the negligence of the employee, in the course of employment is “binding on the employer.” Id.

Another exception, noted in Florida case law, has been the “negligent mode of operation theory.” Under the theory, when the “proprietor could reasonably anticipate that dangerous conditions would arise as a result of its mode of operation, then whether the owner had actual or

constructive knowledge of the specific foreign substance is not an issue.” Markowitz v. Helen Homes of Kendall Corporation, 826 So. 2d 256, 259, 2002 Fla. LEXIS 1842 (2002) citing Owens v. Publix Supermarkets, Inc., 802 So. 2d 315 (Fla. 2001). The issues then become whether the mode of operation was negligent and whether the accident resulted from that negligence. Id. As to the existence of transitory conditions, i.e. foreign substances, that cause accidents, it has been held that such existence “on the floor is not a safe condition.” Id.

Florida has since enacted law specifically focusing on the issue of “transitory conditions.” **Fla. Stat. ch. 768.0710 (2002) - Burden of proof in claims of negligence involving transitory foreign objects or substances against persons or entities in possession or control of business premises.** – provides in pertinent part:

(1) The person or entity in possession or control of business premises owes a duty of reasonable care to maintain the premises in a reasonably safe condition for the safety of business invitees . . . which includes reasonable efforts to keep the premises free of transitory foreign objects or substances that might foreseeably give rise to loss, injury or damage.

(2) In any civil action for negligence involving loss, injury or damage to a business invitee . . . the claimant shall have the burden of proving that:

(a) The person or entity in possession or control of the business premises owed a duty to the claimant;

(b) The person or entity in possession or control . . . acted negligently by failing to exercise reasonable care in the maintenance, inspection, repair, warning, or mode of operation of the business premises. **Actual or constructive notice of the transitory foreign object or substance is not a required element of proof to this claim.** However, evidence of notice or lack of notice . . . may be considered together with all of the evidence; and

(c) The failure to exercise reasonable care was a legal cause of the loss injury, or damage.

Zimmerman v. Eckerd Corporation, 830 So. 2d 835, n1, 2003 Fla. App. LEXIS 2607

(2003)(emphasis added).

In order to establish liability on the proprietor, under general principles of premises liability law, the key factor is **actual or constructive knowledge** of the dangerous condition. This includes the duty to **prevent** “foreseeable conditions” from resulting and not merely **correcting** already existing conditions. As noted, however, notice of the defective condition may not be required. This is the case when the evidence proves the proprietor, through its employee(s), created the dangerous condition. Finally, with respect to “transitory conditions,” the legislature has enacted a broad statute in which notice, actual or otherwise, is not required. This would necessarily include proprietors of stores in which products are sold which tend to become dangerous upon being dropped and/or spilled. In such a case, the injured party needs to prove that the proprietor failed to exercise reasonable care and this failure resulted in the existence of a dangerous condition that caused the claimed injuries. This failure can arise of “maintenance, inspection, repair, warning, or mode of operation” of the premises.