

# Premises Liability - Georgia

According to well-established law in Georgia, a proprietor is liable to business invitees “for injuries caused by his failure to exercise ordinary care in keeping the premises and approaches safe.” Robinson v. Kroger Company, 268 Ga. 735, 740, 493 S.E.2d 403 (1997) citing O.C.G.A. § 51-3-1. While not an insurer of an invitee’s safety, the proprietor is “required to exercise ordinary care to protect the invitee from **unreasonable risks of harm** of which the owner/occupier has **superior** knowledge. Id. (emphasis added). To that end, the proprietor is required to “exercise the diligence toward making the premises safe . . . [t]his includes inspecting the premises to discover possible dangerous conditions of which the owner/occupier does not have actual knowledge, and taking reasonable precautions to protect invitees from dangers foreseeable from the arrangement and use of the premises.” Id.

In order to recover in a premises liability action, the “invitee must prove (1) that the defendant had actual or constructive knowledge of the hazard; and (2) that the plaintiff lacked knowledge of the hazard despite the exercise of ordinary care due to actions or conditions within the control of the owner/occupier.” Id. at 749. Constructive knowledge can be proved in two (2) ways:

by showing that an employee . . . was in the immediate area and could easily have seen the substance and removed it; or by showing that the substance was on the floor for such a time that it would have been discovered and removed had the proprietor exercised reasonable care in inspecting the premises.

Roberson v. Winn-Dixie Atlanta, Inc., 247 Ga. App. 825, 825-26, 544 S.E.2d 494 (2001); Deal et al. v. Children’s World Learning Centers, Inc., 235 Ga. App. 236, 509 S.E.2d 134 (1998).

Coupled with the “implied representation” that the proprietor has exercised reasonable care to make the premises safe, the “invitee is charged with exercising ordinary care for personal

safety and using ordinary care to avoid the effect of the owner/occupier's negligence after that negligence becomes apparent to the invitee or in the exercise of ordinary care the invitee should have learned of it." Robinson v. Kroger Company at 741. In doing so, the invitee "must use all senses to discover and avoid hurtful things." Id. However, the invitee is not required to avoid hazards "not usually present" or which, through the exercise of reasonable care, were not observed and the invitee is not required to "look continuously at the floor." Id. at 741-42. In essence, the invitee is required to look where he or she is walking and to see large objects, in "plain view," which are in a "location where they are customarily placed and expected to be." Id. At 742. Failing to see the hazard which causes a fall or look at the location at which the invitee places his or her foot is not a failure to exercise reasonable care. Id. at 743.

The invitee's burden of coming forth with evidence of exercising his or her own ordinary care arises only **after** "it has been established or assumed the [proprietor] had actual or constructive knowledge of the hazard, and . . . the [proprietor] presents evidence that the plaintiff's injuries were proximately caused either by the plaintiff's voluntary negligence . . . or by the plaintiff's causal negligence." Id. at 748-49. Once the invitee has established the proprietor's negligence and the proprietor has presented evidence of the invitee's negligence, only then does the invitee have the burden of "producing rebuttal evidence that the invitee's failure to ascertain the existence of the hazard was due to actions or conditions within the control of the [proprietor]." Id. at 749.

An exception to the duty placed upon an invitee to exercise reasonable care exists when a distraction occurs, especially when the distraction is caused by the proprietor or where the proprietor should have anticipated, in the exercise of reasonable care, that the distraction would occur. Id. at 744. To that end, merchants "should be cognizant that the usual shopper travels the

aisles with his attention directed toward the item he seeks and the prices of the displayed articles. The merchant deliberately attempts to draw the shopper's attention to selected items." Id. at 744-45.

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. However, Georgia law also places a burden on an invitee to prove reasonable care if the proprietor alleges the invitee voluntarily encountered the hazard or was, his or herself, negligent. This duty does not override the proprietor's own duty toward the invitee.