

Premises Liability - New Jersey

According to well-established law in New Jersey, “one who invites persons to come upon its premises is under a duty to exercise **ordinary care** to render the premises **reasonably safe** for such purposes.” Griffin v. De Geeter, 132 N.J.L. 381 (E. & A. 1945)(emphasis added). The duty of care requires a proprietor “to discover and eliminate dangerous conditions, to maintain the premises in safe condition, and to avoid creating conditions that would render the premises unsafe.” Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563, 818 A.2d 314 (2003). To that end, although not an insurer, a proprietor “is liable (1) for defects of which he knows or (2) defects which have existed for so long a time that by the exercise of reasonable care, he had both an opportunity to discover and to remedy.” Nelson v. The Great Atlantic and Pacific Tea Co., 48 N.J. Super. 300, 137 A.2d 599 (1957) (quoting Daddetto v. Barbiera, 4 N.J. Super. 479 (App Div. 1949)).

Although a plaintiff must ordinarily prove that a proprietor had actual or constructive knowledge of the dangerous condition, there are exceptions. When the dangerous condition is created by the proprietor’s agents or employees, as opposed to those beyond the control of the proprietor, including other patrons, notice is not required. Smith v. First National Stores, Inc., 94 N.J. Super. 462, 466, 228 A.2d 874 (1967). Further, the Supreme Court has expressly stated that “when [a] plaintiff has shown that the circumstances were such as to create the reasonable probability that the dangerous condition would occur, he need not also prove actual or constructive notice of the specified condition.” Ruiz v. Toys “R” Us, Inc., 269 N.J. Super. 607, 614, 636 A.2d 117, 120 (1994) (citing Bozza v. Vornado, Inc., 42 N.J. 355, 360, 200 A.2d 777 (1964)).

To that end, the absence of use of customary precautions to prevent slipping and falling has been adequate evidence of negligence to warrant the submission of the matter to the jury. Brody v. Albert Lifson & Sons, Inc., 17 N.J. 383, 390, 111 A.2d 504, 507 (1955) (citing Deschamps v. L. Bamberger & Co., 128 N.J.L. 527, 529-530 (Sup.Ct. 1942) *aff'd.* at 129 N.J.L. 517, 518 (E. & A. 1943)) (finding failure to use rubber mats upon slippery floor sufficient evidence upon which jury could base finding of negligence).

Essentially, a plaintiff need not prove notice when a dangerous condition is likely the result of the “nature of the business, the property’s condition, or a demonstrable pattern of conduct or incidents.” Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563, 818 A.2d 314 (2003). In those instances, a plaintiff is afforded an “inference” of negligence, thus shifting the burden of proof to the proprietor who must demonstrate that it took “prudent and reasonable steps to avoid the potential hazard.” Id. at 563-64. Specifically, New Jersey adheres to the “mode-of-operation rule,” which states that, “when a substantial risk of injury is inherent in a business operator’s method of doing business, the plaintiff is relieved of showing actual or constructive notice of the dangerous condition.” Id. at 564. However, the “ultimate burden of persuasion” still rests with the Plaintiff. Id. At 565.

Although the plaintiff must generally prove notice, New Jersey has carved out exceptions that relieve the plaintiff of such a duty and, instead, shift the burden to the proprietor to prove that reasonable steps were taken to avoid the defective condition. The proprietor must be aware of the types of defects that can occur due to the nature of the business and act accordingly to avoid such occurrences.