

Premises Liability - Pennsylvania

Under Pennsylvania law, “the mere existence of a harmful condition in a public place or business, or the mere happening of an accident due to such a condition is, neither . . . evidence of a breach of the proprietor’s duty of care to his invitees, or raises presumptions of negligence.” Moultrey v. Great A & P Tea Company, 281 Pa. Super. 525, 530, 422 A.2d 593 (1980). The plaintiff must present evidence that the proprietor knew, or in the exercise of reasonable care, should have known, of the harmful condition’s existence, i.e. - actual or constructive notice. Id.

A proprietor’s duty of protection towards the invitee is the **highest duty owed to any entrant upon land**, and the proprietor is under an affirmative duty to protect the invitee not only against dangers about which he knows, but also against those which with reasonable care he might discover. Treadway v. Ebert Motor Company, 292 Pa. Super. 41, 48, 436 A.2d 994, 998 (1981) (emphasis added). Furthermore, the proprietor owes a business invitee a duty to either put the premises in a reasonably safe condition for use in a manner consistent with the purpose of the invitation or warn the invitee first of the danger. Crotty v. Reading Industries, 237 Pa. Super. 1, 8, 345 A.2d 259, 263 (1975) (emphasis supplied).

While proprietors are generally required to have notice of the harmful condition, the Pennsylvania Supreme Court has noted an exception. Notice need not be proven when the harmful condition is traced to the active conduct of the proprietor or individuals for whom the proprietor is accountable. Feinsmith v.

Innkeepers U.S.A., Ltd., et al., 137 Montg. Co. L. R. Part II (2000) citing Finney v. G.C. Murphy Co., 406 Pa. 555, 561, 178 A.2d 719, 722 (1962)(emphasis added).

While it has been argued that there is no “direct evidence” that a proprietor’s employees created the hazard, the Supreme Court has found that a plaintiff in a trespass action need not prove the “precise manner” in which the tortious conduct developed. Finney v. G.C. Murphy Co., 406 Pa. 555, 559-60, 178 A.2d 719, 721 (1962). To that end, the Supreme Court has held that “it is enough that there be sufficient facts for the jury to say reasonably that the preponderance favors liability.” Id. citing Smith v. Bell Telephone Co., 397 Pa. 134, 138, 153 A.2d 477 (1959).

Further, it has been held that where the condition is one which the proprietor knows to frequently occur, actual notice may be inferred and additional proof of constructive notice is not required. Moultrey v. Great A & P Tea Company, 281 Pa. Super. 525, 531, 422 A.2d 593 (1980). However, when the defective condition is traced to others over whom the proprietor is not accountable, the proprietor is not liable absent proof that it had actual notice of the condition or that the condition existed for such a period of time that the proprietor should have known of it. Id.

Under Pennsylvania law, a proprietor can be liable when it has actual or constructive notice of the harmful condition and fails to act upon that knowledge. However, notice is not required when the defective condition is traced to the conduct of the proprietor or those to whom the proprietor is accountable. The proprietor is then responsible for the resulting harm. Id. at 530. Ultimately, it must be remembered that the proprietor has an affirmative duty to inspect the premises for alleged defects and

either warn invitees of the defect or make the premises safe for those coming on the premises.