

Legal issues business torts

Business



Mae Tom, as the invitee, and as clarified by case law, is fully entitled to sue Kresge for her injuries and demand compensation from them. Support for the stated may be found in *Moore v. American Stores Co.*, 169 Md. 541, 550-551 (1936), wherein the duty of the grocery store proprietor towards customers/invitees is stated as follows:

A duty to exercise reasonable and ordinary care to see that its premises were in such a condition that its customers might safely use them in the performance of that duty it [is] required to exercise reasonable care to discover conditions which, if known to it, it should have realized involved an unreasonable risk to patrons (qtd. in Salmon, 2005).

Again, in *Rawls v. Hochschild, Kohn & Co., Inc.*, 207 Md. 113, 117 (1955) the above is affirmed in the following:

The customer is entitled to assume that the proprietor will exercise reasonable care to ascertain the condition of the premises, and if he discovers any unsafe condition he will either take such action as will correct the condition and make it reasonably safe or give a warning of the unsafe condition (qtd in Salmon, 2005).

As established in both the above cases and in multitudinous others, a proprietor should exercise reasonable care to ensure the safety of invitees and if the conditions of the premise are such that there is a continued hazard, or the reasonable possibility of a specified hazard arising at any given time, consequent to the conditions associated with the premise, it is incumbent upon the proprietor to either remove the hazard or provide sufficient warning of it.

As pertains to Mae Tom's slip and fall claim, the above determines that she is acting within the parameters of her legal rights as an invitee to bring a
<https://assignbuster.com/legal-issues-business-torts/>

negligence case against Kresge and make a claim for proven injury damages. The conditions particular to the Kresge premises, insofar as the proprietor allowed patrons/invitees to walk around the store with their drinks as they are shopping, implies the continued presence of a slip and fall hazard, insofar as movement around the store with open drink can or cups means that liquid may fall to the floor. In this instance, and considering the difficulties inherent in establishing time on the floor,' since liquid is likely to fall to the floor at any given time, Mae Tom had best argue that the proprietor had reasonable knowledge of a continued slip and fall hazard and should have, if unable assign an employee to the continued monitoring of the conditions of the floor and the subsequent removal of hazards, placed a clear warning. Invitees should have been warned that such a hazard was likely and that invitees should exercise caution as they walked around the store. The fact that Kresge did not constitutes negligence.

Negligence, as defined by case law, occurs when a proprietor has reasonable' knowledge of hazard but fails to prevent it or warn patrons of its presence. As noted in *Deering Woods*, supra, 377 Md. At 264, the invitor/proprietor has a legally established duty to ensure the safety of his invitees/patrons and in executing the stated duty, is required to eliminate a known harm and to exercise the effort requisite in identifying harm. A failure to do so, culminating in that harm's negatively impacting an invitee/patron, means that the proprietor/invitor was negligent in the execution of his duties. Therefore, it is within the parameters of the invitor/proprietor's legally defined responsibilities to exercise reasonable vigilance for the detection of hazard and to remove identified hazards.

On the basis of the above definition of negligence and given the

<https://assignbuster.com/legal-issues-business-torts/>

circumstances of Mae Tom's slip and fall accident at Kresge, it is clear that the proprietor/invitor acted negligently. While it may be difficult for Tom to present such evidence as would prove that Kresge had knowledge of the existence of harm and failed to eliminate it, the fact is that Kresge should have reasonably known that hazardous conditions were likely to develop at any given time, consequent to the fact that it allowed patrons/invitees to consume the soft drinks they bought at the store as they walked around it. In other words, they did not simply sell that instrument which created hazardous conditions but established the conditions that made hazards likely. Therefore, while, under the stated circumstances, store employees may not be able to constantly and immediately remove the source of hazard, Kresge had a duty to warn. It is precisely on this basis that Mae Tom can bring a case against the proprietor and demand slip and fall damages. As pertains to the evidence that Tom need present to make her case, there are two sides to the issue. As regards the first side, the burden of proof, as established by case law, is upon Tom. She must prove that the proprietor was negligent insofar as he had reasonable knowledge of a hazardous condition but, nevertheless failed to eliminate the source of hazard. As stated in *Moulden v. Greenbelt Consumer Servs., Inc.*, 239 Md. 229, 232 (1965) " the burden is upon the customer to show that the proprietor created the dangerous condition or had actual or constructive knowledge of its existence." Certainly, proving that Kresge had actual knowledge of the drops of liquid on the floor and which caused Tom to slip and fall, is difficult, bordering on the impossible. However, insofar as the store sells drinks and allows the customers to consume it as they walk around the store, proving that Kresge created the conditions which led to Tom's slip and fall and that it

<https://assignbuster.com/legal-issues-business-torts/>

had knowledge of the potentialities of such a hazard arising, is not difficult.

Hence, even if we assume that the burden of proof is upon Mae, one may surmise that this should not be an obstacle to establishing her claim.

If we look at the question from an alternative perspective, we find that Tom's claim is quite easy to establish. Quite simply stated, under the "mode of operation rule" explicated by Judge Salmon in *Chandra Maans v. Giant of Maryland* (2004), we discover that Mae is not required to prove that Kresge had actual concrete knowledge of the particular condition which caused her slip and fall but only that it had reasonable knowledge of a likely hazard and failed to act against it (Salmon). This is perfectly applicable to Tom's case. Kresge had reasonable knowledge of the likelihood of harm but failed to act against it, either by warning patrons or by prohibiting drinking while in the store. Therefore, all the evidence that Tom needs to present pertains to the store's allowance of drinking while shopping.

Finally, as regards the damages that Mae is entitled to, those damages should be limited to the cost of her slip and fall accident, as in cost of medical treatment and loss of productivity for a specified time. Should Tom request more than that, it is likely that she will not be able to make her case. Hence, damages should be reasonably assessed in direct relation to the actual cost of the slip and fall to Tom.

This, as argued in the above, Tom can bring a case against Kresge and need only prove that the store had likely knowledge of hazardous conditions and failed to take such action as would protect its patrons.

Works Cited

Salmon, J. *Chandra Maans v. Giant of Maryland*. Reported in the Court of Special Appeals of Maryland, No. 161. September Term, 2004.

<https://assignbuster.com/legal-issues-business-torts/>