

WASHINGTON CASE UPDATE

Internal System for Inspecting Equipment Saves Owner from Premises Liability Claim

From the Desk of Josh P. Hayward: Under premises liability law, a business owner can be liable to an invitee for an unsafe condition if the owner had “actual” or “constructive” notice of the unsafe condition. If the business owner can show that there was an internal policy for inspecting restaurant equipment each morning, can that be sufficient to show that the owner did not have constructive notice of an unsafe condition with restaurant equipment? Read on to find out.

Claims Pointer: In this case arising out of a pizza shop when a customer was injured by a broken chair, the court found that the pizza shop’s internal inspection of equipment was sufficient to show that the pizza shop did not have actual notice of the defective chair. Further, because the plaintiff provided no evidence regarding how long the chair had been in an unsafe condition, the court found that the pizza shop did not have constructive notice of the defective chair. This case shows how Washington courts may rule in a case involving defective equipment when the previous owner implements a system of periodical inspection of the equipment used by customers.

Haubrich v. The Pizza Specialists, Inc., No. 49540-6-II, Washington Court of Appeals Div. II (December 19, 2017)

On a warm summer day in August, Mark Haubrich (“Haubrich”) went out to eat pizza with his friend at The Pizza Specialists, Inc., Brewery City Pizza Company #3 (“Pizza Specialists”). The two decided to eat on the outside deck. While they were eating, Haubrich’s chair broke at the spot where the arm attaches to the seat. When the chair broke, Haubrich fell to the ground and suffered a three-inch cut to his right thigh. Haubrich sued Pizza Specialists for negligence, arguing that Pizza Specialists “created a dangerous condition on its premises and fail[ed] to properly inspect or correct the condition.” Pizza Specialists moved for summary judgment and asked the court to dismiss Haubrich’s claim. The court granted summary judgment, and Haubrich appealed.

On appeal, among other arguments, Haubrich argued that Pizza Specialists was negligent because Pizza Specialists: (1) had actual or constructive notice of the dangerous condition, and did not act with reasonable care to make the premises safe for Haubrich.

The Washington Court of Appeals held that Pizza Specialists did not have either actual or constructive notice of a defect with the chair.

The court cited to the case of Fredrickson v. Bertolino’s Tacoma, Inc., which held that a business owner is liable to an invitee for an unsafe condition on the premises if the condition was caused by the owner or his employees, or if the owner had actual or constructive notice of the condition. The court explained that an invitee is a business visitor who is invited onto the property to conduct business with the possessor of the land (it was undisputed that Haubrich was an invitee). Actual notice is straightforward and will be present if the owner had notice of defects with the chair. Constructive notice occurs if the defective condition existed for enough time to afford the owner sufficient opportunity to properly inspect the premises and remove the danger.

The court found that Pizza Specialists did not have actual notice because Haubrich provided no evidence showing that Pizza Specialists was aware of defects in the chair that injured Haubrich. According to the record, each morning, the manager would check the chairs by pushing down on the armrests. There was evidence that other chairs had broken in the past, and cracks to chairs were reported by managers. According to the assistant general manager, over the last 11 years, two chairs were found to be unacceptable and taken out of circulation. Haubrich argued that there was actual notice because the assistant general



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case in point...

manager testified that “there were some cracks and fissures reported.” The court said that the assistant general manager’s testimony was concerning other chairs, and the proper inquiry was whether there was notice of unsafe conditions with the specific chair that broke. Accordingly, the court held that there was no evidence that Pizza Specialists had actual notice.

The court found that there was no constructive notice because Haubrich was unable to present evidence on how long the chair had been in an unsafe condition. According to the court, in order for constructive notice to exist, there must be evidence showing that the chair’s defective condition existed for a sufficient period of time to afford the owner an opportunity to properly inspect the premise and remove the danger. Because there was no evidence of the length of time before the fall during which the chair was in an unsafe condition, the court found that there was no constructive notice.

The court found that Pizza Specialists did not act with a lack of reasonable care. According to the court, reasonable care requires an owner to “inspect for unsafe conditions, repair such conditions, and provide safeguards or warnings that may be reasonably necessary to protect an invitee under the circumstances.” Although Pizza Specialists did not have a written procedure on when chairs may be used and when they need to be thrown out, Pizza Specialists employees were required to inspect the equipment each morning, and equipment that was unsafe was not to be set up for use. Further, the assistant general manager pressed down on the arms when setting up the deck, to ensure the chairs were stable with no cracks or frays. The court held that such procedures were sufficient to establish reasonable care, and because Haubrich offered no evidence to the contrary, the Washington Court of Appeals upheld the trial court’s decision to dismiss Haubrich’s claim.

NOTE: This opinion has not been published. It is provided to demonstrate how the court approaches the issues involved in the case. It cannot be cited as authority to a court of law.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/D2%2049540-6-11%20Unpublished%20Opinion.pdf>

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