

WINTER 2019 NEWSLETTER

PREMISES LIABILITY

By George L. Lankford

Angela Carter v. Tarantino Properties, Inc., WL _____ ; No. 01-17-00843-CV (Tex.App.-Houton [1st Dist.] January 29, 2019.)

Plaintiff is a tenant in a Houston Housing Authority apartment complex. She was injured when a glass cover of an allegedly improperly installed bathroom light fixture fell and cut her wrist. It also cut her leg. She had to go to the ER where her wrist was sutured and leg cleaned. Defendant Tarantino Apartments began managing the complex after Plaintiff moved in to her apartment. Plaintiff filed a premises liability claim against the Defendant. She contended the light fixture was “jerry-rigged”, and the defect of being attached to the wall by a single nail was “imperceptible.” She did not contend the Defendant had actual knowledge. Plaintiff contended “any reasonable inspector would have determined that the lighting fixture was not securely attached to the bathroom wall.”

Defendant filed both tradition and no evidence summary judgment motions. The trial court granted the motions which were upheld on appeal because Plaintiff must show actual knowledge or constructive knowledge of the dangerous condition in order for the property manager to be liable to an invitee for a premises defect. Plaintiff expert’s statement that “any reasonable inspector would have determined that the lighting fixture was not securely attached to the bathroom wall” was held to be conclusory and of no evidentiary value. The only way to discover the defect was to detach the fixture from the wall. The court noted the expert did not state why, in the absence of any complaints or problems, would a reasonable inspector detach the fixture to make a determination of proper installation. Hence, there was no constructive knowledge in which to base liability.

Alice Townson v. Wal-Mart Stores, Inc., 2019 WL 471530 (5th Cir. February 6, 2019.)

Plaintiff tripped and fell over a carpet mat in the entrance to the auto department of a Wal-Mart. The security camera footage demonstrated the mat’s end was folded over by the wind less than two minutes before Plaintiff entered the store. No Wal-Mart employee can be seen in the video footage in the entry way. The video also shows that the wind had flipped the mat thirty minutes before the accident, and that it remained that way for twenty minutes before an employee came by to straighten it out some eight minutes before Plaintiff arrived.

The trial granted summary judgment to Wal-Mart and the Fifth Circuit upheld the ruling. There was no constructive knowledge of the condition because “temporal evidence best indicates whether the owner had a reasonable opportunity to discover and remedy the dangerous condition.” In this case, the court of appeals agreed that “the mat was flipped for less than ninety seconds before Townsend fell. That was insufficient time for Wal-Mart to have a reasonable opportunity to discover it under these facts.”