Sipple v. Sears – A Classic Slip and Fall Case

By Stephen Soule

"Mother fell in the store, the store must pay."

I had an opportunity recently to reread one of my favorite cases, a decision from the United States District Court for the District of Kansas from 1982 called *Sipple v. Sears, Roebuck & Company*, 553 F. Supp. 908 (D. Kan. 1982). The case is worth reading because it sets out in simple terms what the Plaintiff is required to prove in a slip and fall case involving a foreign substance on the floor.

Mrs. Sipple and her husband walked into the Sears store at 95th & Metcalf in Overland Park, Kansas, one day in August, 1982. She let go of her husband's arm to look at some flowers that interested her, "slipped on something hard" and fell. She never saw what caused her to fall. She told one of her treating physicians that she "slipped on a waxy substance." Her husband, however, thought that she fell because she stepped on a cigarette butt, and the case went into suit with the allegation that a cigarette butt on the floor caused the accident.

Plaintiff had no knowledge, information or evidence to indicate how long the cigarette butt was on the floor before she fell. The store moved for summary judgment, arguing that without this evidence, Plaintiff's case could not succeed as a matter of law.

The Federal Court agreed. The proprietor of business is liable to customers who slip and fall on interior floors because the law places on the proprietor a "superior knowledge" concerning dangerous conditions on the premises. The proprietor of the business has to remediate the dangerous condition or, at least, warn of the risk.

Slip and falls on interior floors can be divided into two categories. First, there are those dangerous conditions created or maintained by the proprietor of the store or the store employees. Second, there are dangerous conditions that come about through no active fault of the proprietor.

In the first category of dangers, where the floor is made dangerous because of something that the proprietor of the business has done, the law does not require an injured person to prove that the proprietor of the business had any notice or knowledge of the dangerous condition. In the second category of dangers, however, allow requires the would-be plaintiff to prove that the proprietor had actual knowledge of the dangerous condition or that the dangerous condition existed for such a length of time that in the exercise of reasonable care, the proprietor of the business should have known about it.

This has long been the law in the United States. The Federal Judge cited a 1901 Massachusetts case written by Chief Justice Oliver Wendell Holmes. Justice Holmes held that the plaintiff could not avoid

a directed verdict in a trial in which he fell on a banana skin lying on the platform of a railway station. He was unable to prove that the banana skin had been on the platform for any particular length of time for the accident took place. Thus there was no evidence by which a jury could find that the premises owner was liable for failure to do something about it, such as pick it up.

The Federal Judge contrasted this old case with another old Massachusetts case from 1911 that allowed another "banana peel" case to go forward. In that case, there was evidence that the banana peel on the floor was "dirt dry, gritty, as if there were dirt upon it," and as if "trampled over a good deal," as "flattened down and black in color," "every bit of it was black, there wasn't a particle of yellow," and it was "black, flattened out and gritty." The very appearance of the banana peel on the floor was enough to give the would-be plaintiff a case, because it must have been on the floor for a long enough period of time that the defendant either knew about it or should have known about it and cleaned it up. (You might wonder how anyone could fall on a "dirt dry" banana peel. Sorry, the case doesn't say.)

The Federal Court in the *Sipple* case found that there was no evidence that Sears or any of its employees had placed the cigarette butt on the floor and there was no evidence that Sears or any of its employees had actual knowledge that the cigarette butt was on the floor. Therefore, without any evidence of how long the cigarette butt had been on the floor before the accident, the conclusion was "inescapable" that summary judgment was proper in favor of the Sears store.

We sometimes get cynical about slip and fall cases. It is tempting to think of them as cases of strict liability. I was once defending a store in a slip and fall case. The Plaintiff, who was not even a customer, had rushed into the store to use the restroom. She rushed past a store employee mopping the floor near the restroom area, past the yellow mop bucket and past the "Caution-Wet Floor" signs (two of them) in her hurry to get to the ladies room. After using the facility, she rushed back to leave the store and slipped on the floor beside the gentleman who was mopping the floor. The jury returned a verdict in favor of the store. The Plaintiff's lawyer moved for a new trial. I had the unfortunate experience of having to listen to the trial court judge grant the motion for new trial. After doing so, the judge turned to me, apparently thinking he would set me straight about the law, and said, "Mother fell in the store, the store must pay."

This is not the law, however. The premises owner is liable only for the consequences of a failure to use ordinary care. While the premises owner is deemed to be in a superior position when it comes to knowing about dangers on the premises, and has a duty of active care, in some cases, to keep the premises reasonably safe for business invitees, the premises owner does not guarantee the safety of persons on the premises.

There is also one more thing to note about the *Sipple* case. At the time, the state court judges in Kansas seemed very reluctant to grant summary judgment in tort cases. The defense attorney in *Sipple* removed the case to Federal Court from the state court in which it had originally been filed. It is sometimes the case that the Federal Courts are more receptive to dispositive motions, like the Motion for Summary Judgment that resulted in the end of this case, because of a smaller caseload and a larger staff to assist judges.

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