Florida’s Third DCA Limits Scope of Discovery in Premises Liability Cases

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In cases where a plaintiff is injured due to a slip and fall in a business establishment, the plaintiff may seek discovery related to other slip and falls that occurred on the same premises. Such requests are generally made in an effort to establish that the owner of the premises had actual or constructive knowledge of the dangerous condition that caused the plaintiff’s injury. On July 31, the Third District Court of Appeal issued an opinion limiting the scope of these discovery requests.

In *Publix Supermarkets, Inc. v. Santos*, plaintiff brought an action for negligence and negligent mode of operation against Publix. Plaintiff alleged that she slipped and fell in a Publix grocery store as a result of a transitory foreign substance on the floor. Initially, plaintiff sought discovery related to all slip and falls that occurred at that specific store within the three years prior to her accident. After discovering there had been none during that time frame at that particular store, plaintiff sought production of all incident reports regarding slip and falls at any Publix store in the State of Florida, within the three years prior to her accident. The trial court ordered Publix to supplement its initial discovery response with information regarding its stores, statewide, within the past three years.

The Third District Court of Appeal concluded that the trial court allowed the plaintiff to obtain information that was irrelevant with respect to her burden of proof under the applicable statute. In reaching its conclusion, the Court compared the applicable statute, Florida Statute § 768.0755 (2010), to the repealed Florida Statute § 768.0710 (2009). Florida Statute § 768.0755(1) states,

> If a person slips and falls on a transitory foreign substance in a business establishment, the injured person must prove that the *business establishment* had actual or constructive knowledge of the dangerous condition and should have taken action to remedy it (emphasis added).

The “business establishment” language in § 768.0755 replaced the “person or entity” language of § 768.0710. The repealed statute focused on the actual or constructive knowledge of the person or entity in control of the business premises. The Court explained that, due to the change in language, an injured person must now prove that the particular “business establishment” where the injury occurred had actual or constructive knowledge of the dangerous condition. Thus, discovery should be restricted to information on the particular establishment. The Court noted, however, that the term “business establishment” is not defined in the statute or in any Florida case.

The Court ascertained the plain and ordinary meaning of the term by turning to an online legal dictionary. It ultimately defined “business establishment” as the actual place of business where the slip and fall occurred, not the total network of stores operated by the entity in possession of the premises where the fall occurred.

Accordingly, the Court held that a discovery request relating to all Publix grocery stores in the state of Florida would result in irrelevant discovery that falls outside of the context of Florida Statute § 768.0755. Plaintiffs must show actual or constructive knowledge of the store at which the slip-and-fall occurred under the current statute.

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