Limiting Scope Of Discovery In Fla. Premises Liability Cases

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In cases where a patron is injured on the premises of a business establishment, the plaintiff ordinarily pursues discovery related to other prior accidents that occurred on the same premises. In addition, the plaintiff often may request discovery of accidents that occurred at the locations owned or operated by the defendant. 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.

Last year, Florida's Third District Court of Appeal (Miami) decided that the scope of discovery directed to accidents at other locations should be limited.

In Publix Supermarkets Inc. v. Santos, the plaintiff sued Publix for negligence and negligent mode of operation. She alleged that she slipped and fell in a Publix grocery store as a result of a transitory foreign substance on the floor. Initially, the plaintiff sought discovery related to all slip and falls that occurred at that particular store for the three years preceding her accident.

After learning there had been no slip and falls during that time frame at that store, the plaintiff expanded her request to all reports of slip and falls at every Publix store in Florida, again for the three years before her accident. Over Publix's objection, the trial court ordered Publix to provide information for all of its stores on a statewide basis. Publix appealed the trial court's ruling.

The Third District Court of Appeal determined that the trial court impermissibly allowed discovery that was irrelevant with respect to plaintiff's burden of proof under the applicable statute. In reaching its conclusion, the Santos court compared the statute setting forth the plaintiff's burden of proof in commercial premises liability cases, Florida Statute § 768.0755 (2010), to the one it repealed — Florida Statute § 768.0710 (2009).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 2010's § 768.0755 replaced the "person or entity" language of its predecessor, § 768.0710. The repealed statute focused on the actual or constructive knowledge of the person or entity in control of the business premises.

The Third DCA 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 Santos court observed, however, that the term "business establishment" is not defined in the statute or in any Florida case.

The Third DCA ascertained the plain and ordinary meaning of the term by referring 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 Santos court held that a discovery request relating to all Publix stores in Florida would result in irrelevant discovery beyond the scope of that contemplated under Florida Statute § 768.0755. Plaintiffs must show actual or

constructive knowledge of the dangerous condition for the specific store where the accident occurred under the current statute.

The Third DCA's decisions are controlling in Miami-Dade, Broward and Monroe counties, but in the absence of contrary case law in other districts, it may have statewide application. The Santos decision will impact commercial premises liability cases where the defendant has multiple stores or locations in Florida. The scope of permissible discovery and admissible evidence will be limited to the premises where the accident occurred.

Defense attorneys may cite Santos to oppose any discovery pertaining to stores or locations other than the one where the alleged injury took place. For example, one of Florida's standard interrogatories to defendants in general personal injury cases is:

Please state if you have ever been a party, either plaintiff or defendant, in a lawsuit other than the present matter, and, if so, state whether you were plaintiff or defendant, the nature of the action, and the date and court in which such suit was filed.

Santos arguably would allow defendants to object to the interrogatory except to provide information related to lawsuits involving the store where the plaintiff alleges the injury occurred. Information about lawsuits involving other locations would be irrelevant under Santos. The same would be the case for any discovery directed to accidents and claims for injury at other stores, regardless of whether there was a lawsuit.

Plaintiffs in commercial premises liability cases may be expected to still pursue discovery about accidents and claims for other store locations. Over time, other district courts of appeal may adopt the Third DCA's rationale in Santos, leading to a statewide limitation on "other store" discovery.

Santos in the long term will decrease the cost of litigation for defendants in premises liability cases by limiting the scope of discovery to the store where the accident happened. There then is less likelihood that there will be admissible evidence of actual or constructive knowledge of the dangerous condition that led to the plaintiff's injury if the sole focus of the evidence is a single store.

That is especially so where one of the ways to prove constructive notice under the § 768.0755 is to show that "[t]he condition occurred with regularity and was therefore foreseeable." When there is only one store to consider, the probability that the condition, whatever it was, occurred with "regularity" is far lower than when every store in the state is being considered.

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