Gonzalez v. Interstate Cleaning Corp.
Court of Appeal, Fourth District, Division 2, California.
October 23, 2024, modified November 21, 2024

FACTS/PROCEDURE

On the afternoon of December 31, 2017, Plaintiff Grace Gonzalez was walking with her granddaughters in the common area of the Ontario Mills Shopping Center. The three had walked in the area earlier in the day and did not see anything on the floor. Plaintiff's granddaughters were walking ahead of her when they saw what appeared to be oranges. They were turning to warn plaintiff when she slipped and fell. The orange substance was separate, smashed slices of at least one peeled orange. Plaintiff didn't know if the orange was smashed before or after she fell or how long it was there.

Plaintiff sued the shopping center and Interstate Cleaning Corporation (ICC) for premises liability. Defendants moved for summary judgment on the grounds that the undisputed evidence established they did not have actual or constructive notice of the orange. In support, defendants submitted evidence of ICC's inspection training and maintenance programs.

ICC's vice-president of operations provided evidence that when the shopping center is open to the public, ICC employs "porters" whose sole duty is to walk designated routes continuously inspecting the common area floors. ICC conducted a rigorous training program for the porters with 21 days of hands-on training, then additional training and testing for the following 90 days, after which time regular training and testing was provided for the remainder of employment. Porters were trained to constantly look down at the floors from left to right and right to left while walking in a serpentine pattern on predesignated routes in predesignated "beacon" zones so all floor areas could be examined every 20 to 30 minutes. Porters were trained on how to walk around objects that might block line of sight and to not push janitorial carts as they might interfere with observation.

As part of the inspection program, ICC installed an electronic system called "Lighthouse" to track and record porters' inspections. The porters carried cell phones that connected to "beacon" domes in the ceiling at intervals along porter routes. Defendants introduced maps showing the beacon zones which overlapped at the edges so ICC could constantly track porters' exact locations and inspection times down to the hundredth of a second. The data is transmitted in real time to a third-party tamper-proof server.

On the day of plaintiff's fall, 31 ICC porters were on duty. Ms. Villa was the porter assigned to the area where plaintiff fell – beacon zone 3. The vice-president of operations had personally trained her and regularly observed her work for two years prior and had never seen Ms. Villa walk past any debris or spilled items and she had no disciplinary problems. Defendants introduced inspection reports establishing Ms. Villa inspected beacon zone 3, 8 minutes before plaintiff fell.

In opposition, plaintiff argued there were triable issues of material fact regarding whether defendants actively inspected the common area and whether they had constructive knowledge of the orange. Plaintiffs took issue with the fact that Ms. Villa did not testify or provide a declaration, that the owner used an automated tracking system and that defendants did not retain video footage after plaintiff mailed an evidence retention request to a nonexistent claims department at the shopping center's address. As supporting evidence, plaintiff introduced a declaration from Brad Avrit, a licensed civil engineer, who opined the floor had an unsafe slip resistance and defendants had constructive knowledge. The declaration was heavily objected to.

The trial court ruled that: (1) the undisputed evidence demonstrated no actual knowledge of the condition; and (2) because defendants' training and inspection practices established the fall area had been inspected between 8 to 9 minutes beforehand, this evidenced a reasonable inspection within a short period before the fall and showed defendants lacked constructive knowledge with time to cure.

HOLDING/DISCUSSION

Summary judgement affirmed.

Because a store owner is not the insurer of a visitor's personal safety, the owner must have had actual or constructive knowledge of the dangerous condition to be liable. In cases where the evidence fails to show how long the dangerous condition existed prior to the injury, an owner may be deemed to have had constructive knowledge of its existence if the condition existed long enough for a reasonably prudent person to have discovered it. If so, an inference arises that the condition existed long enough for the owner to have discovered and remedied it in the exercise of reasonable care.

This is a question of fact, and there are no exact time limitations so each incident must be viewed in light of its own unique circumstances. (The court declined to follow a line of district court cases to the extent they suggested that a certain number of minutes between the last inspection and fall could not have constituted constructive notice as a matter of law.)

In light of defendants' undisputed evidence regarding training and inspection, the trial court properly ruled that Ms. Villa actively inspected the floor, and the 8–9-minute interval between the last inspection and plaintiff's fall was insufficient to demonstrate constructive knowledge. The defendants were not required to introduce the testimony of the employee who conducted the inspection, a declaration with proper foundation from a knowledgeable person describing the regular maintenance practices and inspection record around the time is sufficient. Finally, plaintiff's argument that defendants failed to retain video footage was disregarded as plaintiff did not make the proper spoliation motions with the trial court.