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ILLINOIS LAW MANUAL

CHAPTER V
PREMISES LIABILITY

C. DEFECTIVE FLOORING, STAIRWAYS AND LIGHTING

1. Basic Law

a. Defective Flooring

If there is evidence that a walking surface is unusually or unreasonably dangerous due to the nature of its construction or materials used in constructing it, liability may be imposed. Richter v. Burton Investment Properties, Inc., 240 Ill. App. 3d 998 (1993). If there is positive evidence of defects in the flooring, such as holes, worn boards, or depressions, and some direct evidence, however slight, which associates a plaintiff's fall with that defect, the problem becomes a jury question and verdicts for plaintiffs are usually affirmed. Tracy v. Village of Lombard, 116 Ill. App. 3d 563 (1983). However, subjective testimony that a floor looked freshly painted, had a high gloss, and was slippery under foot, was held insufficient to create a question of fact. Lucker v. Arlington Park Race Track Corp., 142 Ill. App. 3d 872 (1986). A business owner may treat its floors with wax or oil or other substances in the customary manner without incurring liability, unless it is negligent in the materials used or manner applied. Kotarba v. Jamrozik, 283 Ill. App. 3d 595 (1996). Actual or constructive notice to the owner of the defective flooring must be proven. Repinski v. Jubilee Oil Co., 85 Ill. App. 3d 15 (1980).

b. Stairways and Lighting

A stairway is not considered unreasonably dangerous solely because of the normal obvious risks a person undertakes when using stairs. Bellerive v. Hilton Hotels Corp., 245 Ill. App. 3d 933 (1993). Stairs only become unreasonably dangerous when, under the circumstances of a particular case, the defendant, in the exercise of reasonable care, should anticipate that the plaintiff will fail to see them. Auguste v. Montgomery Ward and Company, 257 Ill. App. 3d 865 (1993). In such cases, the landowners were chargeable with negligence for doing or failing to do something that made the stairs more dangerous than they would have been "just as stairs." Glass v. Morgan Guaranty Trust Company, 238 Ill. App. 3d 355 (1992). Generally, there is no liability unless there is some evidence to suggest that the stairs were improperly designed, improperly or inadequately lighted, covered with a foreign substance, or slippery. Alcorn v. Stepzinski, 185 Ill. App. 3d 1 (1989).

2. Analysis

In Richter v. Burton, 240 Ill. App. 3d 998 (1993), a mail carrier sued the landlord, alleging that the ceramic tile floor in the building's foyer was unreasonably slippery when wet, and that the landlord acted willfully and wantonly in failing to remove snow and ice from sidewalks in front of the building. The plaintiff failed to provide any factual basis or expert testimony to support his allegation that the defendant either installed a ceramic tile floor that was unreasonably slippery, or maintained the floor in an unreasonable manner. Therefore, the court held that summary judgment was proper. In Tracy v. Village of Lombard, 116 Ill. App. 3d 563 (1983), the plaintiff recovered for injuries sustained when he fell on a stairway in the village hall. The plaintiff, on crutches at the time, fell when his left crutch became caught in a crack in the steps. Although the measurable cracks in the steps were very small, they constituted positive evidence of a defective condition, the

unsafe character of which was properly a question for the jury. The trend in cases involving flooring or stairways appears to allow smaller defects to go to the jury than in some sidewalk cases. However, the court found that the difference may be justifiable for several reasons. Defects in sidewalks may be avoided more easily than defects on stairs. Indoor flooring and stairways are not exposed to the weather. Further, they may be more easily monitored for defects. Moreover, a trip on a stairway is potentially more dangerous because of the likelihood of a fall down the stairway.

In Kotarba v. Jamrozik, 283 Ill. App. 3d 595 (1996), the plaintiff fell as she descended stairs outside of her apartment. She sued the building owner and a handyman who had varnished the stairs nine months earlier. After settling with the owner, the plaintiff proceeded against the handyman, alleging that he failed to install a second banister and allowed the stairway to remain in a slippery and dangerous condition. The plaintiff's expert testified that it was customary to install a non-slip surface on a wooden stairway after varnishing them, and failing to do so created a dangerous condition. In affirming summary judgment in favor of the handyman, the court found that the law did not impose a duty upon the handyman to add an additional handrail or install a non-slip surface over the re-varnished stairs. The court further held that the contract between the owner and handyman did not evidence any agreement to install those features. Finally, the court reasoned that the unsupported allegation that the handyman made the stairs "too slippery" was not sufficient to withstand the motion for summary judgment. There was no specific negligent act, such as selecting an inappropriate varnish or improperly applying the varnish.

In Bellerive v. Hilton Hotels Corp., 245 Ill. App. 3d 933 (1993), a hotel patron fell down stairs while holding onto the handrail and alleged that a stair was uneven. The patron could not identify the exact area of the step that was allegedly uneven and testified only that she felt that her

foot was not on level ground. She did not know exactly what caused her to fall, but testified that the unevenness certainly had "some part in the fall." The plaintiff's testimony was sufficient to withstand the hotel owner's motion for summary judgment, as the court reasoned that the owner could be held liable when it was responsible for only part of the cause of an injury, and a worn or uneven step is actionable.

In Kittle v. Liss, 108 Ill. App. 3d 922 (1982), a tavern patron was injured when she fell on a small patch of ice near the top of a stairway. The court recognized that the operators of a business establishment have a duty to provide invitees with a safe means of ingress and egress and held that this duty required proper illumination of the area, or otherwise adequate warning to invitees of a known dangerous condition.