



News

Don't Shop 'til You Drop

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1.20.2016

On November 1, 2013, Virgie Ray was shopping for clothes at the Stage Store, the same retail store where she had shopped regularly for years. Standing next to a rolling clothing rack, Ms. Ray asked an employee for help with finding a blouse. Attempting to follow the employee to another area of the store, Ms. Ray stepped into the clothing rack, and her right foot caught the bottom bar of the rack, causing her to fall.

Ms. Ray filed a slip-and-fall suit against the Stage Store owners (“Stage”), claiming that she suffered injuries to her knees, face, shoulder, neck and right eye. She claimed that the clothing rack created an unreasonable risk of harm that Stage’s employee had a duty to warn her about. To prove her claim under Louisiana law, Ms. Ray must show that an unreasonably dangerous condition existed in the store when she fell, and that Stage created the condition, knew that the condition existed, or should have known the condition existed. In addition, Ms. Ray must show that Stage’s employee failed to exercise reasonable care to protect her from the unreasonably dangerous condition. Stage filed a motion for summary judgment asking the court to dismiss Ms. Ray’s claims on the basis that she had presented no evidence to support the elements of her claim. According to Stage, the clothing rack and its exposed feet were open and obvious and did not create an unreasonable risk of harm, and its employees had no duty to warn Ms. Ray of the rack’s presence or location.

Video evidence of the accident confirmed that the clothing rack was plainly visible to Ms. Ray immediately before she fell, and although Ms. Ray testified at her deposition that she could not see the bottom of the rack, she made a contradictory binding admission in which she denied that she did not see the bottom of the rack before she fell. Based on the available evidence, the court found that Ms. Ray was aware of and saw the clothing rack before she tripped and fell. As a result, the court concluded that the clothing rack did not create an unreasonable risk of harm. Rejecting Ms. Ray’s argument that she never had a chance to look down before she began to follow the employee, the court found that neither the accident video nor Ms. Ray’s own testimony reflected that she did not have a chance to look down, or that something prevented her from looking down, before she started walking.

The court also rejected Ms. Ray's argument that the store employee's actions in placing or using the clothing rack were unreasonable and/or violated the store's policy to transfer clothes from rolling racks to permanent racks as quickly as possible and then move the rolling racks to the warehouse when finished. Ms. Ray did not present any evidence showing that the employee's actions violated the store policy or were otherwise unreasonable. Moreover, Ms. Ray failed to cite a single Louisiana case that found an unreasonable risk of harm was created, and the defendant had a duty to warn, when a temporary clothing rack was used for the same purpose, in the same manner, and in accordance with the same or a similar store policy.

Finding Ms. Ray failed to come forward with evidence sufficient to create a genuine dispute for trial on the essential elements of her claim, the court granted Stage's motion and dismissed Ms. Ray's claims.

Take-Away: The mere presence of an obstacle in a store, such as a temporary clothing rack, does not create an unreasonable risk of harm when the condition is open and obvious. Additionally, a store employee's use/maintenance of a temporary rack or display case does not amount to a failure to use reasonable care unless the claimant can show that the employee's conduct violated a store policy or was otherwise unreasonable. In order to avoid such claims, retail store owners should take steps to implement a feasible store policy on proper use and maintenance of temporary racks and/or display cases and to train employees to ensure routine compliance with that policy.

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