

HOSPITALITY LAW

Helping the Lodging Industry Face Today's Legal Challenges

December 1999

Vol. 14, No. 12

Motel, franchisor not liable for guest's bathtub injury

Guest could not prove previous knowledge of hazardous condition

Innkeepers must keep their premises safe. This includes a duty to regularly inspect the property. However, there is a limit to what an innkeeper is expected to do. For example, an innkeeper can not be expected to discover a defect hidden behind a wall.

Stanley Howerton was a guest at an Indiana Super 8 Motel. He was injured in the bathtub while getting out. *Howerton v. Red Ribbon Inc.*, No. 18A02-9806-CV-504 (Ind. Ct. App., 9/7/99).

Howerton grabbed the bar on the side wall of the bathtub-shower unit and pulled himself about half-way up. The bar supported his weight without moving, Howerton said, but as he continued to get up, he pulled the bar off the wall and fell.

Howerton and his wife sued the motel owner, Red Ribbon Inc. and the franchisor, Super 8 Motels Inc. Red Ribbon operated and owned the motel as well as the land. Super 8 had no direct control over the operation of the motel.

The trial court rejected the Howerton's claim and granted summary judgment in favor of both Red Ribbon and Super 8. The Howertons appealed to the Indiana Court of Appeals, arguing the grab bar was defective and Red Ribbon would have known that if it had conducted a proper inspection. To support their claim, the Howertons point to cases where guests have slipped and fallen on wet floors. But the court said this case was different because the defect was hidden and Red Ribbon was not expected to discover it. The bar was installed in the wall and Red Ribbon had no means of inspecting the back of the wall. There were no similar incidents with other grab bars. In fact, the court noted, the bar did not move when Howerton initially pulled himself up. Therefore, the court concluded there was no way for Red Ribbon to have discovered the defect.

The Howertons argued that as the franchisor, Super 8 had the necessary control to warrant liability because it approved the plans for the motel. However, the court rejected this claim. Despite Super 8's right to approve the plans for the motel, there was no evidence Super 8 should have discovered any defect in the grab bar.

HLAW COMMENT by Robert Zarco Innkeepers must monitor property to prevent, rectify hazards

The *Howerton* case addresses whether a business owner should bear responsibility for a guest's injury. The legal standard is that a property owner owes a guest, or "invitee," a duty of "reasonable care" while the guest is using the premises. How a court interprets the facts of the situation determines whether the property owner is legally and financially responsible for the expenses a guest incurs as a result of that injury.

When someone has been injured on a business's property, the most important and preliminary question is whether the property owner was aware, or *should have been aware* of the danger that existed. It is a property owner's legal responsibility to provide a safe environment for guests and to monitor that environment in an effort to prevent any hazards from developing. For example, in a restaurant, spills or objects left on the floor are a common occurrence, but they also pose a serious danger to patrons. For these reasons, a restaurant owner has an obligation both to watch out for, and clean up any spills or objects on the floor. Because these are conditions that are readily observable, a property owner will usually be held accountable when he or she fails to correct or take reasonable steps to correct an obvious threat.

In contrast, other dangers lurking on the property might not be as obvious. In the *Howerton* case, the defective unit was actually installed *behind* the wall where Red Ribbon had no means of inspecting the unit. It was also unlikely that anyone other than a guest would

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be in a position to discover the problem. Even Mr. Howerton did not notice a problem when he initially leaned on the unit; it was only after sustained force that it eventually gave way. Because the franchisee did not know, and did not have reason to know about the loose bar, the franchisee was not legally responsible for the resulting injury.

The pivotal fact in this case was that no one had previously reported a problem with the bar. If another guest *had* notified Red Ribbon that the bar was loose, the franchisee would have been on notice about the hazardous situation. Thereafter, if Red Ribbon had not investigated the complaint, or had failed to repair the loose bar before allowing the next guest to occupy the room, the court would have undoubtedly found that Mr. Howerton had presented enough evidence — at least to send the case to the jury to decide whether the franchisee had fulfilled its duty of reasonable care toward its guests.

One lesson to be taken from this case is that you should take seriously and investigate *all* reports and complaints that involve potentially dangerous conditions. If the situation calls for a repair, make it immediately. If you are unable to do so, and the problem is in a well-traveled area, you must take measures to warn your guests in some way — by posting signs or blocking off the site, for example.

In addition, although you might not be liable for risks that are not obvious, routine property inspections may help you avoid a guest's injury altogether. Taking basic precautions and being vigilant in property maintenance could spare you the legal expense and ill will that a guest's injury might generate. Be sure to keep detailed records of all property inspections, as well as records of all the recommended repairs you have made as a result.

Finally, if a guest is injured, you should consult legal counsel immediately. Do not speak with an attorney for the injured party, or with the general counsel for the franchisor, without consulting your own attorney first. Frequently, the injured party will sue both the franchisee *and* the franchisor. In this situation, keep in mind that your interests are not necessarily the same as those of the franchisor, and the statements that you make to the franchisor's attorney may not be protected by the attorney-client privilege as would those statements you make to your own attorney. Above all, you must be attentive in protecting yourself, your guests and the substantial investment that you have made in your business.

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