



THE BASSETT FIRM
WWW.THEBASSETTFIRM.COM

Passion. Preparation. Persistence.

Volume 4, Issue 15

THE BASSETT BULLETIN TM

A STEP FORWARD FOR PROPERTY OWNERS

If a person trips on a pedestrian ramp where the handrails do not extend to the *very* end of the ramp, is that an unreasonable risk of harm to someone? What if the area missing the handrails met all applicable safety standards and the land owner made sure to outline the area in yellow paint?

In *Brinson Ford, Inc. v. Alger*, the Texas Supreme Court held that a pedestrian ramp that meets the above scenario does not pose an unreasonable risk of harm. By reaching this conclusion, the Court moved back to its more traditional approach on premises liability cases, which is more favorable to property owners.

THE FACTS OF THE CASE

Connie Alger went to Brinson Ford, Inc., to pick up friends who were having work done on their car. Alger entered the dealership through a side entrance, but exited through the front door where a pedestrian ramp lead to the parking lot. Although there were handrails along most of the ramp as it sloped down to ground level, a small portion of the ramp extended beyond the handrails to the sidewalk. The highest point of this unrailed section was four inches above the sidewalk, and it was marked by yellow paint along the ramp's edges and around the parking space next to the ramp. The ramp was the dealership's main entrance, and Brinson Ford had no record that anyone had ever fallen from it in the nearly ten years between the business' opening and Alger's fall.

Alger testified that when she reached the point where the handrails ended, she thought the ramp had ended too. When she turned to walk toward her car, Alger stepped off the unrailed portion of the ramp and fell.

Alger sued Brinson Ford alleging that the ramp's configuration was a premises condition posing an unreasonable risk of harm. She alleged that Brinson Ford knew or should have known of the danger, but they failed to exercise ordinary care to protect her from it.

THE PROCEDURAL HISTORY

At trial court level, the court granted summary judgment in favor of Brinson Ford, Inc. Brinson Ford, Inc.'s Motion for Summary Judgment asserted that Alger had no evidence to support her claims against the dealership. Specifically, Brinson Ford, Inc., argued that there was no evidence that the premises presented an unreasonable risk of harm.

A divided Court of Appeals reversed the trial court's ruling. The Court of Appeals held that there were fact issues that existed as to (1) Brinson Ford, Inc.'s actual or constructive knowledge of the condition, (2) whether the condition posed an unreasonable risk of harm, and (3) whether the premises owner failed to exercise reasonable care to reduce or eliminate the risk of harm.

PREMISES LIABILITY CASES

A Plaintiff in a premises liability case must prove that the premises owner knew or should have known of a dangerous condition on the premises that presented an unreasonable risk of harm and that the condition proximately caused the Plaintiff's injuries. [*Seideneck v. Cal Bayreuther Assocs.*, 451 S.W.2d 752, 754 \(Tex. 1970\)](#). A condition is unreasonably dangerous if it presents an unreasonable risk of harm. [*Seideneck*, 451 S.W.2d at 754](#).

In this situation, Brinson Ford, Inc., provided the Court with evidence that they had no record of anyone falling off this ramp in the last ten years. Therefore, with this information, Brinson Ford, Inc., was able to successfully argue that it had no way to know, nor did then know, that this portion of the ramp could be dangerous. In essence, the company was able to negate Alger's actual or constructive knowledge argument.

In another positive step forward for premises owners, the Court went on to say that "... a condition is not unreasonably dangerous simply because it is not foolproof." [*Brookshire Grocery Co. v. Taylor*, 222 S.W.3d 406, 408 \(Tex. 2006\)](#). The argument can most always be made that anything is unsafe. However, in *Brinson Ford, Inc.*, Brinson Ford had documents that support (1) the ramp met the safety standards, (2) they took the extra steps to highlight a potentially dangerous condition (i.e., yellow paint to mark the different elevations of the ramp), and (3) documentation that this object (i.e., the pedestrian ramp) has been there for 10 years and no one had been injured.

REDUCING YOUR EXPOSURE

How can you protect yourself from this type of situation?

- ★ *Document. Document. Document.* It certainly did not hurt that Brinson Ford Inc.'s records showed that no one had been hurt on this ramp for the previous ten years. It is a good idea to have a written procedure in place to document injuries on your premises. This way, if your representative is deposed, he/she can testify (1) that there is the procedure for documenting injuries and (2) as to what the documentation shows. It adds credibility to your defense because it shows that you are aware of customer incidents and have a procedure in place to document this activity.
- ★ *Keep copies of all complaints lodged against you.* The Texas Supreme Court took notice of two things in ruling in favor of Brinson Ford, Inc. (1) No one had been hurt in 10 years and (2) no one had complained that the ramp that Alger fell on was unsafe. The Court further went on to say that "no other customer visiting the property over a ten-year period had ever been injured by the ramp, nor had the dealership received complaints about the ramp's safety."

This information can be very helpful in your defense. One of the most sure fire ways to have this information readily available is to have a written procedure that is followed by all employees – new and old. Especially in high turn over businesses, everyone needs to know the procedures so that it transitions with the employees.

- ★ *Make sure that your ramps, stairs, and/or elevated surfaces meet all applicable safety standards.* It is easier for you to argue that your premises is not unreasonably dangerous if your expert can testify that it meets all the applicable safety standards. The Court in this case also took note that the ramp that Alger fell on met the applicable safety standards. The Court noted that “the ramp at issue in this case did not pose an unreasonable risk of harm.” The area of the ramp without handrails met applicable safety standards and was further outlined in yellow stripping to indicate a change in elevation.

The Bassett Firm

*Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com*

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ELDRIDGE**
- **CHRISTINE S. JOHNSON**
- **DEAN MIYAZONO**
- **MICHAEL J. NOORDSY**
- **MATHEW SAMUEL**
- **JEFF A. WELLS**



Information regarding *The Bassett Bulletin*TM is available from **Angie Stevenson** (astevenson@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

*The Bassett Bulletin*TM is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
