No. 313930

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

RAYMOND ROBINSON

Appellant,

v.

U.S. BANCORP

Respondent.

APPELLANT BRIEF

GRANT COUNTY SUPERIOR COURT
CAUSE NO. 112012553
HONORABLE JUDGE EVAN SPERLINE

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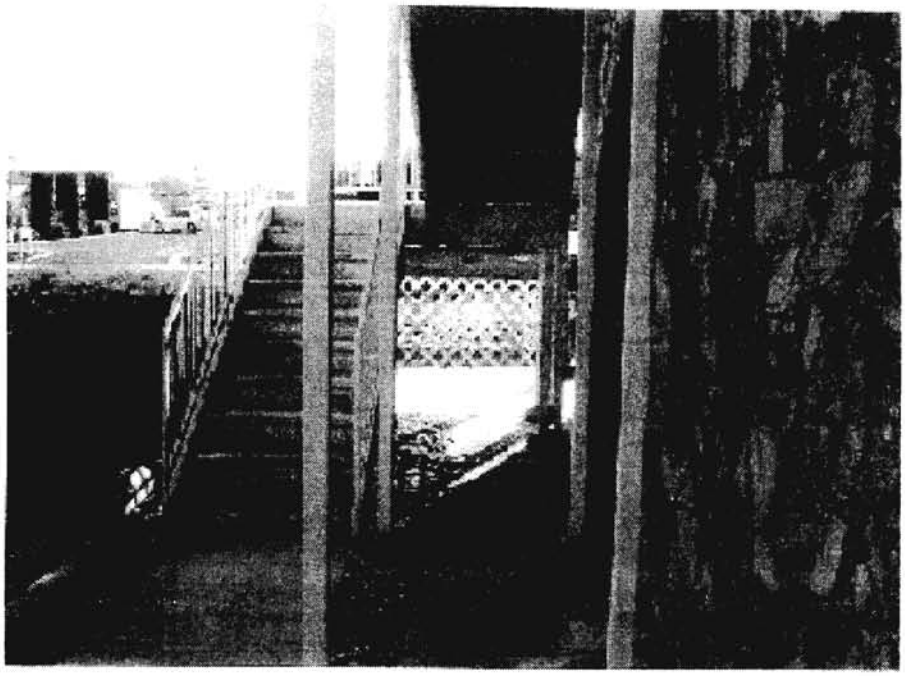
INTRODUCTION

The Plaintiff, 5'9", was injured when he misjudged the height of the landing on a stairway that the Defendant installed on its building years before. He did so because he believed he was following a sidewalk around the building, and "there was no danger sign, there was no height sign, it never even dawned on" him that the landing was too low for him to walk under safely.

This photo on the next page shows the landing, with the latticework that the Defendant installed after the accident, "in order to discourage people from trying to walk underneath the staircase".

The Plaintiff contended that the stairway was "unreasonably dangerous" at the time of his injury because the risk of injury, to himself and others, could be (and ultimately was) easily reduced or eliminated with the installation of the latticework. The Trial Court dismissed the case on summary judgment, leading to this appeal.

The stairway looks like this:



CP 36.

ASSIGNMENT OF ERROR

The Court erred in granting the Defendant's Motion for Summary Judgment of Dismissal, and entering Judgment in Defendant's favor.

STATEMENT OF THE CASE

The Plaintiff Raymond Robinson ("Robinson") alleged was injured on Defendant U.S. Bank's ("The Bank's") property on December 16th,

2010. CP 23. That day, Robinson went to the Moses Lake Branch to withdraw money for his wife. CP 29. After leaving the Bank, Robinson realized he wanted to withdraw money for himself as well. He decided to use the Bank's ATM, which was on the other side of the building from the parking lot. CP 30, 31.

Believing he was on a "sidewalk" leading around the building, Robinson walked under a stairway ("the Stairway") that the Defendant had installed in the parking lot some years earlier. Robinson testified at deposition that:

"I just assumed that you could---it was there. The walkway was there, and I just assumed you could walk on around it."

CP 12.

He was looking "straight ahead" as he walked under the Stairway, which was too low for him to pass safely. Id. He struck his head, injuring himself. Id.

At some point after Robinson was injured, the Bank installed latticework, to "discourage people from trying to walk underneath the staircase". CP 42.

Robinson sued the Bank for his injuries. CP 1-5. The Bank brought a Motion for Summary Judgment, contending that "Plaintiff cannot prove that U.S. Bank breached any duty" to him.

The Trial Court granted the Bank's Motion. CP 66-68. This appeal followed. CP 69-74.

SUMMARY OF ARGUMENT

Robinson was a business invitee of the Bank, and therefore owed a duty of care, to avoid unreasonably dangerous conditions.

If the Stairway as it existed the day Robinson was hurt was an "unreasonably dangerous condition", The Bank breached its duty of care to Robinson and the Bank's other invitees. Whether a particular condition is "unreasonably dangerous" is a question of fact.

Under such circumstances, there would be no requirement of "notice", actual or constructive, to the Bank, because the Bank created the condition by installing the Stairway.

ARGUMENT

It is a matter of pattern jury instruction that a landowner owes invitees a duty to keep the premises in reasonably safe condition, WPI 120.06; Miniken v Carr 71 WN2 325, 428 P2 (1967).

When the owner of the land creates a dangerous condition, there is no requirement of "notice". Trueax v. Ernst Home Center, Inc., 70 Wn. App. 381, 853 P.2d 491 (1993), reversed on other grounds, 124 Wn.sd 334, 878 P.2d 1208 (1994).

Whether a particular condition is unreasonably dangerous is generally a question of fact for the jury. Bodin v. City of Stanwood, 130 Wn.2d 726, 741, 917 P. 2d 240 (1996).

The Bank contended that the installation of the latticework after Robinson's injury would be unequivocally inadmissible under ER 407 as a "subsequent remedial measure". But the rule on its face creates exceptions that the Bank cannot overcome for purposes of summary judgment:

If the Bank controverts the "feasibility" of the latticework as a precautionary measure before Robinson's accident, the fact that it was installed later is admissible;

If the Bank acknowledges that such installation would be "feasible", the fact that it was not done would support an inference of negligence.

CONCLUSION

The judgment should be reversed.

DATED this 12 day of April, 2013.

By: _____
David A. Williams, WSBA #12010
Attorney for Appellant

PROOF OF SERVICE

I hereby certify that a copy of the Appellant's Brief, was forwarded for service upon the counsel of record:

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DATED this 15th day of April, 2013.

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