THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

BRIAN SUDBECK, Appellant, v. EAGLE TRANSPORT, Inc., Respondent.	)	No. 81154-1-I DIVISION ONE UNPUBLISHED OPINION

ANDRUS, A.C.J. — Brian Sudbeck sued Eagle Transport, Inc. ("Eagle") for negligence after he fell through the roof of a damaged semitrailer belonging to Eagle. The trial court granted summary judgment for Eagle, concluding it had discharged any duty it owed to Sudbeck, who was on site to repair the trailer. We affirm.

FACTS

Brian Sudbeck is a tractor trailer mechanic with twelve years of experience, six years of which he spent working for Mobile One Trailer Repair, LLC ("Mobile One"). Defendant Eagle Transport, Inc. exclusively retains Mobile One to perform all repairs and maintenance on its semitrailers. The two companies have a business relationship extending twenty-five years.

On June 15, 2017, a forklift mast hit the roof of one of Eagle's trailers, poking a hole in the top and damaging a "spar." [1] Eagle employee Tom Robertson inspected the damage and alerted his managers, Jeff Pepper and Jake Smith, via email and attached two .jpeg image files to his message.[2] Neither Pepper nor Smith visually inspected the damage. Instead, Smith called Bruce Frewaldt, owner of Mobile One, and requested he come to look at "cracks in the roof" of the trailer. According to Eagle President Tyler Beach, Eagle's standard procedure was to communicate to Mobile One the exact faulty condition to be remedied when requesting repairs. Frewaldt testified, however, that Smith did not tell him a spar had been damaged.

Frewaldt instructed Sudbeck to go to Eagle's place of business first thing in the morning of June 16, 2017 to make the repairs. There is an issue of fact as to what exactly Frewaldt communicated about the nature of the required repairs. Frewaldt testified he gave Sudbeck a hand-written list, which stated "cracks in roof." Sudbeck testified he was instructed to fix a "small hole" in the roof.

Sudbeck arrived at Eagle's facility at approximately 6:45 a.m. Sudbeck had performed work at Eagle's facility on many occasions and had been instructed by Eagle employees to knock on a specific door if he wanted to contact them while performing any repair work. Sudbeck knocked on the door and waited approximately 5-10 minutes. When no one came to the door, Sudbeck decided to start working on the trailer. It was not unusual for Mobile One employees to begin

[1] Spars run horizontally across the inside of the top of the trailer to support the trailer's roof. They are also referred to as "roof bows."
[2] Neither Eagle nor Sudbeck submitted copies of these images to the trial court and they are not in the record before this court.

repairs without checking in with employees from Eagle.

Sudbeck located the trailer parked up against Eagle's loading dock. Although Sudbeck conceded he normally assesses damage from the inside of a trailer, Eagle's trailer was parked in such a way that he could not access the interior without first entering Eagle's facility. Using his ladder, Sudbeck climbed on top of the trailer without fall protection and walked from the front to the back of the trailer to find the damage. He testified he stepped only in locations he believed were supported by interior roof bows. Sudbeck testified walking on the bows is common practice when repairing a trailer roof, but the fiberglass roof was too weathered and dirty for Sudbeck to see the exact location of the bows. Sudbeck found a small hole in the roof near the back of the trailer. He turned to walk back to the front of the trailer, took a few steps and then fell through the roof, landing on the inside of the trailer and suffering serious injuries. Sudbeck yelled for help and called 911 on his cell phone before Eagle employees came to his aid.

Sudbeck filed this suit against Eagle claiming Eagle was negligent in failing to protect him from the damaged roof bow. Eagle sought summary judgment, arguing that it discharged its duty to Sudbeck as a matter of law when it informed Mobile One that the trailer had cracks in the roof and requested repairs. The trial court granted Eagle's motion and Sudbeck appealed.

ANALYSIS

Sudbeck argues the trial court erred in granting summary judgment because there is a genuine issue of material fact as to whether Eagle discharged the duty it owed to Sudbeck as a business invitee. We disagree.

We review summary judgment orders de novo and perform the same inquiry as the trial court. McDevitt v. Harbor View Med. Ctr., 179 Wn.2d 59, 64, 316 P.3d 469 (2013). Summary judgment is only appropriate when there is no genuine issue of material fact based on the record before the trial court. CR 56(c). All reasonable inferences are considered in a light most favorable to the non-moving party. Robb v. City of Seattle, 176 Wn.2d 427, 432-33, 295 P.3d 212 (2013).

A plaintiff in a negligence action must show: (1) the existence of a duty owed to the plaintiff (2) breach of that duty (3) a resulting injury and (4) a proximate cause between the breach and the duty. Iwai v. State, 129 Wn.2d 84, 96, 915 P.2d 1089 (1996).

At issue here is the extent of Eagle's duty to Sudbeck when Eagle invited him to its facility to repair a damaged trailer roof. Whether a duty exists is a question of law. Tincani v. Inland Empire Zoological Soc'y, 124 Wn.2d 121, 128, 875 P.2d 621 (1994). "The legal duty owed by a landowner to a person entering the premises depends on whether the entrant falls under the common law category of a trespasser, licensee, or invitee." Iwai, 129 Wn.2d at 90-91. "An invitee is either a public invitee or a business visitor." Thompson v. Katzer, 86 Wn. App. 280, 284, 936 P.2d 421 (1997) (quotations omitted). It is undisputed that Sudbeck was a business invitee.

Washington has adopted the Restatement (Second) of Torts sections 343 and 343A as the law regarding a landowner's duty to a business invitee. Iwai, 129 Wn.2d at 96. Section 343 states:

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

> (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and
>
> (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
>
> (c) fails to exercise reasonable care to protect them against the danger.

RESTATEMENT (SECOND) OF TORTS § 343 (AM. LAW INST. 1965).

The trial court concluded Sudbeck failed to establish a genuine issue of material fact as to prong (b) of section 343 because he presented no evidence to suggest that Eagle should have expected Sudbeck, a veteran trailer repairman specifically invited to fix a damaged roof, would fail to discover the damaged bow or fail to protect himself from falling through the roof. Sudbeck argues the trial court erred in reaching this conclusion because, based on the information Eagle communicated to Mobile One, he had no reason to believe that a roof bow was damaged. But the focus of prong (b) is not what Sudbeck actually knew about the extent of the damage before he climbed to the top of Eagle's trailer, but what Eagle should have expected a repairman such as Sudbeck to discover when that repairman was hired to inspect and repair roof damage.

Addressing an analogous issue, this court held that "landowners who invite individuals with superior knowledge onto their property to make repairs on the property should not be required to know of defects the repairs were intended to discover and remedy or to anticipate defects within the expertise of the experts." Stimus v. Hagstrom, 88 Wn. App. 286, 296, 944 P.2d 1076 (1997). In Stimus, a roofer sued property owners when she fell through their dry-rotted roof, alleging they had failed to warn her of the dangerous condition caused by the dry rot. Id.

at 289-92. The homeowners had asked Stimus to conduct repairs after the roof sustained extensive water damage and specifically requested that one of Stimus's employees check for dry-rot damage. Id. at 289-90. The trial court granted summary judgment to the homeowners and Stimus appealed, arguing the Hagstroms had a duty to warn her of the dangerous condition and an issue of fact existed as to whether the Hagstroms knew of but failed to disclose the defect to her. Id. at 292.

The court rejected Stimus's argument, reasoning that, under section 343, "[t]he duty owed by the Hagstroms to the roofers . . . must be examined in light of the expectations and knowledge of the parties." Id. at 296. The court concluded that, because the roofers "were in the position of having superior knowledge concerning the roof and the implications of the Hagstroms' statements about dry rot," the Hagstroms' duty to warn of the danger extended only to dangers of which the owners were aware and which the roofers "could not reasonably have discovered." Id. With the expertise of the roofers in mind, the court held that the Hagstroms fulfilled their duty when they warned the roofers about the potential dry rot. Id.

In this case, Eagle similarly discharged its duty to warn Sudbeck of potential dangers when it informed Mobile One that there was a crack or hole in the roof of the trailer and asked a contractor with whom it had worked for decades to come to the facility to inspect and repair the damage. There is no evidence to support Sudbeck's contention that Eagle should have expected he would not discover or realize the danger from the roof damage, or would fail to protect himself against it.

Sudbeck argues on appeal there is no evidence in the record that he could have reasonably discovered the dangerous condition through a visual inspection of the trailer's interior.[3] But if the damage was not observable to Sudbeck, an expert in trailer repairs, it is hard to imagine how it could have been observable to Eagle. In fact, the email from Robertson to Pepper and Smith indicated he had gone inside the trailer, identified a damaged spar and hole in the top of the roof, and attached image files for Pepper and Smith to review. This undisputed evidence shows that the extent of the damage was apparent by visual inspection of the trailer's interior.

Moreover, even if Sudbeck could not have seen the damaged bow, he was in a position of superior knowledge regarding the potential risks to physical safety he might encounter when climbing onto and walking across a semitrailer fiberglass roof. Sudbeck was an experienced trailer repairman, was trained in fall protection, and was aware that Mobile One provided employees with fall protection equipment when working on trailer roofs. Sudbeck admitted he was aware the roof was damaged, knew there was the possibility that a roof bow had been compromised and a missing or damaged bow would reduce the roof's ability to support his weight, and understood the danger of falling through the roof. He further testified it was common practice to check the inside of damaged trailers before climbing onto possibly structurally-compromised trailers. Sudbeck's supervisor testified that no one expected Sudbeck to climb onto the roof of the trailer. This undisputed evidence supports the trial court's conclusion that Eagle had no reason to expect

[3] Eagle argues that this is a new issue raised for the first time on appeal in contravention of RAP 9.12. Because we affirm summary judgment for Eagle, we decline to reach this argument here.

that a Mobile One repairman would be unable to discover damage that might present a risk to that person's physical safety or to protect himself from that risk.

We affirm.

Andrus, A.C.J.

WE CONCUR:

Appelwick, J.