

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FIFTH
DISTRICT

Charissa Frazier v. Panera, LLC

Frazier v. Panera · No. 5D22-1496 · Decided June 30, 2023

SUMMARY

The Florida Fifth District Court of Appeal reversed a summary final judgment for Panera, LLC in a premises-liability action arising from a customer's trip over an unweighted sign base on a sidewalk. The court held that genuine issues of material fact existed regarding whether the base was open and obvious and whether Panera should have anticipated the danger. The court also emphasized that an obvious condition may discharge a duty to warn but does not eliminate the independent duty to maintain reasonably safe premises.

CASE DETAILS

COURT	District Court of Appeal of the State of Florida, Fifth District
WRITING FOR THE COURT	Harris, J.; Wallis, J.; Jay, J.
JURISDICTION	Florida
DECIDED	June 30, 2023
DOCKET	5D22-1496
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order granting Panera, LLC's motion for summary judgment in a premises-liability action.
STANDARD OF REVIEW	Summary judgment is reviewed de novo; reversal is required when genuine issues of material fact remain.
PRECEDENTIAL VALUE	Published intermediate appellate opinion; precedential under applicable Florida law.
PARTIES	Charissa Frazier v. Panera, LLC

TOPICS

- premises liability
- summary judgment
- duty of care
- comparative fault
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether genuine issues of material fact existed as to whether the weighted sign base was an open and obvious condition.
2. Whether, even if the base was open and obvious, Panera retained an independent duty to maintain its premises in a reasonably safe condition.
3. Whether summary judgment was proper on Frazier's premises-liability claims.

HOLDINGS

1. The evidence presented a genuine issue of material fact as to whether the weighted sign base, without an attached sign and located in the direct path of customers, was an open and obvious condition.
2. Even if the weighted base was open and obvious, that condition would discharge only Panera's duty to warn; it would not eliminate Panera's separate and independent duty to maintain the premises in a reasonably safe condition.

KEY QUOTATIONS

“A landowner or occupier owes an invitee two independent duties: (1) to give warning of concealed perils which are known or should be known to the owner, but which are not known to the invitee, and (2) to maintain the premises in a reasonably safe condition.” (at 2)

“[A] landowner’s duty to warn is separate and distinct from the duty to maintain the premises in a reasonably safe condition.” (at 2)

“Even if the base was considered an open and obvious condition under the circumstances, it is a separate and independent issue of negligence whether Panera created a hazardous condition and generally failed to maintain a safe premises under the circumstances.” (at 4-5)

“Because we conclude that issues of material fact exist, we reverse the summary final judgment and remand this cause for further proceedings.” (at 5)

FACTUAL BACKGROUND

On July 29, 2017, Charissa Frazier parked at Panera's property intending to dine at the restaurant. As she walked from the parking lot onto the sidewalk, she tripped over a weighted sign base that had no sign attached to it. The base was in the direct path customers used to enter the restaurant, and Panera employees were in the process of removing it. Frazier alleged that the base was hidden from her view and that Panera should have anticipated that invitees would encounter and trip over it.

PROCEDURAL HISTORY

Frazier sued Panera after tripping and falling on a weighted sign base on Panera's sidewalk. The Circuit Court for Hernando County granted Panera's motion for summary judgment, concluding that the base was open and

obvious, that no concealed peril triggered a duty to warn, and that Frazier's failure to look down caused the accident. Frazier appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion.

CASES CITED

- Marion v. City of Boca Raton, 47 So. 3d 334, 338 (Fla. 4th DCA 2010)
- Burton v. MDC PGA Plaza Corp., 78 So. 3d 732, 734 (Fla. 4th DCA 2012)
- Moultrie v. Consolidated Stores International Corp., d/b/a Big Lots Store # 505, 764 So. 2d 637 (Fla. 1st DCA 2000)
- Pratus v. Marzucco's Constr. & Coatings, Inc., 310 So. 3d 146, 148-49 (Fla. 2d DCA 2021)
- Marriott Int'l, Inc. v. Perez-Melendez, 855 So. 2d 624 (Fla. 5th DCA 2003)
- De Cruz-Haymer v. Festival Food Mkt., Inc., 117 So. 3d 885, 888 (Fla. 4th DCA 2013)

OPINION

PER CURIAM.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FIFTH DISTRICT
NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED CHARISSA FRAZIER, Appellant, v. Case No. 5D22-1496
LT Case No. 2020-CA-001016-A PANERA, LLC, Appellee.
_____/ Opinion filed June 30, 2023 Appeal from the Circuit
Court for Hernando County, Donald Scaglione, Judge.

Stephen H. Haskins, of Lucas, Macyszyn & Dyer Law Firm, New Port Richey, for Appellant. Jack R. Reiter, and Robert C. Weill, of GrayRobinson, PA, Miami, for Appellee. HARRIS, J. In this premises liability action, Appellant, Charissa Frazier, appeals the trial court's order granting Appellee's, Panera, LLC ("Panera"), motion for summary judgment. Frazier alleged that she tripped and fell on a weighted sign base located on Panera's property.

In this appeal, Frazier argues that genuine issues of material fact exist as to whether the base was open and obvious and whether Panera should have anticipated that, under the circumstances of this case, the base would cause invitees to trip and fall.

We agree and reverse. On July 29, 2017, Frazier and her husband parked their vehicle in Panera's parking lot with the intention to dine inside the restaurant. Frazier exited the car from the

passenger side, proceeded to walk up onto the sidewalk, then tripped on a weighted base and fell to the ground. She alleged that the weighted base, which was without a sign, was hidden from her view and that Panera should have anticipated and expected that invitees would walk onto the sidewalk and encounter the base.

Following a hearing on Panera's motion for summary judgment, the court entered an order granting the motion, finding that there was no concealed peril that would have triggered a duty to warn, and further, that Frazier failed to look down which caused her to trip and fall on the base.

The court concluded that the base was open and obvious; thus, Frazier's claim failed as a matter of law. This appeal followed. 2 A landowner or occupier owes an invitee two independent duties: (1) to give warning of concealed perils which are known or should be known to the owner, but which are not known to the invitee, and (2) to maintain the premises in a reasonably safe condition.

Marion v. City of Boca Raton, 47 So. 3d 334, 338 (Fla. 4th DCA 2010). "[A] landowner's duty to warn is separate and distinct from the duty to maintain the premises in a reasonably safe condition." Burton v. MDC PGA Plaza Corp., 78 So. 3d 732, 734 (Fla. 4th DCA 2012). Frazier alleged a breach of both duties in her complaint.

Here, it is undisputed that Panera placed the weighted sign base on the sidewalk and that at the time of the accident, the base was without a sign attached to it. In its order granting summary judgment, the trial court held that the base was open and obvious, and that Panera was not required to warn Frazier.

The court reasoned that the base was black in color and in stark contrast to the white sidewalk, that it was a sunny day and it had not been raining, and that Frazier failed to look where she was walking. Many cases cited by the court and Panera involving uneven pavement, traffic bumps, landscape features, and steps within business premises or residences were decided in favor of the defendant on the grounds that the conditions were a matter of common knowledge or everyday life.

The same cannot be said for the weighted sign base in this case. A weighted base 3 without a sign attached to it is not so common that people encounter it on a daily basis. In Moultrie v. Consolidated Stores International Corp., d/b/a Big Lots Store # 505, 764 So. 2d 637 (Fla. 1st DCA 2000), the plaintiff did not see an empty pallet in the center of a store aisle and tripped over it while looking upward in another direction.

The First District Court of Appeal found that "the height of the pallet was such that it might not fall within the line of vision of adult invitees who entered... to purchase items placed on counters and shelves." Id. at 639–40. It determined that the location of the pallet was not a "matter of common knowledge or every day life" and that it is not "customary or common practice for relatively large, empty wooden pallets to be placed in store aisles, with no elevated pennant or

other type of warning device to alert customers or store employees of its presence.” *Id.* The court concluded that an issue of material fact existed as to whether the pallet was open and obvious and if so, whether the defendant “should have anticipated that as a general rule, adult shoppers do not focus on the floor of a store aisle when moving toward merchandise they propose to buy.” *Id.* at 640.

Similar to *Moultrie*, here, the weighted sign base is not an everyday common object that people encounter. Indeed, a base as the one in this case typically has a sign attached to it. In fact, the base in this case did have a sign attached to it shortly before Frazier tripped and fell.

The base was located on a sidewalk in the direct path of where customers are known to walk in order to enter the restaurant. Moreover, Panera’s employees were in the process of removing the base, indicating that it was not intended to be left there in the first place.

Accordingly, a material fact exists as to whether the base was an open and obvious condition. See also *Pratus v. Marzucco’s Constr. & Coatings, Inc.*, 310 So. 3d 146, 148–49 (Fla. 2d DCA 2021) (reversing summary judgment where employee stepped into an uncovered drain on a construction site and was injured).

Although the drain was obvious, genuine issues of material fact existed regarding whether the uncovered drain presented an open and obvious danger). Even if the base was considered an open and obvious condition under the circumstances, it is a separate and independent issue of negligence whether Panera created a hazardous condition and generally failed to maintain a safe premises under the circumstances.

While the fact that a danger is obvious discharges a landowner’s duty to warn, it does not discharge the landowner’s duty to maintain his premises. See *Marriott Int’l, Inc. v. Perez-Melendez*, 855 So. 2d 624 (Fla. 5th DCA 2003). “[W]hen the failure to maintain premises is alleged, the obvious nature of the danger creates an issue of fact regarding the plaintiff’s own comparative negligence.” *De Cruz-Haymer v. Festival Food Mkt., Inc.*, 117 So.

3d 885, 888 (Fla. 4th 5 DCA 2013). The trial court’s order did not address Panera’s duty to maintain the premises in a reasonably safe condition even though Panera conceded that it placed the base in the location where Frazier tripped and fell.

Because we conclude that issues of material fact exist, we reverse the summary final judgment and remand this cause for further proceedings. REVERSED and REMANDED for further proceedings. WALLIS and JAY, JJ., concur. 6