

RETAIL CASE UPDATE



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Are Retailers Required to Guard Against a Visitor's Own Negligent Inattention?

In a recent case from Alberta, *Bzdzich v. Loblaw's Companies Limited*, 2019 ABQB 984, an elderly woman was unsuccessful in her action against a grocery store for injuries she sustained when she tripped and fell over a pallet. Specifically, she claimed the grocery store allowed for an empty pallet to protrude into the pedestrian walking area, that the store did not draw attention to the pallet, and that she was following a busy crowd when she tripped on the edge of the pallet.

The court held the correct questions to ask in determining the liability of the grocery store was whether it was foreseeable to a reasonable person that visitors exercising ordinary diligence might trip over the pallet and fall, and if so, whether the grocery store took reasonable care to prevent visitors from injuries. In answering these questions, Brooker J. concluded the store was not liable for the plaintiff's injuries.

The trial judge could not conceive of any markings, delineations, or signs that would be more effective in drawing a customer's attention to this pallet than the extensive amount of bright red and yellow paint on its base which was a stark contrast to the cooler's dull grey concrete. Further, the store had "display guidelines" in place that required a minimum of 5 feet around all displays, including pallets, to allow for customer traffic. Photographs after the incident showed the display guidelines had been followed. The court held it was difficult to conceive of what more the store could reasonably have done to protect any customers from their own negligent inattention to where they walk.

This case is important as it underscores that while an occupier is not an insurer of the visitor's safety, occupiers must take reasonable steps to guard against the

the foreseeable risk that a visitor might not notice an object and trip on it. Similarly, customers must be mindful of their surroundings and take steps to look out for their own safety.

We hope you found this update useful.

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