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Article 8

Torts - Duty of Building Owner Under Wisconsin Safe Place Statute to Persons on Adjacent Sidewalks

Samuel Weitzen

RECENT DECISIONS

Torts—Duty of Building Owner under Wisconsin Safe Place Statute to Persons on Adjacent Sidewalk—Plaintiff was walking on a public sidewalk adjacent to a store building with no intention of entering the building when a glass block fell from the front of the building and struck and injured her. Action was commenced against A, the owner of the building; B, the occupant; C, the general contractor; and E, the sub-contractor, to recover damages. The case was tried on the theory that the defendants failed to construct and maintain the building so as to render it "safe" under the provisions of the Wisconsin safe-place statute.[1] Plaintiff recovered judgment against defendants B, C, and E. *Held:* The judgment was reversed on the ground that the safe-place statute applies only to such portions of the interior of a building as are used or held out to be used by the public or employees and does not extend to protect persons on the adjacent sidewalks. *Delaney v. Supreme Inv. Co., 29 N.W. (2d) 754, (Wisconsin, 1947).*

This case is the first to decide the question as to whether the pedestrian on the adjacent sidewalk can be brought within the protection of the "safe-place statute." It is surprising that this question has not been presented before under a statute now thirty-seven years old. This statute for some purposes will be construed liberally,[2] but the court has refused to extend it to impose any duty on property owners beyond that already imposed by the common law unless such "statute clearly and beyond any reasonable doubt expresses such purposes by language that is clear, unambiguous and peremptory."[3]

The statute, upon which the claim is based, states:

> ". . .Every employer and every owner of a place of employment or a public building now or hereafter constructed shall so construct, repair or maintain such place of employment or public building. . .as to render the same safe."[4]

The statutes define the word "safe" as follows:

> "The term "safe" or "safety" as applied to an employment or place of employment or a public building, shall mean such freedom from danger to the life, health, safety or welfare of employees or frequenters, or the public, or tenants, or firemen, and such reasonable means of notification, egress and escape in case of fire, and such freedom from danger to adjacent buildings or

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[1] Section 101.06, Wisconsin Statutes (1945).
[2] Sadowski v. Thomas Furnace Co., 157 Wis. 443, 146 N.W. 770 (1914).
[3] Delaney v. Supreme Inv. Co., 29 N.W. (2d) 754 at 757 (1947). To same effect see Sullivan v. School District, 179 Wis. 502, 191 N.W. 1020 (1923), Wisconsin Bridge & Iron Co. v. Industrial Commission, 233 Wis. 467, 290 N.W. 199 (1940).
[4] Supra, fn. 1.

other property, as the nature of the employment, place of employment, or public building, will reasonably permit."[5]

This definition indicates that the safety provisions were meant to cover "employees or frequenters, or the public, or tenants, or firemen",[6] but this definition contains the only reference to the "public" which reasonably could be construed as an indication of a protected class. Looking further into the definitions contained in the statute, it appears that only the words "employee" and "frequenter" are defined:

"The term "employee" shall mean and include every person who may be required or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, or to go or work or be at any time in any place of employment."[7]

* * *

"The term "frequenter" shall mean and include every person, other than an employee, who may go in or be in a place of employment, or public building under circumstances which render him other than a trespasser."[8]

It can be inferred from the above statutes, that since the word "public" was not defined, the intent was that members of the public, to be protected, must fall within one of the classes that was defined. It also seems a fair inference that the legislature intended only persons *in* the building to be included in the protected classes. Both statutes use the word "in" in limiting the defined classes, namely frequenters and employees. Because of the evident ambiguity and indefiniteness of language of the "safe-place statute," it reasonably follows that the Court was justified in deciding that a person on the adjacent sidewalk in front of the building, such as the plaintiff in the case at bar, was not within the class of persons meant to be protected by the statute.

While it may be said that the owner of the building owes a duty to passers-by, the degree of care required there is somewhat less than that required under the "safe-place statute", and to hold an owner liable to all members of the public for injuries sustained anywhere around the outside of his building would be extreme and unjustified by any clear language in the statute. It has been held that the duty of the owner of a building, under the statute, to maintain the building in a safe condition applies only to such portions of a building as are held out to be used by the public.[9] To say that the outside walls and the sidewalk are held out to be used by the public as a part of the building would be unreasonable in the absence of clear legislative language requiring such interpretation.

[5] Section 101.01 (11), Wisconsin Statutes (1945).
[6] Supra, fn. 5.
[7] Section 101.01 (4), Wisconsin Statutes (1945).
[8] Section 101.01 (5), Wisconsin Statutes (1945).
[9] Grossenbach v. Devonshire Realty Co., 218 Wis. 633, 261 N.W. 509 (1935).

However, the mere fact that this type of case does not fall under the "safe-place statute" does not relieve the owner from liability under doctrines of common law negligence, nor does it prevent the application of res ipsa loquitur. Although the owner of a building is not an insurer to those in and around his building, he is bound to use reasonable care in construction and maintenance in order to avoid injuries to the public which fall within the range of foreseeable harm as defined at common law.[10]

SAMUEL WEITZEN

Torts—Liability under Federal Employers' Liability Act—The plaintiff brought suit as administrator of the estate of Peter Anastis against the Erie Railroad Co., for wrongful death under the Federal Employers' Liability Act. The decedent had been employed by the defendant as a yard foreman since 1913, and for several years had been hard of hearing. On November 22, 1944, which was a clear day, the decedent with his gang was working in the Youngstown, Ohio, yards of the defendant. The tracks in this yard ran in a general east and west direction and a toolhouse was located just south of the tracks. At 12:10 the decedent and his men left their place of work to go to lunch, which they always ate in the toolhouse. About that time a regular freight train of the defendant came into the yard and stopped about where the men had been working. This was the only engine in the yard when the men stopped working. One of the decedent's men testified that just before the decedent reached the toolhouse he turned and walked across the tracks in a northerly direction, while the men entered the toolhouse where they ate their lunch and talked together. This witness further testified that the door of the toolhouse remained open, but he heard no movement of trains or bells or whistles sounding. After lunch the men went to look for their foreman and found his body lying across the tracks about seven hundred feet west of the point where he had last been seen. How he traveled that seven hundred feet, whether by foot or on a moving train, did not appear. No one saw the accident. There was no evidence as to how the decedent met his death except that he was run over by one of the defendant's trains, presumably by the one which was in the yard and departed during the thirty minutes which elapsed between the time the decedent was last seen and the time his body was found. The plaintiff contended that the evidence showed the defendant negligent in not maintaining a lookout and in not giving a signal of warning. The District Court directed the jury to return a verdict for the defendant. From this verdict the plaintiff appealed.

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[10] Harper on Torts, Chapter 7.