

Danger Zone: A Property Owner's Duty of Safety to Customers

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On March 4, 2010, Hiram Jimenez was enjoying a meal with his brother at an Applebee's Neighborhood Grill & Bar in Westhampton, New Jersey. Hiram ordered the fajitas from the "Sizzling Entrees" menu. When the waitress delivered Hiram his meal, she placed the skillet right in front of him and told him to "enjoy [his] meal." Hiram described the skillet as "real dark" and "real hot." Hiram proposed to his brother that they say a prayer before eating and bowed his head over his meal. It is then that he heard "a loud, sizzling noise" followed by "a pop noise," and then he felt burning in his left eye and on his face. Hiram panicked and managed to knock the skillet of food into his lap. He immediately used his arms to push the food off his lap, at which point he pulled something in his right arm and banged his elbow. Hiram filed an incident report with Applebee's and sought treatment. He was left with no scars from the burns.

Nonetheless, Hiram brought suit alleging that he was injured by Applebee's negligence¹. He claimed he had suffered serious and permanent injuries from the incident. Applebee's sought summary judgment on the grounds that "the condition was open, obvious and easily understood." The Court agreed and dismissed Hiram's action. He appealed the decision to the Superior Court of New Jersey, Appellate Division, which upheld the lower court's decision.²

In its written decision, which is unpublished, the Appellate Court stated, "A business owner owes its invitees a 'duty of reasonable care to provide a safe environment for doing that which is within the scope of the invitation.'" In evaluating "reasonable care," the Court considers "the foreseeability of the risk of injury." In Hiram's case, the Court found that "the risk of injury was foreseeable since the plate of food, as described by plaintiff, was sizzling, smoking, and 'real hot.'" Additionally, the server brought the food to the table and left it there, at which point it was no longer in her or Applebee's control. It was then in the hands of Hiram to protect himself from "any danger that [the food] posed, since the danger was open and obvious."

The details of Hiram's case were picked up by national news sources due to the unusual nature of the facts. But Hiram's case presents an excellent opportunity for owners and tenants to brush up on the law surrounding their legal duty to prevent injury to those who enter onto their property.

There are three categories of persons who enter onto someone else's property: 1) invitees, 2) licensees, and 3) trespassers. An invitee is a person who is invited onto the property of another for business purposes. A licensee is a person who is invited onto the property of another for social purposes or for their own purposes. A trespasser is a person who is not authorized to be on the property of another.

A retail customer falls into the category of an invitee, so what duties do you owe to your invitees? Owners and tenants owe the highest degree of care to invitees. It is the duty of owners and tenants to make sure that invitees are safe from dangers while on the property. This means not only removing and addressing known hazards but also performing a reasonable inspection of the premises to discover other unknown hazards that may exist. Examples include mopping up puddles, fixing uneven flooring, and removing debris from pathways. This does not, however, require an owner or tenant to keep constant watch over all public areas. The best course of action for owners and tenants to protect their customers from injury and themselves from liability is to institute a policy for regular inspections and cleaning of high traffic areas. The frequency of the inspections depends on how many customers visit the space. For instance, a popular mall would require more frequent inspections and clean ups than a retail store in a strip mall. Owners and tenants should also instruct staff to give verbal warnings of possible hazardous conditions (such as "hot plate" or "team lift") or hang signs to warn customers of possible dangers (such as "watch your step" or "wet floor").

Additionally, as was the case in the *Applebee's* case, just because an owner or tenant has a duty to provide a space safe from dangers does not mean that invitees can avoid open and obvious dangers. If an invitee is aware of a dangerous condition and does not make efforts to avoid it, he does so at his own peril. Such was the case for Hiram Jimenez who chose to put his face close to a plate of sizzling-hot fajitas.

In closing, here are some simple steps to avoid liability for unsafe conditions on your premises:

1. Walk through your property and keep an eye out for existing conditions that could injure a customer, both those that are obvious as well as those that are hidden. Keep in mind that many customers are distracted, engaged in personal or telephone conversations or texting, and not looking as they walk.
2. Make repairs to the conditions you identify, or, if repairs cannot be made, place visible warning signs in the area of the condition to warn customers to be careful.
3. Set a schedule for regular inspections of customer areas. Make sure the schedule is appropriate to the frequency of visitors to the area.
4. Establish cleaning procedures if a hazard is noticed during a regular inspection or if one is reported by a customer.
5. Consider whether to instruct your employees to give warnings to customers (this may only apply to certain businesses, like restaurants).

¹ Jimenez v. Applebee's Neighborhood Grill & Bar et al., N.J. Super. Ct. Law Div., Camden County, Docket No. L-1074-12.

² Jimenez v. Applebee's Neighborhood Grill & Bar et al., 2015 WL 893236, *1 (N.J. Super. Ct., App. Div.) (unpublished).

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