

Tom Williamson represented Mrs. Brooks in her succesful fight to win her case against Loehmann's, Inc. To learn more about Tom, please visit www.wllc.com

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 30th *day of* March, 2001.

Loehmann's, Inc.,

Appellant,

against

Record No. 001071

Circuit Court No. CL99-094-00

Helene Brooks,

Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Henrico County on the 11th day of February, 2000.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no error in the judgment of the trial court.

Loehmann's contends that the evidence was insufficient to prove notice, either actual or constructive, that a dangerous condition existed on its premises, and that the evidence was insufficient to prove that a plastic clip on the floor of its display area was the proximate cause of Helene Brooks' ("Brooks") fall. The Court disagrees.

Shirley Jennings ("Jennings"), an employee of Loehmann's, testified that the plastic clip which was found at the scene of Brooks' fall was a packing clip utilized in the shipping of new clothing. Jennings stated that it was the responsibility of

employees in the stockroom to remove these clips from clothing prior to placement of the clothing in the display area. She stated that, if left on the clothing, the clips could easily fall off and create a hazard on the floor. There was sufficient evidence to prove that the clip in question was on the floor because Loehmann's employees brought clothing with a clip attached to the retail display area of the store. Brooks was not required to prove that Loehmann's had actual notice of the dangerous condition because constructive notice was established by sufficient evidence. See Memco Stores, Inc. v. Yeatman, 232 Va. 50, 55, 348 S.E.2d 228, 231 (1997).

Generally, the issue of proximate causation is a question of fact within the province of a jury. Sugarland Run Homeowners Ass'n v. Halfmann, 260 Va. 366, 372, 535 S.E.2d 469, 472 (2000). Only when reasonable people cannot differ does the issue become a question of law for the court to decide. Jenkins v. Payne, 251 Va. 122, 128, 465 S.E.2d 795, 799 (1996).

Loehmann's store manager filed an accident report after Brooks' fall which stated, "[c]ustomer fell. . . . Found plastic clip on the floor where she fell." Despite this acknowledgment, Loehmann's agent attempted to deceive Brooks by informing her, after the accident report had been filed, that "[t]here was nothing

on the floor, and we can only speculate as to why you actually fell." Moreover, Brooks presented circumstantial evidence from which a jury could conclude that Brooks' fall was the result of slipping on a plastic object on the tile floor. Accordingly, the evidence was such that reasonable people could differ and the issue of proximate causation was properly left to the jury.

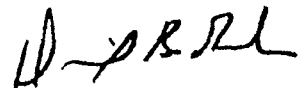
Accordingly, the judgment of the trial court is affirmed. The appellant shall pay to the appellee damages according to law.

Justice Hassell took no part in the consideration or decision of this case.

This order shall be certified to the said circuit court.

A Copy,

Teste:



Clerk