

Arizona Court Decision On Liability Applies To Landlords

A recent Arizona case, *Cox v. Department Store Co.*, dealt with the issue of liability. While the ruling was against a retail store, it also could apply to a landlord.

The plaintiff, a Ms. Cox, was in the Robinson's-May branch at Paradise Valley Mall in Phoenix when the jacket she was wearing became lodged between the escalator's moving handrail and a stationary guide. She was thrown down and dragged to the top of the escalator and suffered physical injuries.

Eleven days prior to the accident, store management contacted the Montgomery Elevator Co., which maintained the escalator. Its service personnel inspected the moving stair and found no need to perform any maintenance. Additionally, the city of Phoenix inspected the escalator four months prior to the accident and two months after it occurred. In both cases the city found no problems with the machinery.

Ms. Cox filed an action against both the May Co. and Montgomery for negligence. The defendants argued there was no defect in the escalator or any negligence on their part and, therefore, no liability could be imposed against them.

Ms. Cox countered by arguing the theory of *res ipsa loquitur*, which allows a party to pursue a claim of liability when there is no evidence of a specific defect in the particular device or any direct proof of negligence by the defendants. However, this theory of liability requires that a party bringing the suit must show that the accident was caused by something within the exclusive control of the defendants.

In this case, the defendants argued that Ms. Cox had exclusive control over how she was using the escalator and, therefore, the defendants could not be held liable under such a theory.

The court, however, found that the concept of "control" refers to the party responsible for the particular instrumentality (the escalator) and not to the party who may use the instrumentality, such as Ms. Cox.

There was no way, continued the court, that Ms. Cox could establish the particular circumstances that actually caused this accident. However, this is the precise reason that the theory of *res ipsa loquitur* exists so as to permit such legal actions.

In its conclusion, the court said the plaintiff's accident could not have occurred without negligence on someone's part, so Ms. Cox should be allowed to pursue her claim against the defendants. Said the court, "Its (the defendants') common experience with escalators would allow the jury to infer that such an accident would not occur absent the negligent design, construction, maintenance, inspection or repair of the escalator."

The court went on to say that a jury could conclude that Ms. Cox was, in some way, at least partially responsible for her mishap. The jury would then reduce her damages under Arizona's

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"comparative negligence" laws, which do not absolve the store or the maintenance company of liability but merely reduce the damages imposed against them.

This case can apply to the multihousing industry because the theory of liability can be imposed upon a landlord even though the party bringing the suit cannot either establish evidence of a specific defect in some instrumentality at the property nor any particular act of negligence by the landlord.

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