Grounds For A Claim

Who's Responsible For The Show Field?

Regular readers of this column will recall that on more than one occasion we have discussed cases with the moral, *caveat emptor*, let the buyer beware. This column goes a step further, *caveat carshowgoer*, let the car show goer beware.

The facts suggest a situation ripe for possible litigation. Hundreds, if not thousands, of aficionados go striding dreamily through fields blooming with a heavenly array of breathtaking vehicular pulchritude. Who could blame them for not looking downward to where they tread? Which brings us to the case of *McDonald vs. Christian*, decided on January 7, 2000, by the Court of Appeals of Washington State.

According to the Court, in July 1995, the East End Cruisers Association sponsored their annual classic car show on the grounds of the Cowlitz River Lodge. In front of the Lodge are two fields divided by a central driveway. The Lodge asked East End to display the classic cars only in the right field because the left field had too many ruts, holes, and rocks. East End complied with the request by putting ribbons with Budweiser flags along the driveway and the edge of the left field. The Lodge already had six or seven no-trespassing signs posted on their grounds; one sign was posted on each side of the driveway. Both the right and left fields were mowed and looked the same.

Barbara and William McDonald participated in the car show, paying the $15 entry fee to enter a car. The show was a weekend event, and the McDonalds camped in a field across the road from the Lodge. On Sunday morning, Barbara spent six or seven hours walking in the right field with her husband, William. As they walked through the car show, William saw several holes in the right field and warned Barbara to watch her step.

Later that day, the McDonalds ducked under the Budweiser ropes and were walking across the left field when Barbara stumbled into a hole and broke bones in both her feet. Barbara claimed that she entered the left field to look at other classic cars and that she did not see the hole until she fell. "The grass had been mowed right across the top of it, so it looked all flat." William McDonald later measured the hole as "approximately 20 inches across and maybe eight to nine inches deep." None of the East End members, however, knew of the hole.

The McDonalds sued East End, the Lodge, and the owner of the Lodge, claiming Barbara was injured "due to a latent, unsafe condition" on the Lodge premises. East End moved for summary judgment, which was granted. The McDonalds appealed. The Court of Appeals affirmed the judgment for East End.

First, the Court addressed the McDonalds' claim that East End was responsible as the owner or occupier/possessor of the land. "In general, a 'possessor of land owes a duty of reasonable care to invitees with respect to dangerous conditions on the land, including an affirmative duty to discover dangerous conditions.'" The Court concluded that, "[e]ven considering the evidence most favorable to Barbara, she falls short of showing that East End occupied the left field. Barbara offered no evidence that East End directed or allowed cars to park in the left field; indeed there is no showing that any cars parked in the left field were entered in the car show. Nor did Barbara offer evidence as to the location of any concessions in the left field, whether near the area of her fall or on the periphery of the field. And Barbara presented no evidence that East End controlled the location of any concession. The evidence is insufficient to establish that East End occupied the left field with the intent to control it."

Next, the Court explored whether, even if East End had occupied the left field and Barbara were a licensee or business invitee, East End was required to warn her. It concluded that, "East End owed her no duty to warn of 'open and apparent dangers from a natural condition'....Generally whether a danger is open and apparent is a question of fact [for a jury to decide at trial]. But if the facts are not in dispute and reasonable minds could come to only one conclusion, the court can resolve the issue on summary judgment....Here, the evidence was undisputed that the natural condition of both fields was uneven and marred by holes. Barbara and her husband had walked through the right field for six or seven hours before entering the left field. And Barbara does not dispute that her husband warned her to watch where she walked because of the holes. We conclude that reasonable minds could not differ: The holes were open and apparent dangers from a natural condition. Accordingly, East End would not be liable for Barbara's fall even if it had occupied the left field."

Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior Old Cars In Law *articles can be found online at www.lawrencesavell.com*