by Lawrence Savell

# Falling For A Corvette

## *The Perils Of Perusal*

Few would disagree that a vintage Corvette in prime condition is a "slick" car that could both "floor" one with its beauty and give the "slip" to a competing machine.

This semantically strained beginning brings us to the case of Gilbert v. Automotive Purchasing Service, decided on April 8, 2002 by the Court of Appeals of Georgia.

According to the Court, Ita Gilbert was shopping for an "antique" Corvette at Corvette City, a showroom operated by Automotive Purchasing Service ("APS"). Gilbert allegedly slipped on a substance on the floor and fell. She and her husband sued APS for her injuries and his loss of consortium. (There is no indication whether she bought the car.)

APS made a motion for summary judgment, asking the Court to dismiss the case before trial on the ground that APS lacked any knowledge of the hazard on the premises. The lower court agreed and granted summary judgment.

The Gilberts appealed. The Court of Appeals agreed with them, and reversed the ruling, sending the case back for trial.

In assessing an appeal of summary judgment, the appellate court assumes (but does not make a finding) that the facts are the way the non-moving party says they are. If, under that analysis, significant disputed factual issues remain, summary judgment is not appropriate and a trial is necessary to resolve them.

"When viewed in the light most favorable to Gilbert, ... the evidence shows that Gilbert did not see any substance on the floor prior to her fall, but, with the sunlight falling at a different angle on the floor after her fall, she saw the substance on which she slipped. According to Gilbert, there was a thin film of substance and a streak where her shoe had slid through the film. Gilbert's husband testified that he knew exactly what the substance was—it was a sweeping compound typically used to clean garages and industrial areas. ... According to Gilbert's husband, he had used the substance himself and knew it was excellent for cleaning grease, oil and grit. However, he also knew that if it was not completely swept up, it was very slippery and dangerous.

"Automotive Purchasing Service acknowledged that the floor was cleaned the night before Gilbert fell, but denied that the cleaning substance described by Gilbert's husband was used. However, its witnesses give different and inconsistent testimony as to what cleaning agent may have been used on the floor. And, there is no testimony from the individual who actually cleaned the floor the night before Gilbert's fall.

"An owner or occupier of land is liable to invitees [such as prospective customers of a business] for injuries caused by his failure to exercise ordinary care in keeping his premises and approaches safe. This duty of ordinary care requires the owner to protect the invitee from unreasonable risks of harm of which the owner has superior knowledge and to inspect the premises to discover possible dangerous conditions of which the owner does not have actual knowledge. To recover for injuries sustained in a slip-and-fall action, therefore, the invitee must prove (1) that the owner had actual or constructive [implied] knowledge of the hazard, and (2) that the plaintiff lacked knowledge of the hazard, despite the exercise of ordinary care, due to actions or conditions within the control of the owner.

"In the present case, ... there is sufficient evidence to create a genuine issue of material fact regarding the presence of a foreign substance on the floor where Gilbert fell.

"The issue of whether Automotive Purchasing Service had actual or constructive knowledge of this substance is disputed. Although the evidence does not demonstrate that Automotive Purchasing Service had actual knowledge of the substance, it does preclude us from holding as a matter of law that Automotive Purchasing Service did not have constructive knowledge of the substance. ... Viewed in a light most favorable to Gilbert, there is evidence from which a jury could find that Automotive Purchasing Service negligently created a dangerous condition on its premises that caused Gilbert to fall and injure herself. And, under Georgia law, one who creates a dangerous condition on his property has constructive knowledge of the danger.

"In addition, even assuming that an Automotive Purchasing Service employee had inspected the floor earlier in the morning, such an inspection would not necessarily foreclose Gilbert's recovery. 'An owner/occupier is on constructive notice of what a reasonable inspection would reveal.' [I]t is for a jury to determine whether the Automotive Purchasing Service employee conducted a cursory and inadequate inspection which failed to disclose the substance upon which Gilbert slipped and whether the substance was discoverable upon a reasonable inspection. Similarly, a jury must decide whether Automotive Purchasing Service breached its duty ... to keep its premises in a reasonably safe condition by negligently conducting that inspection or by failing to warn of the dangerous condition."

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Although the facts remain to be proven at trial, this case illustrates the need to maintain premises properly and safely and the potential for liability when you invite others onto your property.

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