

Pickett v. Orion Real Estate, Inc.

GREENVILLE, TX, March 16, 2016 – [Brian Rawson](#) and [Roy McKay](#), of the Dallas office of Hartline Dacus Barger Dreyer LLP, obtained a complete summary judgment on behalf of the owner of an apartment complex in a premises liability lawsuit in Greenville, Hunt County, Texas.

Plaintiff Patricia Pickett alleged that in 2014, she slipped-and-fell seven feet down the stairs inside her apartment at the Ranchview Townhomes, due to a loose handrail and broken attachment. Ms. Pickett alleged that her son had fallen down the same staircase in November 2013, and that she had twice notified the property management of Ranchview Townhomes regarding the defect and requested repairs. Following the subject incident, Ms. Pickett sent an online service request, attempting to document her prior oral requests and the two alleged slip-and-fall incidents.

Ms. Pickett claimed she injured her foot and experienced acute back and buttocks pain as a result of the fall and sought treatment following her fall. She also obtained approximately five months of medical treatment, including coccyx injections, to improve her condition. She sought damages between \$100,000 and \$200,000.

Defense counsel obtained testimony from Ms. Pickett that she had never made any of her requests for repairs in writing, and that Ms. Pickett had knowledge of the handrail condition prior to her fall on March 17, 2014. This evidence, as well as the testimony of Ranchview Townhomes' management and maintenance staff, established that the management of Ranchview Townhomes did not have proper notice of the condition under the parties' lease agreement, and that Ms. Pickett was aware of the condition prior to the incident.

Defense counsel moved for summary judgment on two grounds. First, the complex did not owe a duty to Ms. Pickett, a "licensee", for dangerous conditions inside of her townhome. Second, even if Ms. Pickett was considered to be an "invitee," the evidence that Ms. Pickett had knowledge of the dangerous condition prior to March 17, 2014, barred her recovery under the Texas Supreme Court's decision last June in *Austin v. Kroger Texas, L.P.*, 465 S.W.3d 193 (Tex. 2015).

Ms. Pickett responded by arguing that the complex's right to re-enter the townhome to conduct repairs and prohibition on Ms. Pickett from performing repairs contained in the lease agreement established a right of control over the premises by Ranchview Townhomes. Ms. Pickett also argued that Ranchview Townhomes had a contractual duty under the lease to perform repairs. Defense counsel replied that under Texas case law, a property owner or landlord's reservation of the right of re-entry does not establish a right of control, and that physical possession of the premises is required. Defense counsel further argued that Ms. Pickett's failure to comply with the lease requirement that she provide written notice of the need for repairs prior to the incident barred Ms. Pickett from asserting that Ranchview Townhomes had a contractual duty. The trial court agreed with Defense counsel's arguments and granted a complete summary judgment, dismissing all claims with prejudice.

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Brian Rawson



Roy McKay

