

## **STORE THAT ACQUIRES EASEMENT FOR ARRIVAL AND DEPARTURE OF INVITEES OWES DUTY OF CARE TO INVITEE WHO IS INJURED WHILE USING EASEMENT FOR THE SAME PURPOSE**

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*Timmons v. Ross Dress for Less, Inc.*

Arizona Ct. Appeals, Div. Two, March 21, 2014

Authored by the [JSH Appellate Team](#)

While leaving the defendant store, the plaintiff was injured when she fell on a curb or step that connected the parking lot and elevated area in front of the store. The store did not own or lease the parking lot or curbs but held a non-exclusive easement across both that allowed invitees to access the store. The property owner agreed to maintain the easement area. The plaintiff sued the store and the property owner alleging they were negligent in failing to keep the premises reasonably safe.

The court of appeals reversed the trial court's grant of summary judgment to the store. It found that the store acquired and used the easement for the arrival and departure of invitees to and from its retail premises. The store therefore had a duty to act reasonably in providing for the safety of invitees to the extent they used the easement for purposes of arriving and departing. The plaintiff maintained she was injured while departing from the store. Because the plaintiff was using the easement for the same purpose that the store acquired it, the court of appeals concluded her injury occurred within the scope of the store's duty to invitees.

The court rejected the store's argument that it had no control over the area where the plaintiff was injured and therefore could have no duty toward her. The court found that to the extent the plaintiff needed to demonstrate the store's control over the easement, she had done so by showing that the store agreed to pay for maintenance of the easement area, part of the insurance, and any property taxes for it. The court separately held that the trial court abused its discretion in not permitting the plaintiff to amend her complaint to allege that the store had control over the design and construction of the area where she fell and was liable for negligent construction.