

## Airlines May Own the Skies, But Not Always the Ticket Counters

By Dayne J. Rogers

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A landlord may grant a tenant use of property; however, the landlord retains exclusive possession of common areas located on that property. One must possess and control the property where the injury occurred to be held liable under a theory of premises liability, but the possessor may still owe a duty to another and potentially be liable under a theory of general negligence. This distinction between the parameters of premises liability and general negligence was analyzed by the Michigan Court of Appeals in *Lynette Love v Alaska Airlines, et al.*, unpublished opinion per curiam of the Court of Appeals, issued January 9, 2025 (Docket No. 364791).

Plaintiff Lynette Love (“Love”) was an employee of a staffing agency where she was positioned as a customer service and boarding agent for Defendant Alaska Airlines, Inc. (“Alaska Airlines”) at the North Terminal of the Detroit Metro Airport. The ticket counter wherein Love was stationed was considered a common area pursuant to the lease agreement between Alaska Airlines and Co-Defendant Wayne County Airport Authority (“WCAA”). Ticket counters like the one Love was at consisted of a desk between two luggage conveyor belts. When an individual must get to the ticket counter for their shift, they must first ensure one of the conveyor belts is stopped, they must then step onto and over said conveyor belt to get to the desk. Should an individual at the ticket counter require additional supplies to fulfill their duties, they could go to the supply cart. The supply cart could be accessed in one of two ways: 1) an individual could step onto a stopped conveyor belt at their own workstation and into the customer area, walk down to the supply cart, walk back, and then step back over the stopped conveyor belt at their workstation to return to their desk; or 2) an individual traverses each workstation’s conveyor belts until they reach the supply cart, repeating this until they have returned to their own workstation. Should an individual wish to step into another’s workstation via the “cross-over” method, they must first notify a coworker at the next workstation, the coworker would then verbally notify the individual when the conveyor belt has stopped so that they may cross. Alaska Airlines recommended option 1, but allowed option 2.

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The Court of Appeals in *Love* reiterated that, to be held liable under a theory of premises liability, you must have had possession and control of the premises. The Court further affirmed prior caselaw establishing that a landlord retains the exclusive possession of all designated common areas. Additionally, *Love* establishes that even when a claim for general negligence appears to be grounded on a defect that may have been open and obvious, a duty may still exist between the tenant and plaintiff.

In *Love v Alaska Airlines*, Love had decided to utilize option 2, the cross-over method, when heading to the supply cart. Love had allegedly followed protocol and waited for verbal confirmation from a coworker before traversing into their workstation, Love’s following protocol was a point of contention. However, on Love’s return, a conveyor belt had been activated while she was stepping over it, causing her to fall and sustain injuries to her

head and right side of her body. As a result, Love brought claims for premises liability and general negligence against Alaska Airlines, WCAA, and Co-Defendant Dantec. Dantec was an entity formed by several airlines to provide management services at the North Terminal. Alaska Airlines and Dantec each filed similar motions for summary disposition, arguing: 1) that they were not in possession or control of the area; and 2) that they did not owe a duty to Love and thus cannot be found liable for general negligence. The trial court granted Dantec's motion in its entirety and dismissed them from the case. The trial court granted in part Alaska Airlines' motion with respect to their arguments concerning premises liability. Love's general negligence claim against Alaska Airlines remained as the trial court denied Alaska Airlines' motion in part as Alaska Airlines had argued that Love's claim was sounded exclusively in premises liability as it was based on an alleged open and obvious defect. Upon an unsuccessful motion for reconsideration, Alaska Airlines appealed the ruling as it relates to Love's general negligence claim. Love cross-appealed as it relates to her premises liability claim against Alaska Airlines only.

All negligence claims, including premises liability, require that a plaintiff prove four elements: duty, breach, causation, and harm. *Kandil-Elsayed v F&E Oil, Inc*, 512 Mich 95, 110 (2023). Regarding premises liability, a defendant's duty arises from its role as the owner, possessor, or occupier of land. *Jeffrey-Moise v Williamsburg Towne Houses Corp, Inc*, 336 Mich App 616, 626 (2021). The Court defined "possession" as having the right to exercise control over something to the exclusion of all others; it also defined "control" as exercising restraint, domination, regulation, or management of something. Because the ticket counter was explicitly identified as a common area in the lease agreement between Alaska Airlines and WCAA, the Court of Appeals held that Alaska Airlines could not have had possession given that WCAA, as the landlord, retained exclusive possession of such. Further, the Court determined that Alaska Airlines did not control the ticket counter as their right of use was not to the exclusion of others. The Court specified that, although Alaska Airlines had possessed a lease for numerous years preceding this incident that permitted them to use the ticket counter, their use was not exclusive as another airline may use the area once Alaska Airlines' lease term ends. Thus, the Court affirmed the trial court's dismissal of Love's premises liability claim.

Regarding Love's general negligence claim, the Court agreed that Alaska Airlines had not shown that a genuine issue of material fact did not exist, establishing that this claim was established in premises liability. The Court reasoned that, although Alaska Airlines did not owe the same duty to Love as the premises possessor did, a duty may still have existed. As Alaska Airlines failed to raise an evidentiary issue concerning Love's support for her claim until this appeal, the Court held that Alaska Airlines waived their right to now raise this argument as Michigan follows the "raise or waive" rule of appellate review.

The Court thus affirmed the trial court's ruling granting in part and denying in part Alaska Airlines' motion for summary disposition, dismissing Love's premises liability claim while leaving her general negligence claim remaining.

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