

STATE OF MAINE
SUPREME JUDICIAL COURT SITTING AS THE LAW COURT

LAW COURT DOCKET NO. CUM-26-53

**ALISON GOWENS, AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF RAMONA GOWENS, and SONIA HALL**

Plaintiffs-Appellants

v.

BPI PARTNERS, LLC, and MIGIS HOTEL GROUP, LLC

Defendants-Appellees

On Appeal from the Superior Court Civil Docket, Cumberland County

**Reply Brief of Appellants Alison Gowens, as Personal Representative
of the Estate of Ramona Gowens, and Sonia Hall**

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I. INTRODUCTION

The Black Point Inn¹ expected its hotel guests to use the adjacent Prouts Neck Cliff Walk. It invited guests to use the walk through online promotional materials and in-room literature. It described the Cliff Walk as a hotel “amenity” on its website. It provided maps and directions to point the way there. It even acquired an exclusive pedestrian easement that funneled paying guests to a private entrance to the Cliff Walk.

But the Inn did not inspect or maintain the Cliff Walk or its fences and bridges, nor did it tell guests that it had no idea whether those installations were safe. The question this appeal raises is, should it have? Under the unique circumstances here, did the Inn owe its guests a duty to do more?

Under established principles of Maine law, the answer is yes. An innkeeper has a “special relationship” with its guests that creates a heightened, “affirmative duty to aid and protect” them from foreseeable peril. *See Est. of Cilley v. Lane*, 2009 ME 133, ¶ 17, 985 A.2d 481. And a landowner’s duty of care can reach beyond its property lines to areas that its invitees are invited or otherwise expected to use and to land over which it manifests an intent to control. *See Libby v. Perry*, 311 A.2d 527, 535 (Me. 1973) (event organizer could be liable for injuries on nearby property that it invited and expected guests to use); *Pelletier v. Fort Kent*

¹ Appellants refer to Appellees BPI Partners, LLC and Migis Hotel Group, LLC collectively as the “Black Point Inn” or the “Inn.”

Golf Club, 662 A.2d 220, 222 (Me. 1995) (golf course owner could be liable for injuries on private railroad property that it expected and invited players to use).

These two principles require reversal here. The Inn's liability arises from its heightened duty of care and the foreseeable risk that guests would rely on the integrity of installations along a cliffside path to which the Inn offered exclusive access and that it implied to its guests was part of the Inn's amenities.

II. ARGUMENT

The Inn maintains that Appellants waived the issue of the innkeeper's heightened duty of care and it owed no duty of care to protect guests on the Cliff Walk under Maine law. First, the scope of the Inn's duty of care is a central focus of this entire litigation and has been since Appellants filed the Complaint—it is not waived. Second, with respect to the facts that give rise to a duty of care, the Inn fails to see the forest for the trees. Rather than address the cumulative weight of the unique facts that give rise to a duty of care, the Inn instead argues that each cannot stand on its own. But under the totality of the unique circumstances here, the Inn owes its guests an affirmative duty of care with respect to unreasonably dangerous conditions on the Cliff Walk.

A. Appellants have not waived the innkeeper's heightened duty issue: the duty was addressed in the Amended Complaint and by the trial court in its summary judgment order.

The Inn contends Appellants' did not raise the issue of the Inn's heightened duty of care in the trial court and thus waived that argument on appeal. But as the

Inn admits, the Superior Court considered the special duty innkeepers owe to guests in its order. (See MSJ Order, A18 (“An innkeeper, specifically has a positive duty to exercise reasonable care to protect guests from dangerous conditions on the premises of which he knew or reasonably should have known.”) (*citing Est. of Smith v. Salvesen*, 2016 ME 100, ¶ 20, 143 A.3d 780) (cleaned up)).

The issue of the innkeeper’s duty of care has been argued in this case from the beginning. Appellants allege in the Amended Complaint that the Inn “had an affirmative duty to aid, warn, and/or guard its inn guests from danger” and that Sonia Hall and Ramona Gowens had a “special relationship” with the Inn by virtue of being guests there. (Am. Complaint, A42, ¶ 66).

The crux of this case has always been the scope of the Inn’s duty of care to its guests. The innkeeper’s duty issue is thus not one raised “for the first time at the appellate level” nor is it a “theory different from that on which it was tried in the court below.” See Opp. Br. at 9 (*quoting McMahon v. McMahon*, 2019 ME 11, ¶ 16, 200 A.3d 789, 794). The issue of duty has been front and center from the start.

Whether the trial court failed to properly consider the Inn’s duty in light of the special relationship between innkeepers and guests when it granted summary judgment is an issue that forms the basis of the entire dispute. The argument is not waived.

B. This Court has never held that “necessity” is the deciding factor in determining off-premises liability.

Appellees echo the trial court’s reasoning that it was not “necessary” for Sonia or Ramona to use the Cliff Walk to access the Inn, and this Court’s holdings in *Libby* and *Pelletier* finding a duty of care thus do not apply. But although the Law Court has considered necessity persuasive, it has never held that necessity is the deciding factor in determining whether off-premises liability exists. The Court must examine the totality of the circumstances to make that determination.

In its order, the trial court reasoned that off-premises liability cases in Maine hinge on whether “the respective plaintiffs were injured while in areas necessary for the use of the landowner’s premises. . . .” (MSJ Order, A19) (*citing Libby*, 311 A.2d at 527 (walkways necessary to access defendant’s premises), *Pelletier*, 662 A.2d at 220 (train track bisecting a golf course that players necessarily had to cross to play)). Appellees pick up that thread, arguing that the holdings in *Libby* and *Pelletier* do not apply because “there is no reason why patrons could not use the Inn without also using the Cliff Walk.” Opp. Br. at 10.

But the Appellees incorrectly identify necessity as the decisive factor in determining whether a landowner’s duty should extend beyond the borders of the premises. In *Libby*, the Court fell short of identifying “necessity of use” as the deciding factor to determine whether the duty of care extended beyond the premises. Indeed, the Court reasoned that there is no one deciding factor to determine whether the duty extended beyond the property lines. It held instead that the defendant owed guests a duty of “reasonable care to provide [them] with

walkways or areaways which [they are] invited to use” and to keep them “reasonably safe from an unreasonable risk of harm in the *light of the totality of the existing circumstances.*” *Libby*, 311 A.2d 527, 535-36 (emphasis added).

In both *Libby* and *Pelletier*, it was necessary for the guests to use adjacent property to access the defendant’s. But in *Libby*, the Court reasoned that the necessity of using the adjacent approaches to access the defendant’s property was an “implicit invitation” to use those approaches. *Libby*, 311 A.2d at 535 (“By inviting the public to this dance, the Armory Committee implicitly extended an invitation to use the approaches to the Armory.”). So under the holding in *Libby*, invitation and expectation may be sufficient to create a duty of care so long as the totality of the circumstances supports the same.

Here, it was unnecessary for guests to use the Cliff Walk to access the Inn. But instead of the implicit invitation the defendants offered in *Libby*, the Inn *expressly* invited and encouraged guests to use the Cliff Walk (and expected at least half of them to do so).² That fact and the remaining circumstances support a duty of care here.

C. The facts here are sufficiently unique to both (a) create a duty of care for the Inn and (b) ensure that any finding of a duty of care is limited to these facts.

Of course, without more, inviting Inn guests to visit a local attraction is not sufficient to create a duty of care to assure the attraction is reasonably safe. Such a

² The majority of Inn guests use the Cliff Walk, more than the pool and beach club combined. (A115; A144, ¶ 26).

rule would be entirely overbroad and unworkable, and Appellants do not contend otherwise. The hotels in Ogunquit are not responsible for making the beach reasonably safe, nor are the many inns on MDI responsible for maintaining the trails in Acadia. Nor would it be reasonable for their guests to expect that they had any authority to maintain any safety installations or trails on the beach or in the park. After all, visitors can reach those areas from any number of locations or from any number of entrances.

1. The Inn's duty of care here arises under the totality of the circumstances, which are unique.

The general inaccessibility of the Cliff Walk from anywhere *but* the Black Point Inn is one fact that makes this case different. The public must park about two miles away and walk along the side of the road for 30–40 minutes before they tackle the mile or so of the Cliff Walk from the single public entrance on the far side of Prouts Neck. Out-of-state guests like the decedent and her sister would not know whether there was any public access. So convenient is the Inn's access that the Inn polices its parking lot—Inn employees monitor the lot to ensure that only paying guests of the hotel or restaurant use it, and many of its restaurant guests eat there specifically because of the easy access to the Cliff Walk they receive in exchange.

The Inn has also tethered its property to the Cliff Walk via a private deeded easement that leads its guests to an entrance the public is prohibited from using. That fact alone distinguishes the Inn's duties with respect to the Cliff Walk from its duties over any other nearby location. That is why the Inn is wrong to argue that a

finding of a duty of care here would also somehow apply to the “Two, 1.5 mile sandy beaches (Scarborough Beach and Ferry Beach).” Both of those beaches are accessible through their own parking lots. The Inn does not own a private easement that grants guests unique access to those beaches, nor do those beaches appear to guests as part of the hotel property, unlike the Cliff Walk.

The Inn also argues that other property owners and their guests on Prouts Neck may access the Cliff Walk. Opp. Br. at 19. But that is irrelevant—Appellants have never argued that the Inn would owe non-guests any duty of care.

Indeed, the focus on each of Appellant’s arguments divorced from the context of the others may be the Inn’s greatest misunderstanding of Appellants’ position. The Inn argues that Appellants lose because *Libby* and *Pelletier* are distinguishable (Opp. Br. at 8–11); or Appellants lose because hotels typically do not owe duties of care to their guests outside the hotel premises (Opp. Br. at 11–12); or they lose because the facts in the record are insufficient for a jury to find that the Inn created the impression that it owned the Cliff Walk (Opp. Br. at 20). And *by themselves*, each of these reasons might form a legitimate basis for summary judgment in the Inn’s favor.

But as Appellants have argued, the rule in *Libby* says the duty of care arises from a consideration of “the totality of the circumstances.” *Libby*, 311 A.2d 527, 535-36. And under the totality of the circumstances here, there is enough evidence to support the existence of a duty of care.

The Inn owes its guests a heightened duty of affirmative care. The decedent and her sister were overnight Inn guests, owed the highest duty of care by the Inn.³

The Inn also invited and expected its hotel guests to use the Cliff Walk and took affirmative steps to get them there by connecting the Cliff Walk to the Inn's property. The Inn's heightened duty of care should extend to the Cliff Walk because it explicitly invited guests to use it *and* provided a private deeded easement taking guests to the private entrance to the Cliff Walk. The easement (a) ran directly from Inn property to Marginal Way, of which the Cliff Walk is a part (Plf's. Statement of Add'l Material Facts, A145–46, ¶¶ 31–36), and (b) aided in the perception that the Inn maintained special authority over the Cliff Walk itself. No other hotel in the area, indeed no other property in the area, provided access to the Cliff Walk comparable to the Inn's.

And as noted by the trial court, the Cliff Walk entrance contained no “warnings or safety instructions” nor did it include a disclaimer that the Cliff Walk was unconnected to the Inn. (MSJ Order, A14). Nor did the Inn communicate to its guests before they walked the Cliff Walk that it did not own or monitor the condition of the safety installations on it. (Southard Depo., A189 at 54:21-56:23). The Cliff Walk is lined with fences and bridges—if the Inn was not monitoring the

³ Had Sonia and Ramona been only lunchtime guests of the restaurant, the Inn would not owe them a heightened duty. *See Belyea v. Shiretown Motor Inn, LP*, 2010 ME 75, ¶ 11, 2 A.3d 276 (holding defendant Inn did not owe a heightened duty of care to a guest of its lounge who was not staying at the Inn).

conditions of any of these structures, it should have said so when it handed out its maps and sent its guests down the easement.

Finally, the Inn profited off its proximity to the Cliff Walk. The Inn contends that the out-of-state cases submitted by Appellants are inapposite because there the defendant “used the adjacent area to operate its business,” and that is not the case here. Opp. Br. at 23. But to argue that the Cliff Walk was not a significant factor to the Inn’s business is disingenuous. There is no question that the Inn profited from the access it provided, given that it heavily advertised the Cliff Walk, more than 50% of Inn guests used the Cliff Walk, and employees monitored the parking lot to ensure that anyone parked there was a paying guest of either the hotel or the restaurant.

Under the totality of the circumstances described above, the Inn owed a duty of care to Ramona and Sonia, as paying guests of the Inn, to either monitor the condition of safety installations on the Cliff Walk, or to affirmatively tell them that they could not vouch for the safety or condition of any such installations. It should be up to a jury to determine whether the Inn breached that duty.

2. The totality of the circumstances here make it easy to limit the duty of care within these specific facts.

The trial court understated the unique nature of the facts here when it found that Appellants were asking for the duty of care to “encompass neighboring, recreational attractions that a local area has to offer and a local business desires to promote.” (MSJ Order, A21). Such a burden on businesses would be unworkable.

But that is not what Appellants are advocating. Instead, Appellants are asking for the duty of care to encompass a neighboring recreational attraction (1) inaccessible by any other hotel, (2) difficult to access by the public, (3) to which an Inn has invited and expected its overnight guests to use, (4) to which the Inn maintains an exclusive access route via a private deeded easement, (5) from which it profits, and (6) which its guests would reasonably believe is controlled by the hotel.

Under those circumstances, Appellants contend that a duty of care can and should arise under established principles of Maine law. And the circumstances here are unique enough that the Court can limit the holding within this case's specific facts to obviate any concern that the decision would adversely affect other Maine tourism businesses.

III. CONCLUSION

The totality of the circumstances here, as unique as they may be, create a duty of reasonable care for the Black Point Inn to protect its overnight guests from the foreseeable harm that could arise from uninspected or otherwise faulty safety installations on the Cliff Walk. Short of inspecting or maintaining the Cliff Walk itself, that duty at least required the Black Point Inn to tell guests that it did not oversee the Cliff Walk, nor did it have any idea whether or how often the many fences and bridges along it were ever inspected, nor whether they were reasonably safe to use. Only a jury can determine whether the Inn breached that duty. This Court should reverse the order of summary judgment and remand for trial.

Dated at Lewiston, Maine this 9th day of July, 2026.

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