

## Luu v. Kim

A nine-year-old boy was injured when his arm became entangled in a conveyor belt system causing three fractures to his left arm, shoulder strain, back strain, and severe head trauma. At the time of his injury, he was in the second floor storage area of a discount mall because a door to a nearby stairway was open and the minor and his young cousin thought "there were games up there." We represented the mall owner and property manager.

The minor Plaintiff sued our clients, as well as the manufacturer of the conveyor system, for negligent operation of the mall and negligent design of the conveyor system, respectively. Following the close of discovery, we moved for summary judgment on behalf of our clients arguing that, at the time of the occurrence, the minor was a trespasser, to whom our clients owed no duty other than to refrain from willful and wanton misconduct. In addition, we argued that there was no proximate cause between our clients' conduct in leaving the door to the stairway leading to the second floor open and the child's injuries. The trial court granted our motion for summary judgment. The Plaintiff appealed.

On appeal, the minor Plaintiff argued that our clients "knew or should have known" that children frequented the second floor, so our client should be liable for his injury. The appellate court disagreed. It agreed with our argument that the presence of graffiti, the fact that vendors' children sometimes went with their parents to the storage room and that children frequented the game room located near the door to the stairs that lead to the storage room were not facts indicating that our clients knew or should have known that children frequented the second-floor storage room. This was especially so, since there was no evidence that our clients had any knowledge that a child ever turned on the conveyor system.

The minor Plaintiff also argued that our clients' conduct, leaving a door to a stairway open, was the proximate cause of his injury. Again, the appellate court agreed with our argument that there existed no legal proximate cause between the conduct of our clients and the injuries sustained by the boy.

For the full text of this decision, please contact Scott Gillman of Condon & Cook, LLC or please see *Luu v. Kim, et al.*, 323 Ill. App. 3d 946; 752 N.E.2d 547 (1<sup>st</sup>Dist 2001).