



ceremony. After she had been seated for approximately 30 minutes, the chair collapsed when the left front leg broke away from the frame. Plaintiff was helped to an area outside of the ballroom where she was treated with ice for pain in her left foot and ankle.

In order for plaintiff to prevail upon her claim of negligence, she must prove by a preponderance of the evidence that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285.

{¶4} It is undisputed that plaintiff was an invitee at defendant's student center. Business invitees are owed a duty of ordinary care by owners in maintaining their places of business in a reasonably safe condition so that visitors are not exposed unnecessarily and unreasonably to danger. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St.3d 203. "This duty includes maintaining the premises in a reasonably safe condition and warning an invitee of latent or concealed defects of which the possessor has, or should have, knowledge." *Baldauf v. Kent State University* (1988), 49 Ohio App.3d 46, 47-48. The possessor of land is not, however, an insurer against all forms of risk. *Id.* at 48. Where negligence revolves around the existence of a hazard or defect, a duty of reasonable care does not arise unless the defendant has notice, either actual or constructive, of such hazard or defect. *Heckert v. Patrick* (1984), 15 Ohio St.3d 402, 405.

{¶5} Plaintiff asserts that the doctrine of *res ipsa loquitur* should apply to this case to supply the element of causation. The *res ipsa loquitur* doctrine is an evidentiary rule which permits, but does not require, the trier of fact to draw an inference of negligence where (1) the instrumentality causing the injury was under the exclusive control of the defendant; and (2) the injury occurred under such circumstances that in the ordinary course of

events it would not have occurred if ordinary care had been observed. See *Hake v. Wiedemann Brewing Co.* (1970), 23 Ohio St.2d 65, 67.

{¶6} With regard to defendant's control over the chair, the testimony at trial established that plaintiff had been sitting in the chair for approximately 30 minutes prior to its collapse and that she had selected the chair from approximately 450 chairs that had been placed in the KSC ballroom. The court finds that the chair was not in the exclusive control of defendant at the time of the incident. Rather, defendant had rented its ballroom to the organization to which plaintiff belonged and plaintiff had exclusive control of the chair when it collapsed. Numerous cases have held that such open access to the instrument causing the injury precludes a finding of exclusive control on the part of defendant. See *McConnell v. Budget Inns of America* (1998), 129 Ohio App.3d 615, 627 (collapsed chair located in a rented motel room); *Caldwell v. Greek Corp.*, (Sept. 19, 1997), Lucas App. No. L-96-397 (collapsed chair located on the outdoor patio area of a restaurant); *Cochran v. Ohio Auto Club* (Oct. 3, 1996), Marion App. No. 9-96-33 (collapsed chair located in the office of an auto club); *Brown v. Univ. Hosp. of Cleveland* (June 7, 1990), Cuyahoga App. No. 57101 (collapsed chair located in a hospital waiting room). Therefore, the court finds that the doctrine of *res ipsa loquitur* does not apply to the facts of this case inasmuch as defendant did not have exclusive control of the chair at the time that it collapsed.

{¶7} The court also finds that plaintiff's assertion that spoliation of evidence requires the application of *res ipsa loquitur* in this case is without merit. The evidence does not support a finding that defendant intentionally or negligently disposed of the chair with any knowledge that litigation was

pending or probable. The court is also not persuaded by plaintiff's reliance on *Cook v. Wineberry Deli* (July 17, 1991), Summit App. No. 14841. In *Cook*, the court found that the doctrine of *res ipsa loquitur* applied in a case involving a collapsed chair because "the means of determining and explaining the cause of the injury were within the [defendant's] exclusive control." *Id.* In this case, plaintiff obtained several photographs that depicted close-up views of the chair and the broken chair leg and she was not prevented from examining the chair after the accident. This court agrees with the court's reluctance in *Cook* to apply the doctrine of *res ipsa loquitur* in such a case because "[i]n practical effect, it would be tantamount to imposing strict liability on the part of owners for all such injuries occurring on their premises \*\*\*. [E]ven if it were reasonable to assume that chairs do not ordinarily collapse without negligence on someone's part, it is questionable whether that negligence is automatically attributable to the premises owner, as there may be other reasonably possible causes of a chair's collapse in any given case, such as defects in manufacture or abuse or misuse by other customers." *Id.*

{¶8} Plaintiff further asserts that defendant's failure to adequately inspect the chair for any defect resulted in her injury.

In support of her claim, plaintiff offered the testimony of Pamela Merz who heard the chair collapse and observed the chair after the accident. Merz took photographs of the chair, which were offered into evidence. (Joint Exhibit A.) Merz testified that the chair appeared to have broken at a weld that secured the chair legs to the seat frame. Merz also noticed that some rust had formed on the metal frame.

{¶9} Davowah Minah, a manager at KSC, testified regarding the equipment set-up procedures for events that were scheduled at the

student center. Minah testified that KSC equipment crew members were provided with worksheets that specified the equipment requirements for each event. According to Minah, two crew members typically worked together to place chairs during the set-up process; one crew member inspected the chair and the other crew member placed it in the proper position. At trial, Minah demonstrated the inspection procedure that defendant's employees were trained to follow. Crew members were instructed to push down on the seat back while applying force, alternately to the left legs and then to the right legs, to check for any weakness or instability. Employees were instructed to pre-emptively break any weak chair legs and to immediately dispose of any chair that was found to be unstable.

{¶10} Leonard Houtz, Manager of Operations at KSC, testified that all KSC chairs were inspected twice each year and that he had personally trained the managers on the proper inspection procedure.

Houtz testified that structural repairs were not made to the chairs and that employees were trained to break and remove any weak legs that were discovered during inspections. Houtz further testified that, prior to the incident involving plaintiff, he was not aware that any of defendant's chairs had collapsed during use.

{¶11} In this case, defendant had an inspection procedure in place, and the court must now determine whether the inspection procedure was reasonable in light of any foreseeable risk of harm.

Upon review of the evidence, the court finds that credible testimony was presented that all of the chairs used at KSC were thoroughly inspected during summer and winter breaks. The biannual inspections included an examination of the frame welding and the overall structural integrity of each chair. Based upon the testimony of defendant's employees, the court finds that defendant's procedure for inspecting chairs was reasonable.

{¶12} The court has also reviewed the photographs submitted by plaintiff in support of her contention that the chair needed repair at the time of the incident. The photographs show what appears to be some light rust adjacent to the location where the legs were welded to the seat frame; however, the court cannot conclude from the testimony and evidence that the mere presence of some rust was related to the cause of the collapse. Trial testimony established that the chair at issue was one of 1,200 to 1,500 chairs that had been in service at KSC for approximately 27 years; however, there was no evidence of any prior incidents involving the collapse of defendant's chairs.

{¶13} Based upon the totality of the evidence, the court finds that defendant acted reasonably in inspecting the chair in light of any foreseeable risk of harm. The court concludes that defendant did not have actual or constructive notice of a possible defect in the chair that made it unreasonably dangerous to an invitee such as plaintiff. Therefore, defendant is not liable to plaintiff for injuries that she sustained. Judgment shall be entered in favor of defendant.

{¶14} This case was tried to the court on the issue of liability. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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J. WARREN BETTIS  
Judge

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