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COLORADO PREMISES LIABILITY 2017 UPDATE

Overview of Colorado Premises Liability Law

When a person is injured on the real property of another due to a condition on the property or circumstances or activities conducted on the property, the person's exclusive remedy against the landowner or landowners is pursuant to the Colorado Premises Liability Act, C.R.S. §13-21-115 (the "Act"). The Act defines a "landowner" as follows:

> "Landowner" includes, without limitation, an authorized agent or person in possession of real property and a person legally responsible for the condition of real property, and for the activities conducted or circumstances existing on real property.

The Act's definition of a "landowner" is not limited to the titled owner of the property. Even if a defendant did not own or physically possess the property, it may still be considered a landowner under the Act if it was legally responsible for the condition of the property or conducting an activity on the property that allegedly resulted in injury to the plaintiff. There may also be more than one landowner in a given case. *See Pierson v. Black Canyon Aggregates, Inc.*, 48 P.3d 1215, 1219, 1220 (Colo. 2002) ("a 'landowner,' for the purposes of the Premises Liability Statute is any person in possession of real property and that such possession need not necessarily be to the exclusion of all others"). Tenants of leased premises can be landowners. *Id.* Janitors can be held responsible under the Act as landowners in a slip and fall case. *Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612, 615 (Colo. App. 2003). The scope of a person or entity's control or lack of control over the real property where an incident occurred is critical to the determination of whether that person is a landowner under the Act.

If a person or entity is a "landowner" under the Act, the duties of that landowner are "non-delegable." That is, a landowner who maintains some degree of control over the property cannot transfer duties to another, such as a property management company. Landowners who do not transfer possession and control over premises, but simply hire property management or maintenance companies to supervise or manage the property, may be found liable to those injured on the property. *See Sofford v. Schindler Elevator Corp*., 954 F. Supp. 1459 (D. Colo. 1997); *Jules v. Embassy Properties, Inc*., 905 P.2d 13, 14 (Colo. App. 1995) and *Kidwell v. K-Mart Corp*., 942 P.2d 1280 (Colo. App. 1996).

A landowner's duties to a plaintiff is based upon a classification of "invitee," "licensee,"

or "trespasser" as defined in the Act. An **invitee** is a person who enters or remains on the land of another to transact business in which the parties are mutually interested or who enters or remains on such land in response to the landowner's express or implied representation that the public is requested, expected, or intended to enter or remain. An invitee may recover for damages caused by the landowner's unreasonable failure to exercise reasonable care to protect against dangers of which he actually knew or should have known.

A **licensee** is a person who enters or remains on the land of another for the licensee's own convenience or to advance his own interests, pursuant to the landowner's permission or consent. The status of "licensee" would apply to a social guest. A licensee may recover only for damages caused by the landowner's unreasonable failure to exercise reasonable care with respect to dangers created by the landowner of which the landowner actually knew, or by the landowner's unreasonable failure to warn of dangers not created by the landowner which are not ordinarily present on property of the type involved and of which the landowner actually knew. A **trespasser** is a person who enters or remains on the land of another without the landowner's consent. A trespasser may recover only for damages willfully or deliberately caused by the landowner.

If a claim is brought under the Act, no other remedies or claims for relief can be made. The express language of the Act itself precludes other claims and the Supreme Court also addressed the issue in *Vigil v. Franklin*, 103 P.3d 322, 328 (Colo. 2004) as follows:

> Where the interaction of common law and statutory law is at issue, we acknowledge and respect the General Assembly's authority to modify or abrogate common law. *Beach,* 74 P.3d at 4; *see also* § 2–4–211, C.R.S. (2004) ("The common law... shall be the rule of decision, and shall be considered as of full force until repealed by legislative authority"). Here, the General Assembly abrogated the common law with respect to landowner duties when it passed Colorado's premises liability statute.

Prior to 1971, Courts determined landowner duties based upon the classification system of trespasser, licensee or invitee. The classifications of the plaintiffs were determined as a matter of law by the Courts. In 1971 the Colorado Supreme Court decided *Mile High Fence Co. v. Radovich,* 489 P.2d 308 (1971), rejecting the trespasser, licensee and invitee classification scheme in favor of a standard of reasonable care for landowners in view of the foreseeability of injury to others. *Id.* The Colorado legislature in 1986, during a period of tort reform, enacted the Act (C.R.S. §13-21-115), which reinstated the status classification scheme that existed prior to 1971. The purpose of the Act was to provide greater protection to landowners than was available to them at common law, and to "create a legal climate [to] promote private property rights and commercial enterprise and…foster the availability and

affordability of insurance." See *C.R.S. §13-21-115(1.5)(d)*. The Supreme Court held the Act unconstitutional in 1989, citing equal protection grounds. *Gallegos v. Phipps*, 779 P.2d 856, 862-63 (Colo. 1989). The following year the legislature amended the Act to address the Supreme Court's equal protection concerns, and the status classifications became applicable once more. The Act was again amended in 2006 to provide clarification as to the statutory defenses available to landowners in premises liability actions. There was a dispute as to whether the 2006 amendment to the Act was a true amendment/change to the Act, or just a clarification, but the Supreme Court affirmed it was the latter in *Union Pacific Railroad Company v. Martin*, 209 P.3d 185 (Colo. 2009).

Most commonly, the Act is invoked with respect to allegedly dangerous conditions on real property, like un-remediated snow/ice, uneven sidewalks, spilled milk, staircases slippery from melting snow or faulty fixtures. *See Lawson v. Safeway, Inc*., 878 P.2d 127 (Colo. App. 1994) (spilled milk); *Henderson v. Master Klean Janitorial, Inc.*, 70 P.3d 612 (Colo. App. 2003) (melting snow on steps); *Thornbury v. Allen*, 991 P.2d 335 (Colo. App. 1999) (glass shelf fell on housekeeper's foot). However, the Act has broad application and it has been found to be the exclusive remedy even in cases involving dog bites and flying hockey pucks. *Wilson v. Marchiondo*, 124 P.3d 837 (Colo. App. 2005) (dog bite); *Teneyck v. Roller Hockey Colorado, Ltd.*, 10 P.3d 707 (Colo. App. 2000) (flying hockey puck).

2017 Premises Liability Cases/Legal Developments

St. Vrain Valley School Dist. RE-1J v. Loveland, 395 P.3d 751 (Colo. 2017)

On May 19, 2014, the Colorado Supreme Court decided *St. Vrain School District RE-1J v. A.R.L. by and through Loveland*, 325 P.3d 1014 (Colo. 2014). A nine-year-old student and her parents brought a lawsuit against the St. Vrain school district and a district employee for negligent supervision and premises liability in connection with injuries sustained by the student when she fell from a "zip line" apparatus on the school playground. The Weld County District Court judge dismissed the claims as being barred by the Colorado Governmental Immunity Act ("CGIA"). The student and her parents filed an interlocutory appeal. The Court of Appeals affirmed the dismissal of the negligent supervision claim but reversed the dismissal of the premises liability claim and remanded for further proceedings on that claim. The Colorado Supreme Court granted the school district's petition for *certiorari* review of the appellate court's decision. Addressing issues of first impression, the Supreme Court held that:

> (1) a playground located on the premises of a public elementary school is "public" within meaning of recreation area waiver of immunity under CGIA;
>
> (2) individual "zip line" apparatus on public playground does not qualify as

> "public facility" for purposes of the recreation area waiver, but entire playground can qualify as "public facility" and a condition on a zip line apparatus may qualify as "dangerous condition" of that facility;
>
> (3) a single water slide in a water park would not itself qualify as a "swimming facility" within the waiver of immunity under CGIA for injuries resulting from operation of a swimming facility by a public entity, abrogating *Anderson v. Hyland Hills Park & Recreation District*, 119 P.3d 533 (Colo. App. 2004);
>
> (4) the term "facility" under recreation area waiver of immunity can be interpreted to include both a prototypical bricks-and-mortar structure and a collection of items that serve a greater purpose, such a playground;
>
> (5) for a facility to be "public" under the recreation area waiver of immunity, it must be accessible to the public and maintained by a public entity to serve a beneficial public purpose;
>
> (6) playground in question qualified as "public" facility; and
>
> (7) playground was "located in" a "recreation area" within meaning of recreation area waiver of immunity.

The Supreme Court remanded the case back to the trial court for additional fact finding on the remaining requirements of the recreation area waiver, including whether there was a dangerous condition. The Supreme Court stated, "Because the trial court made no findings of fact regarding the dangerous condition requirement, this Court cannot determine whether a dangerous condition existed."

On remand, the school district defendant again moved to dismiss, arguing that the recreation area waiver did not apply because the plaintiffs (the Lovelands) failed to establish a dangerous condition on the zip line. Applying the CGIA's definition of "dangerous condition," the trial court granted the school district's motion to dismiss. The court explained that the plaintiffs failed to assert what specific physical or structural condition made the zip line a "dangerous condition" as that term is defined in the statute and as distinguished from their general assertion that a zip line is inherently dangerous. The trial court concluded that the plaintiffs failed to state a claim sufficient to overcome the school district's sovereign immunity.

The plaintiffs appealed this dismissal, and the court of appeals again reversed. The court of appeals concluded that an individual playground apparatus, such as the zip line in this case, is a physical condition for purposes of the dangerous condition test. The court of appeals

remanded the case to the trial court for further proceedings. The district court filed a petition for certiorari review, which the Colorado Supreme Court granted. The specific issues accepted for review were the following:

> 1. Whether the court of appeals erred in broadly defining "dangerous condition" within section 24-10-103(1.3), C.R.S. (2015), of the Colorado Governmental Immunity Act ("CGIA"), to include a playground apparatus with no physical condition, thereby waiving governmental immunity for all playground equipment.
>
> 2. Whether the court of appeals erred in holding that the existence of a warning sign from the manufacturer on a piece of playground equipment, in and of itself, renders the equipment an unreasonable risk to the health or safety of the public for purposes of establishing that element of a "dangerous condition" within the CGIA.

The Colorado Supreme Court reversed the appellate court's ruling in *St. Vrain Valley School Dist. RE-1J v. Loveland*, 395 P.3d 751 (Colo. 2017), and affirmed the dismissal in favor of the school district. The plaintiffs argued that the zip line satisfied the "dangerous condition" test because the zip line was inherently dangerous and that the school district was negligent in placing something inherently dangerous on the playground. The Colorado Supreme Court determined that the recreation area waiver of the CGIA does not recognize, and actually explicitly precludes, such blanket claims of danger based on the design of a public facility. The Colorado Supreme Court also determined that a non-negligently constructed and maintained piece of playground equipment cannot be a "dangerous condition" under the CGIA's recreation area waiver. The Colorado Supreme Court found that, because the facts the plaintiffs allege cannot satisfy the dangerous condition requirement, the recreation area waiver did not apply and the school district's immunity under the CGIA remained intact.

N.M. v. Trujillo, 397 P.3d 370 (Colo. 2017)

On August 5, 2013, an eight year old boy and his cousin were walking on a sidewalk in Adams County, heading towards an elementary school playground. The boys claim that as they walked along the sidewalk, two "large, vicious, loud-barking pit bulls" jumped up on and rattled the four-foot-high chain-link fence that was parallel to, and right up against, the sidewalk. The boys claim that they were so frightened that the dogs were going to jump over the fence and bite them that they ran out into the street. A service van struck the eight year old boy when he ran into the street, causing him serious injuries. A lawsuit was filed on behalf of the boy, against the dog owner, the van driver and the van owner. The plaintiffs settled with the van driver and the van owner. The plaintiffs alleged that the dog owner defendant was negligent in maintaining his two vicious pit bulls, which he knew regularly threatened pedestrians on the sidewalk next to an elementary school. The plaintiffs also sued the dog owner defendant in his capacity as a

"landowner" under the Premises Liability Act. The dog owner filed a motion to dismiss the plaintiffs' claims pursuant to C.R.C.P. 12(b)(5), and the motion was granted. The plaintiffs appealed this order, resulting in appellate case, *Lopez v. Trujillo*, 2016 Colo. App. LEXIS 465, 2016 COA 53 (Apr. 7, 2016). In their appeal, the plaintiffs contended that the trial court erred in concluding as a matter of law that the dog owner defendant owed no duty to the injured boy; and (2) that defendant was not subject to liability as a landowner under the Premises Liability Act. The Court of Appeals affirmed the dismissal of plaintiffs' claims. With regard to the negligence claim, the Court of Appeals concluded it was not foreseeable to the dog owner defendant that a passerby, startled by the dogs that were confined by the fence, would run out into the street into the path of moving vehicles. Regarding the premises liability claim, the Court of Appeals concluded that the dog owner defendant was not a landowner under the Premises Liability Act because the defendant was not a "person in possession of real property" for the purposes of the Premises Liability Act.The plaintiffs argued that the dog owner defendant affirmatively acted when he unleashed "two large vicious pit bulls upon unsuspecting passersby" and "created a sufficiently dangerous condition to impose liability under the Premises Liability Act," but the Court of Appeals disagreed. The Court of Appeals noted that the dog owner defendant did not own or possess the public sidewalk adjacent to the sidewalk, nor did it create any condition on the sidewalk that caused the boy's injuries.

Prior to this ruling in *Lopez v. Trujillo*, no Colorado appellate court had dealt specifically with whether a dog owner owes a duty to exercise reasonable care to an injured party when the injured party was not directly injured by the dogs or on the dog owner's property, and the dogs remained confined and never left the landowner's property. The plaintiffs sought certiorari with the Colorado Supreme Court, and it was accepted. The Supreme Court issued its decision on June 26, 2017. The Supreme Court granted certiorari to review the following issue:

> Whether the Court of Appeals erred by holding that a dog owner does not owe a duty of care to a child pedestrian who, frightened by the owner's dogs, ran into the street and sustained injuries from a passing vehicle.

The Supreme Court affirmed the appellate court's holding that the defendant dog owner, Trujillo, owed no duty of care to the injured plaintiff, N.M., whether under a premises liability theory or even a common law negligence theory. The Court explained its reasoning as follows:

> "Trujillo's dogs did not escape their enclosure and never touched N.M. Thus, even if the cases on which N.M. relies could, in certain circumstances, support a viable negligence claim, notwithstanding the absence of a special relationship between the parties, this is not such a case, and we perceive no reason to extend the reasoning of the cited cases to a case like the present one. Indeed, were we to do

> so, it would be difficult to discern the limits of such a rule, and the threshold element of duty would be rendered virtually meaningless in negligence cases involving animals."

Tancrede v. Freund, 2017 Colo. App. LEXIS 338 (Colo. App., March 23, 2017)

Plaintiff, Faith Leah Tancrede, filed an injury lawsuit arising from a car accident which occurred in an alley on private property owned by the defendants, Denver East Machinery Company (DEMC) and Duane Freund, owner and president of DEMC. Plaintiff was a passenger in a car that was traveling through the alley and collided with a DEMC truck driven by Freund. A police accident report determined that Freund was at fault and drove carelessly when rounding a corner of the DEMC building without looking or slowing down. The plaintiff asserted claims of negligence and negligence *per se* against the defendants. The defendants moved for summary judgment, arguing that because the collision occurred on their private property, the plaintiff was limited to asserting claims under the Premises Liability Act. The trial court granted the motion for summary judgment, but plaintiff was permitted to amend her complaint to assert a claim under the Act. After the plaintiff filed her amended complaint the defendants again moved for summary judgment, arguing that since she was a trespasser and had not alleged a willful or deliberate injury her claim should be dismissed. The court determined that plaintiff was a trespasser, and that because she had not alleged a willful or deliberate injury, she was not entitled to relief. It once again granted summary judgment for the defendants.

Plaintiff filed an appeal, contending that the Act did not preclude her negligent driving claim against the defendants, and that the court erred in entering the initial summary judgment against her. The Court of Appeals disagreed with the plaintiffs, and affirmed the trial court's rulings. The Court of Appeals found that because the subject collision occurred on private property owned by defendants, and the "injury occurred by reason of the property's condition or as a result of activities conducted or circumstances existing on the property," their potential liability was governed solely by the Act. Freund's affidavit showed that he was moving the truck between two loading docks on DEMC's property. The plaintiff could not have been harmed by defendants' activities unless she was on their property, and her injury occurred because of "activities conducted" on the property. Plaintiff did not contest her status as a trespasser under the Act, nor did she contest the trial court's determination that the defendants did not act willfully or deliberately.

Given the undisputed facts, the Court of Appeals found that the "injury occurred by reason of the property's condition or as a result of activities conducted or circumstances existing on the property" and so the Act preempted her common law claims of negligence and negligence *per se*. The plaintiff argued that her suing Freund directly and DEMC vicariously as motor vehicle drivers did not implicate a landowner duty, so her negligence claims should

stand, but plaintiff's argument contradicts the Colorado Supreme Court's holding in the *Larrieu* case that the Act's applicability is not restricted solely to activities directly related to the land. The plaintiff's petition for *certiorari* review of this appellate decision was denied on August 21, 2017.

2016 Premises Liability Cases and Developments

Reid v. Berkowitz, 370 P.3d 644 (Colo. App. 2016)

In *Reid v. Berkowitz,* a construction worker filed a premises liability personal injury lawsuit against a builder for injuries sustained when a handrail that he grabbed gave way, causing him to fall three stories. The handrail had been placed previously by other construction workers. Before trial, the defendant builder designated the two construction workers who had installed the handrail as non-parties at fault under the premises liability statute, contending that they had negligently failed to secure it. The Court approved the designation, and plaintiff later amended his complaint to include the two co-workers as defendants but under a theory of common law negligence. Because the two co-workers failed to answer the complaint, the Court entered a default judgment and awarded the plaintiff damages of over $1,000,000 against them.

The parties stipulated that the defendant builder was a landowner, and the Court ruled during trial that plaintiff was a licensee. The defendant builder submitted proposed jury instructions concerning apportionment of fault to the two co-workers, as well as an instruction concerning comparative negligence. The Court ruled that, because a matter of safety at the construction job site was involved, the defendant builder as a landowner had a non-delegable duty to maintain the premises in a safe condition; therefore, it held that an apportionment of fault to the two co-workers would not be permissible. The Court also rejected the defendant builder's comparative negligence instruction because it concluded there was no evidence to support it. The Court stated that the only evidence presented was that of plaintiff himself, who stated that he had tripped over some cables. The Court stated that, by inference, the jury could decide plaintiff tripped over his own feet, but in this type of situation, tripping did not rise to the level of failing to exercise reasonable care. The jury awarded $400,000 to the plaintiff and the Court entered judgment against the defendant builder for that amount, adding interest.

The defendant builder appealed this verdict, in *Reid v. Berkowitz*, 315 P.3d 185 (Colo. App. 2013). The appeal concerned whether the trial court erred in: (a) determining that plaintiff was a licensee at the time of the incident; (b) refusing to instruct the jury that it could apportion liability and fault to the two co-workers; and (c) refusing to instruct the jury on plaintiff's comparative negligence, based on a lack of sufficient evidence. The Colorado Court of Appeals reversed only upon the issue of the comparative negligence instruction, finding that the jury should have been given the instruction because the plaintiff walked up the stairs in a dark construction site without proper lighting.

The Court of Appeals included the following finding in its decision regarding landowner non-delegable duties when a non-landowner person/entity is involved for whom a landowner is vicariously liable:

> "Accordingly, we hold that when, as here, a landowner defendant is vicariously liable under the non-delegability doctrine for the acts or omissions of the other defendants, the trial court should nevertheless instruct the jury to determine the respective shares of fault of the landowner defendant (who may be individually negligent) and the other defendants, but in entering a judgment, the court shall aggregate the fault of the defendant landowner and any other defendants for whom the landowner defendant is vicariously liable."

The case was remanded for a new trial only on the issue of liability. A second jury allocated the liability/fault 90% to the defendant builder and 10% to the plaintiff. The $400,000 judgment was reduced accordingly, and the defendant paid the amount due. The plaintiff then moved for declaratory relief, asking that the district court find the defendant builder liable under his non-delegable duty pursuant to the Colorado Premises Liability Act for 90% of the default judgments entered against the subcontractors, plus simple interest. The defendant builder opposed the motion. After a hearing, the trial court held the defendant builder liable for the entirety of the default judgments with compound interest, which amounted to $1,457,149.10. The defendant builder appealed, asserting that the district court erred in concluding that he is liable for the amount of the default judgments entered against the subcontractors. *See Reid v. Berkowitz*, 370 P.3d 644 (Colo. App. 2016).

The Court of Appeals found that, because the Premises Liability Act provides the sole remedy against landowners for injuries occurring on their property, the defendant builder could not be simultaneously liable for damages separately assessed under the Premises Liability Act and under common law negligence theories. The Court of Appeals included the following discussion in its decision regarding the difference between a non-delegable duty and the *respondeat superior* doctrine:

> While the non-delegable duty imposed on a landowner by the Premises Liability Act may be viewed as a form of vicarious liability, it is not the equivalent of liability under a doctrine of respondeat superior. The former liability arose with respect to a landlord's duty to tenants and was later recognized as retained under the Premises Liability Act, which defines a landowner's duty to those entering on land. *See* § 13-21-115(3) (delineating the scope of landowner duty as a function of the invitee, licensee, or trespasser status of the party injured on the landowner's premises); *Springer*, 13 P.3d at 804 (recognizing a landowner's non-delegableduty to invitees and licensees under the Premises Liability Act); *Frazier v. Edwards*,

> 117 Colo. 502, 507, 190 P.2d 126, 129 (1948) ("It is well-settled law that it is the duty of the landlord . . . to keep his premises in a reasonably safe condition . . ., and this responsibility is not delegable."). The latter is a common law liability independent of the Premises Liability Act, in which an employer or principal is liable for the negligence of employees or agents acting in the scope and course of their employment or authority. *Henisse v. First Transit, Inc.*, 247 P.3d 577, 581 (Colo. 2011). This form of liability stems solely from the liability of an employee or agent. *Id.*

On February 25, 2016, the Court of Appeals reversed the judgment and orders, and remanded the case to the district court with directions to vacate the judgments against the defendant builder.

Rucker v. Fannie Mae, 2016 Colo. App. LEXIS 1038 (Colo. Ct. App., July 28, 2016)

On June 5, 2011, a woman, Ellyn Rucker, and her daughter, drove over to see a house that was for sale, for which Ms. Rucker's husband had submitted a written offer that same day. The house was an unoccupied foreclosure acquisition owned by Federal National Mortgage Association ("FNMA"). The listing real estate broker, had placed a "For Sale" sign in the house's front yard, with the realtor's name and phone number. The broker also put a white sign on the front door of the house which stated "Warning" in English and Spanish in large print. In smaller print, the sign stated, in both languages, "Theft, Trespassing or Vandalism Will Be Prosecuted to the Full Extent Of the Law." Neither woman alerted FNMA or the broker of their visit or requested permission to enter the property. After parking the car in the house's driveway, Ms. Rucker and her daughter proceeded to walk around the house, looking into the windows. Once they reached the front doorstep of the house, they began walking back to the driveway along the front pathway. Ms. Rucker then fell on an uneven part of the sidewalk and suffered injuries. Ms. Rucker sued FNMA and the broker for her fall, alleging that she was an invitee to the property under the Premises Liability Act because the "For Sale" sign in the front yard constituted an "express or implied representation that the public is requested, expected, or intended to enter or remain on the premises." She also argued that she was an invitee because she was "a person who enter[ed] or remain[ed] on the land of another to transact business in which the parties are mutually interested." *Id.*

In a written order on March 17, 2015, the trial court concluded that Ms. Rucker's status under the Act was that of a trespasser. The Court reasoned that the "For Sale" sign did not make Ms. Rucker an invitee because she "never had the express consent of any 'land owner' to enter or remain on the Property" and the 'For Sale' sign did not qualify as an implied invitation to the public-at-large or more specifically to Ms. Rucker to enter the subject property." The Court did not address, in that order, Ms. Rucker's second argument that she was an invitee because she was present with regard to a business transaction. Upon Ms. Rucker's request, the trial court

certified its order for immediate appeal under C.A.R. 4.2. A division of the Court of Appeals, concluding the case was not ripe for interlocutory appeal because Ms. Rucker's business transaction invitee argument had not been addressed by the trial court, dismissed the appeal without prejudice on June 5, 2015. On October 5, 2015, after the trial court issued an order rejecting the business transaction invitee argument, it certified the issues to the Court of Appeals. The Court of Appeals agreed, pursuant to C.A.R. 4.2, to review Ms. Rucker's contention that she was an invitee under the Colorado Premises Liability Act because the "For Sale" sign constituted an "express or implied representation that the public is requested, expected, or intended to enter" the property. This was a matter of first impression, as no Colorado case had ever addressed whether a "For Sale" sign creates an express or implied representation for a plaintiff to enter a landowner's property as an invitee. The Court of Appeals concluded that "For Sale" signs, standing alone, do not create an implied representation to strangers to enter the private property of others and consequently, Ms. Rucker was a trespasser.