



Ready for the Defense

No negligence if thin glaze of ice remains after snow removal

As winter approaches, we thought it might be helpful to discuss the general rules involved in ice and snow removal cases and the claims and lawsuits frequently seen in these slip and fall on ice or snow accidents.

This month's column discusses a slip and fall on ice on the driveway of the parking lot of a Dominick's Finer Foods store. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App.3d 740, 826 N.E.2d 987 (1st Dist. 2005). Both the factual setting and the rules involved are of interest in avoiding liability for removal of ice and snow. The fact-setting was as follows:

On January 4, 2000, Plaintiff Debbie Tzakis drove to Dominick's, parked in the parking lot, exited her car and slipped and fell on ice on the driveway area walking to the entrance. It had snowed that day, said Mrs. Tzakis, but "not too heavy". There also had been snow five days earlier on December 30, 1999 and Dominick's had a snow removal contractor spread salt but not plow the parking lot after that snow.

Plaintiff Tzakis sued Dominick's, contending her slip and fall was on an unnatural accumulation of ice caused by the spreading of rock salt and the thawing out and refreezing of the ice. This theory of thawing and refreezing of the ice was argued to avoid the "no duty to remove natural accumulations of ice and snow" rule. And, so Plaintiff's claim could fall within the "if ice and snow removal is done negligently so as to create an unnatural accumulation then there can be liability" rule.

There was no evidence revealed in discovery to show how the presence of ice on the day of the accident came to be there—no witnesses, no photographs.

The trial court granted summary judgment for Dominick's, finding Mrs. Tzakis failed to offer any evidence that Dominick's negligently created an unnatural accumulation of ice on its parking lot driveway. The theory that Dominick's, through its contractor's salting, created the ice was merely conjecture and speculation not supported by any evidence.

On appeal, the Appellate Court, First District, affirmed the judgment for Dominick's.

The Appellate Court began its discussion of the appeal, stating the general no duty to remove natural

weather-created accumulations of ice and snow rule:

A property owner has no duty to remove a natural accumulation of snow and ice from his property; however, a property owner who voluntarily undertakes the removal of snow and ice can be subjected to liability where the removal results in an unnatural accumulation of snow or ice that causes injury to a plaintiff. (356 Ill. App. 3d at 746, 826 N.E.2d at 992).

Noting that it is the plaintiff who must prove the ice and snow was unnatural and created by the defendant (not the defendant's burden of proof), the court stated:

Therefore, "[i]n order to avoid summary judgment in a case such as this one, a plaintiff must allege sufficient facts for a trier of fact to find that defendants were responsible for an unnatural accumulation of water, ice or snow which caused plaintiff's injuries. (356 Ill. App. 3d at 746, 826 N.E.2d at 992).

Thus, while a defendant has no legal duty or obligation to remove ice and snow, if the defendant undertakes to do so, the defendant can become liable if this voluntary undertaking is done negligently:

While there is generally no duty to remove natural accumulations of ice and snow, a voluntary undertaking may subject defendant to liability if it is performed negligently. (356 Ill. App. 3d at 746, 826 N.E.2d at 992).

Liability will be imposed, however, where a plaintiff shows that an injury occurred as the result of snow or ice produced or accumulated by artificial causes or in an unnatural way, or by the defendant's use of the premises. (356 Ill. App. 3d at 993, 826 N.E.2d at 993).

But, the court explained that a landowner's removal of ice and snow which leaves a natural thin glaze of ice is not negligence. Among the common experiences in life known to all who shovel snow is that fact that the thin glaze of ice under the snow usually remains

when snow is shoveled.

And, the court also reiterated the rule that spreading the rock salt which causes ice to melt but does not prevent a later refreezing of the melted ice is not negligence. The Appellate Court in *Tzakis v. Dominick's Finer Foods, Inc.* stated these two rules of non-liability in these words.

The mere removal of snow leaving a natural ice formation underneath does not constitute negligence. (356 Ill. 3d at 746, 826 N.E.2d at 993).

As a matter of law, this court has previously rejected Tzakis' argument, stating that the "mere sprinkling of salt, causing ice to melt, although it may later refreeze, does not aggravate a natural condition so as to form a basis for liability on the part of the property owner." (356 Ill. App. 3d at 747, 826 N.E.2d at 993).

Because Plaintiff Tzakis' theory was mere speculation and because even if the ice reformed after the

parking lot driveway was rock salted, there would be no liability, the court affirmed summary judgment for Dominick's, finding it was not negligent.

Comment

Ice and snow are commonly known and understood conditions by all persons residing in this area. The presence of ice and snow is its own warning to be careful. Indeed, many persons have slipped and fallen on ice and snow on their own property.

The rule of the *Tzakis* case encourages landowners and possessors to undertake to remove ice and snow. That is, if they remove the ice and snow and leave a thin glaze of ice or if they spread rock salt or snow melts, they will not become liable for slip and fall accidents. A contrary rule would discourage ice and snow removal. And, it is certainly better, easier and safer to walk on a sidewalk that has been shoveled even with exposure to patches of ice, than to try and walk with frozen ice and snow footprints which make walking more difficult and the risk of falling greater.

Photos From Around the State



READY FOR WINTER—In 2004, Rock Creek-Lima Township (Carroll County) completed construction of its new salt storage shed. The building is 60'x30'x20' built with treated lumber and concrete pylons; it currently, as pictured, houses more than 800 tons of a chip/salt mixture ready to be used this winter on both hard and gravel surface roads throughout the township. Grove Construction and Burkholder and Son constructed the building as designed by Road Commissioner John Schneider, who has been in office for more than 21 years. Total road miles in the one and a half township equals about 65 miles with more than 17 miles being seal coated. A conscientious effort is made each year to add seal coat roads to the township. The benefits of this building to the township is that the material is totally protected from the weather elements and allows extreme storage for better buying at all times of year.

Retiring officials...

Retiring from Blackhawk Township, Rock Island County in April were:

Ernie Hauman, who became a trustee in 1978 serving until 1992 when he became supervisor, total years 27.

Gene Gipe became clerk in 1978, having served 27 years.

Cecil Kinder became trustee in 1989, having served 16 years.