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Landlord and Tenant - Duty to Remove Ice and Snow from Common Sidewalk

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dence was strong and the defense was basically a fervent plea for mercy. In the *Muskus* case, the court reversed and remanded while in the *Woodards* case, the verdict was affirmed. One crucial distinction between the two cases is that in *Woodards,* defense counsel failed to make timely objection whereas in the *Muskus* case, counsel objected and was overruled. Had the defendant objected in the *Woodards* case, the similarities between the two cases would be so great that it seems unlikely that the same court would reverse one and not the other.

The *Woodards* case is demonstrative of a trend allowing greater latitude to the prosecutor in his closing argument, specifically in the area of abusive language. Where the evidence is strong and the crime of a serious and heinous nature, the courts will not reverse merely because of an overzealous summation by the prosecutor. Even greater latitude is allowed where the defense counsel fails to object to the improper remark. Thus, in a proper case, the prosecutor can employ prejudicial comment to his advantage with little fear of reversal. He need only be willing to face possible reprimand by the court or instruction to the jury informing them of the prejudicial nature of his comment. However, the effectiveness of such an instruction is questionable once the comment has made an impression upon the minds of the jurors.

Barry Woldman

LANDLORD AND TENANT–DUTY TO REMOVE ICE AND SNOW FROM COMMON SIDEWALK

The plaintiff, a tenant in the defendant's apartment building, was injured when he slipped and fell on a common sidewalk, controlled and maintained by the defendant for the tenants' use. The plaintiff alleged that the defendant was negligent both in allowing snow and ice to remain on the walk and in removing it. The trial court ruled for the plaintiff and the Supreme Court of Appeals of Virginia affirmed the judgment holding that the landlord had a duty to use reasonable care to remove natural accumulations of snow and ice from the walkways reserved for the common use of his tenants within a reasonable time after the snow had ceased. *Langhorne Road Apartments, Inc. v. Bisson,* 207 Va. 474, 150 S.E.2d 540 (1966).

The *Langhorne Road Apartments* case is a significant decision in the recently emerging law of a landlord's liability to a tenant, his guests, and business invitees, for failure to remove snow and ice from common walkways. The purpose of this note is to analyze and compare the underlying rationale of the various courts indicating the law's evolution from placing the duty of removing snow and ice from the common premises

on the tenant, to the more modern view of placing this responsibility on the landlord.[1]

There are basically two rules governing these circumstances: the common law or so-called Massachusetts rule[2] and the Connecticut rule.[3] The common law—Massachusetts rule holds that a landlord has no duty to remove the natural accumulations of ice and snow from the common premises within his control.[4] The Connecticut rule imposes upon the landlord a liability for injuries due to the accumulation of ice and snow on the common premises.[5]

One of the leading common law cases is *Woods v. Naukeag Steam Cotton Co.*,[6] where the plaintiff, a tenant in the defendant's house, slipped and fell on a common walkway which was the only entranceway to the house. Snow and ice had been allowed to accumulate on the walkway for approximately one week. The Supreme Judicial Court of Massachusetts held there was no duty on the part of the landlord to remove the snow and ice which had naturally accumulated on the steps and walkway.[7] More recently in *Cairns v. Giumentaro*,[8] Massachusetts, in a similar factual situation, reaffirmed its position by holding that "a landlord is under no obligation to remove a natural accumulation of snow and ice on common passageways or stairs."[9]

[1] This note will not consider an abutting owner's obligation to remove the non-natural accumulations of ice and snow on the public walks. Generally, where an abutter has contributed to the dangerous icy condition of the public walk, he is a tortfeasor and is liable to an injured third party. Whalen v. Zolper, 148 A.2d 778 (Del. 1959); Tremblay v. Harmony Mills, 171 N.Y. 598, 64 N.E. 501 (1902); Aollington v. City of Verocqua, 155 Wis. 472, 144 N.W. 1130 (1914); DeGraff, *Snow and Ice*, 21 CORN. L.Q. 436 (1936).

[2] Purcell v. English, 86 Ind. 34, 44 Am. Rep. 255 (1882); Woods v. Naumkeag Steam Cotton Co., 134 Mass. 357 (1883); Cairnes v. Giumentaro, 339 Mass. 675, 162 N.E.2d 61 (1959); Goodman v. Corn Exch. Bank and Trust Co., 331 Pa. 587, 200 Atl. 642 (1938); Schedler v. Wagner, 37 Wash. 612, 225 P.2d 213 (1950); Davis v. Lendau, 270 Wis. 218, 70 N.W.2d 686 (1955).

[3] United Shoe Mach. Corp. v. Paine, 26 F.2d 594 (1st Cir. 1928); Frazier v. Edwards, 117 Colo. 502, 190 P.2d 126 (1948) (by implication); Reardon v. Shimelman, 102 Conn. 383 (1925); Young v. Saroukos, 185 A.2d 274, *aff'd*, 189 A.2d 638 (Md. 1963); Fincher v. Fox, 107 Ga. App. 695, 131 S.E.2d 651 (1963); Durkin v. Lewitz, 3 Ill. App. 2d 481, 123 N.E.2d 151 (1954); Bostian v. Jewell, 254 Iowa 1289, 21 N.W.2d 141 (1963); Langley Park Apartments v. Lund, 234 Md. 402, 199 A.2d 620 (1964); Strong v. Shefveland, 249 Minn. 59, 81 N.W.2d 247 (1957); Visaggi v. Frank's Bar and Grill, Inc., 4 N.J. 93, 71 A.2d 638 (1950); Sidle v. Humphrey, 8 Ohio App. 2d 25, 220 N.E.2d 678 (1966); Ingalls v. Isensee, 170 Ore. 393, 133 P.2d 614 (1943) (by implication); Grizzell v. Foxx, 48 Tenn. App. 462, 348 S.W.2d 815 (1960).

[4] See cases cited *supra* note 2.

[5] See cases cited *supra* note 3.

[6] *Supra* note 2.

[7] Woods v. Naumkeag Steam Cotton Co., *supra* note 2.

[8] *Supra* note 2.

[9] *Id.* at 678, 162 N.E.2d at 63.

The Massachusetts rule not only applies to the tenants but also to the tenant's business invitees, licensees, and guests. While in other areas of the law of landlord-tenant, the landlord owes varying degrees of care to individuals depending on the status of the individual coming onto the premises, no distinction is made among tenants, invitees, licensees, and guests on the common premises when snow removal is in issue.[10] Thus, when a patient of a dentist, who was a tenant in the defendant's building, fell on the icy stairway which was used in common by other tenants, the court held that the presence of snow and ice on a private sidewalk[11] was a condition for which the owner could not be held liable.[12]

While in the *Woods* case, the court flatly held that the landlord had no duty to remove the ice and snow which had naturally accumulated on the steps, the court failed to provide any rationale for this abrupt conclusion of law.[13] It was obviously a rigid adherence to the common law concept of the lessor-lessee relationship.[14] At common law the lessee had the exclusive rights and responsibilities of the premises and the lessor had no obligation to repair or maintain the passageways.[15] This is exemplified in the *Woods* case when the court concluded that the duty to remove the snow "was the tenant's duty, if she so desired to use the steps."[16]

However, today the courts regard the lease as a transfer of use and enjoyment of property and hence a landlord is bound to keep the property in good repair.[17] Consequently, landlords are liable for injuries caused by their negligence in failing to keep those parts of the premises used in

[10] This note does not attempt to delve into and differentiate among degrees of care owed by a landlord to a tenant, his licensees, or his business invitees. Generally, invitees of the tenant stand in precisely the same position as the tenant himself and can recover from the lessor only when the lessee could recover. McCourtie v. Bayton, 159 Wash. 418, 294 Pac. 238 (1931); HARPER, TORTS § 103 (1933). Furthermore, unreasonable risks on the common premises makes the landlord liable to anyone rightfully on the premises as guests, licensees, or invitees of his tenant. United Shoe Mach. Corp. v. Paine, *supra* note 3; RESTATEMENT (SECOND), TORTS § 332 (1965). The rationale is that the landlord by controlling these premises in effect invites the use of such passageways, etc. by the tenants, their guests, and their invitees; therefore these people have the assurance that the premises have been reasonably prepared and made safe for their visit. Sidle v. Humphrey, 8 Ohio App.2d 25, 220 N.E.2d 678 (1966); PROSSER, TORTS § 61 (3rd ed. 1966).

[11] Common sidewalks and stairways are treated exactly alike since they are both portions of the common premises retained by the landlord. Blumberg v. Baird, 319 Ill. App. 642, 49 N.E.2d 745 (1943); Sidle v. Humphrey, 8 Ohio App.2d 25, 220 N.E.2d 678 (1966).

[12] Goodman v. Corn Exch. Bank and Trust Co., *supra* note 2.

[13] Durkin v. Lewitz, *supra* note 3.

[14] *Ibid.*

[15] Bowe v. Hunking, 135 Mass. 380 (1883).

[16] Woods v. Naumkeag Steam Cotton Co., 134 Mass. 357, 361 (1883).

[17] Durkin v. Lewitz, *supra* note 3.

common by tenants in a reasonably safe condition.[18] Even jurisdictions following the Massachusetts rule recognize this obligation. For example, the Washington courts have held since 1910 that a landlord must use due care to keep the common passageways in a reasonably safe condition.[19] Nevertheless, these courts hold that this obligation only extends to general repairs and does not impose on the landlord a liability for injuries resulting from the temporary obstructions of ice or snow.[20]

The explanation for this exception was that it would be too great a burden to hold the landlord accountable for the removal of snow and ice on the common passageways.[21] However, this explanation prompted the Supreme Court of Appeals of Virginia to comment in the *Langhorne Road Apartments* case:[22]

> We can conceive of no logical or legal reason why a landlord should be held liable for an injury caused by a defect in a common walkway resulting from negligent . . . maintenance and yet be released from liability where the injury is caused by a natural accumulation of snow and ice which is negligently permitted to remain upon the surface of the same sidewalk. To draw such a distinction is but to create in the law another of those strange anomalies, which, once created, live on to haunt successive legal generations.[23]

Another possible explanation for decisions following the Massachusetts rule is that some courts have confused the landlord's liability for injuries due to the natural accumulation of snow and ice on the private premises with actions against an abutting owner for injuries on a public sidewalk.[24] These courts apparently have lost sight of the vital distinction between public and private walks. Public walks are owned by the municipality and therefore the city has the primary obligation to keep them safe; consequently the abutting landlord ordinarily has no liability to the public on those premises.[25] However, this reasoning is not applicable for injuries on the owner's own premises since they are under his exclusive control and he has the primary duty to keep them in a reasonably safe condition.[26] In *Little v. Wirsh*,[27] a New York court concluded that the authorities were uniform in holding that the owner owes no duty to a tenant or the

[18] Murphy v. Illinois State Trust Co., 375 Ill. 310, 31 N.E.2d 305 (1940).

[19] Oerter v. Ziegler, 59 Wash. 421, 109 Pac. 1058 (1910).

[20] *Ibid.* See also Schedler v. Wagner, *supra* note 2.

[21] Purcell v. English, *supra* note 2.

[22] Langhorne Road Apartments, Inc., v. Bisson, 207 Va. 474, 150 S.E.2d 540 (1966).

[23] *Id.* at _____, 150 S.E.2d at 542.

[24] DeGraff, *supra* note 1.

[25] King v. Swanson, 216 Ill. App. 294 (1919); Riccitelli v. Sternfeld, 1 Ill. 2d 133, 115 N.E.2d 288 (1953).

[26] Durkin v. Lewitz, *supra* note 3.

[27] 6 Misc. 301, 261 N.Y. Supp. 1110 (Super. Ct. 1893).

public to remove from the private or common steps or walks the ice and snow naturally accumulating thereon. The court then cited several New York cases to substantiate this statement but these cases involved actions against the abutting landowners for injuries on the public sidewalk.[28] In *Turoff v. Richman*,[29] the Ohio Appellate Court noted that abutting landowners had no duty to remove the natural accumulation of snow and ice on the public walks and concluded therefore, that landlords should not be subjected to removing the snow and ice on their common walkways. These decisions have failed to differentiate between these two situations.

In direct conflict with the Massachusetts rule is the Connecticut rule. It imposes upon the landlord a liability for injuries due to the accumulation of ice or snow, provided he knew or should have known of the existence of the dangerous condition, and failed to exercise reasonable care to remove it.[30]

In *Grizzell v. Foxx*,[31] the landlord's building superintendent, who was living on the premises, failed to remove the snow and ice from the common walkway and the tenant was injured. The Tennessee Appellate Court ruled that the landlord's general duty is "to keep the common passageways in good repair and in a safe condition and this included the duty of removing natural accumulations of snow and ice within a reasonable time."[32]

A newspaper boy, in *Sidle v. Humphrey*,[33] was injured in a fall down the icy front steps of an apartment building after delivering newspapers to some tenants. The Ohio Appellate Court held that regardless of whether the newspaper boy was an invitee or a licensee, he had rights against the landlord for damages similar to those of a tenant[34] since the landlord has the duty to exercise reasonable care to keep the common portion in a reasonably safe condition including the duty of removing ice and snow.[35]

The Connecticut rule developed from the well recognized rule that a landlord has the duty to exercise reasonable care in keeping the common premises in good repair.[36]

> The obvious reason why the courts . . . implied a duty on the landlord to use ordinary care to render safe the common areas was that, since he reserved and

[28] Moore v. Gadsden, 93 N.Y. 12 (1883); Wenzlick v. McCotter, 87 N.Y. 122 (1881). See also DeGraff, *supra* note 1.

[29] 76 Ohio App. 83, 61 N.E.2d 486 (1944).

[30] *Supra* note 3.

[31] *Ibid.*

[32] *Ibid.* See also 29 TENN. L. REV. 307 (1962).

[33] *Supra* note 3.

[34] See *supra* note 10.

[35] Sidle v. Humphrey, *supra* note 3.

[36] Woods v. Forest Hill Cemetery, 183 Tenn. 413, 192 S.W.2d 987 (1946); Sidle v. Humphrey, *supra* note 3.

controlled such areas, he was the logical one to see that they were kept in a reasonably safe condition. [The] courts . . . concluded that if the landlord did not keep such areas safe, no one would.[37]

There appears to be no reason why the danger of ice and snow on a common walkway should be different from any other danger on that same walkway. "To set apart this particular source of danger is to create a distinction without a sound difference."[38]

There can be little doubt that although jurisdictions are divided on this question, the recent decisions have sought to make the law conform with the reasonable requirements of placing a duty on the landlord to keep the common premises in good condition.[39] New York, which had originally followed the harsh common law rule, has modified its position by holding that while a landlord would not ordinarily be liable for injuries caused by the natural accumulation of ice and snow in common passageways retained in his control, there might be liability where the ice and snow presented an unreasonable risk to the user because its surface was formed into ridges or hummocks.[40] New York still follows the Massachusetts rule but the landlord now has a restriction on his freedom.

More recently, Ohio has changed from the common law rule to the Connecticut rule. In the *Turoff* case,[41] the court held that a landlord will not be held negligent for a failing to remove a natural accumulation of ice and snow from the common passageway. Then in 1946, the court recognized the conflict between a landlord's duty to remove the natural accumulation of ice and snow from the common passageways and the general duty of exercising reasonable care to keep these passageways in a reasonably safe condition. Nevertheless, at that time the court was still unwilling to adopt the Connecticut rule.[42] Finally in 1966, Ohio held in *Sidle v. Humphrey*[43] that the landlord's duty to exercise reasonable care in common premises retained in the landlord's control includes the duty of removing natural accumulations of ice and snow from the common ways, thereby accepting the Connecticut rule.

Illinois, also, in 1952 followed the Massachusetts rule by deciding that the landlord had no liability with respect to the removal of snow and ice on the common premises.[44] Subsequently in 1954, the court held in the

[37] Langhorne Road Apartments v. Bisson, *supra* note 22, at ____, 150 S.E.2d at 542.

[38] 1 TIFFANY, LANDLORD AND TENANT, 633 (1912).

[39] Durkin v. Lewitz, *supra* note 3.

[40] Harkin v. Crumbie, 20 Misc. 568, 46 N.Y.Supp. 453 (1897); Greenstein v. Springfield Development Corp., 22 Misc. 2d 740, 204 N.Y.S.2d 518 (1960).

[41] *Supra* note 25.

[42] Oswald v. Jeraj, 146 Ohio St. 676, 67 N.E.2d 779 (1946).

[43] *Supra* note 3.

[44] Cronin v. Brownlie, 348 Ill. App. 448, 109 N.E.2d 352 (1952).

Durkin v. Lewitz[45] that Illinois has "firmly and decisively fixed upon the landlord the duty to use reasonable care with respect to the premises used in common . . ."[46] which includes the removal of snow and ice.[47]

Thus, New York has modified the Massachusetts rule and Ohio and Illinois no longer follow it. In 1954, the Illinois court observed that the authorities appeared to be about equally divided.[48] Since 1954, there is apparently a growing majority following the Connecticut rule, and

> most of the courts not bound by earlier decisions which have, in recent years, passed upon the question, have held that the landlord's general duty to exercise reasonable care to keep the parts of the premises retained on the landlord's control for the common use of his tenants in reasonably safe condition for the contemplated use may, in a proper situation, include the duty of removing natural accumulations of ice and snow from the common ways or structures.[49]

In the case at bar, the Supreme Court of Appeals of Virginia, has clearly adopted the Connecticut rule on the basis of the sounder rationale on which the rule rests. This is the same logical foundation on which preceding cases have formed a growing majority. *Langhorne Road Apartments, Inc.* is an important decision in this emerging majority holding the landlord liable for injuries due to the snow and ice on the common premises.

Bruce Samlan

[45] *Supra* note 3.

[46] *Id.* at 484, 123 N.E.2d at 156.

[47] *Ibid.*

[48] Durkin v. Lewitz, *supra* note 3.

[49] Sidle v. Humphrey, *supra* note 3, at _____, 220 N.E.2d at 683.

PUBLIC WELFARE–STRIKER'S RIGHT TO PUBLIC ASSISTANCE

The plaintiffs instituted a taxpayer's action to enjoin the use of public funds for the payment of public assistance to strikers and their families. The trial court found for the defendants and refused issuance of an injunction. On appeal, the Appellate Court of Illinois affirmed and held that strikers and their families are eligible for aid under the Illinois Public Assistance Code.[1] The court held strikers, whose need for aid arises solely and initially from participation in a strike arising out of a labor dispute,

[1] ILL. REV. STAT. ch. 23, § 401 (1965): "The alleviation and prevention of poverty and substandard economic conditions existing in some segments of the State is an essential governmental objective. Persons who for unavoidable causes are unable to maintain a decent and healthful standard of living, or whose families are unable to provide them a reasonable subsistence, shall be eligible to receive aid in meeting their minimum subsistence requirements . . . through a grant of general assistance under this Article if such persons: . . . (d) do not refuse suitable employment or training for self-support work, as hereinafter in this section provided."