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Tort Law - Landlord and Tenant - Duty of Landlord to Use Reasonable Care to Remove Natural Accumulations of Snow and Ice from Passage-Ways Reserved to Common Use of His Tenants - *Sidle v. Humphrey*

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TORT LAW—Landlord and Tenant—Duty of landlord to use reasonable care to remove natural accumulations of snow and ice from passageways reserved for common use of his tenants. *Sidle v. Humphrey*, 220 N. E. 2d 678 (Ohio 1966).

Plaintiff's fourteen year old son, who delivered newspapers to the tenants of a multiple family dwelling, was injured in a fall down icy front steps of the dwelling. The steps were used as a common passageway by tenants and had been retained under the possession and control of the landlord. It was alleged that the proximate cause of the injury was due to ice and snow which allegedly were negligently left there by the landlord. It was further alleged that the newsboy had the express or implied permission of the landlord to enter the premises. The plaintiff was given judgment by the trial court. Upon appeal the Court of Appeals of Ohio *held* that landlords who retain possession and control of walkways and approaches used in common by tenants in effect invite use of these common ways by tenants and others whose relation to tenants involves use thereof, and their duty to maintain such common ways in a reasonably safe condition extends to the removal of natural accumulations of ice and snow.¹

When dealing with the liability of landlords in relation to common ways and passages on the leased premises, the courts apply the general common law rule that where the owner of premises leases parts thereof to different tenants and expressly or impliedly reserves other parts thereof, such as entrances, halls, stairways, walks, etc., for the common use of the tenants, it is his duty to exercise reasonable care to keep safe the parts over which he reserves control. If he is negligent in this regard, and a personal injury results by reason thereof to a tenant or to a person there in the right of of tenant, he is liable, provided the injury occurs while such part of the premises is being used in the manner intended.² Earlier cases which considered such liability uniformly held that the landlord's common law duty of reasonable care with respect to the maintenance of such parts of his property did not include the duty to remove natural accumulations of snow and ice.³ This rule has become well established in Massachu-

1. *Sidle v. Humphrey*, 220 N.E.2d 680 (Ohio 1966).

2. *Young v. Saroukos*, 185 A.2d 274 (Del. 1962).

3. 52 C.J.S. *Landlord and Tenant* § 417d (1947); *Woodley v. Bush*, 272 S.W.2d 833 (Mo. 1954).

setts, and has come to be known as the "Massachusetts" rule.⁴ The apparent reason for this rule is that the courts felt that any other rule would subject a landlord to an unreasonably harsh burden of vigilance and care.⁵ However, as the number of apartment houses and multiple dwelling units increased, there gradually arose a greater need for a rule which established a duty of landlords to remove natural accumulations of ice and snow.

The New York courts attacked this problem in a unique way. The courts retained the common law rule that a landlord has no duty to remove natural accumulations of ice and snow and is not liable to any person who is injured as a result of his failure to remove the natural accumulations.⁶ But a landlord does have the duty to remove rough and bumpy accumulations of snow and ice, such as hummocks or ridges, in the path of a user of a common walkway and is liable when he creates an artificial hazard.⁷

The majority of the jurisdictions, however, went about establishing this duty on the basis of one of two available theories.

The first theory which moved toward finding a landlord's duty of snow removal was the theory that if the landlord assumes the duty of removing natural accumulations of ice and snow, any tenant or person on the premises in the right of a tenant who was injured because of the landlord's failure to remove ice and snow has a cause of action against such landlord.⁸ The prerequisite to recovery under this theory is proof of the fact that the landlord has assumed the duty of removing the ice and snow.⁹ In other words, the law would not impose this duty under any other circumstances. This theory is applied mainly by courts which are bound by earlier decisions finding no duty.¹⁰

The second theory used by courts is that the landlord's general common law duty may, in a proper situation, include

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4. *Cairns v. Giumentaro*, 339 Mass. 675, 162 N.E.2d 61 (1959).
 5. Annot., 26 A.L.R.2d 614 (1952).
 6. *Greenstein v. Springfield Development Corp.* 22 Misc. 2d 740, 204 N.Y.S.2d 518 (1960).
 7. *Ibid.*
 8. *Oswald v. Jeraj*, 146 Ohio St. 676, 67 N.E.2d 779 (1946).
 9. *Carey v. Malley*, 327 Mass. 189, 97 N.E.2d 645 (1951).
 10. Annot. *supra* note 5, at 616.

the duty of removing natural accumulations of ice and snow.¹¹ This theory is used mainly by courts which are not bound by earlier precedent.¹² Under this theory the courts have agreed that the duty is only to use reasonable care and there can be no recovery for injuries unless the evidence demonstrates that the landlord had notice of the dangerous condition and a reasonable opportunity to correct it before the time when the plaintiff was injured.¹³ In the case of *Oswald v. Jeraj*¹⁴ the court noted the conflict in decisions pertaining to landlord's duty to remove natural accumulations of ice and snow from common ways. The court said that the general rule requiring a landlord to exercise reasonable care in keeping common passageways reasonably safe is the controlling theory in relation to the duty of snow removal. The court, however, in its actual holding on the case, used the theory that where a landlord has assumed the duty by removing accumulations of snow over a period of time he is liable for negligence if he fails to remove any accumulation. In any case, the principal theory used by the courts today is the general duty which requires a landlord to keep common passageways in a reasonably safe condition.¹⁵

Having determined that a landlord owes a duty to remove snow from common ways, the courts then noted that a landlord will not be liable for all injuries arising from his failure to do so. This is because the courts have evolved the rule that a landlord is not an insurer of everyone who comes onto his land and uses the common passageways, even if such person is one of his tenants.¹⁶ The general duty imposed on the landlord by law requires him to exercise only reasonable care to keep the common ways safe.¹⁷ Therefore, a plaintiff seeking to recover for an injury must show that the landlord had actual or constructive notice of the presence of a dangerous accumulation of ice or snow.¹⁸

11. *Grizzell v. Foxx*, 48 Tenn. App. 462, 348 S.W.2d 815 (1960).

12. Annot., *supra* note 5.

13. *Grizzell v. Foxx*, *supra* note 11.

14. *Supra* note 8.

15. *Supra* note 3. In this case the court expressly declined to try the case on the assumed duty theory, and rejected this theory in favor of the reasonable duty theory.

16. *Langhorne Road Apartments, Inc. v. Bisson*, 150 S.E.2d 540 (Va. 1966).

17. PROSSER, *TORTS* § 61, at 419 (3d ed. 1964); *Strong v. Shefeland*, 249 Minn. 59, 81 N.W.2d 247 (1957).

18. *Grizzell v. Foxx*, *supra* note 11.

In *Langhorne Road Apartments v. Bisson*¹⁹ the Supreme Court of Virginia held that although the landlord was not an insurer of the tenant, he was liable for the injury the tenant suffered as the result of the failure of the landlord to remove the snow from a sidewalk used as a common passageway. The landlord had sufficient notice of the snow fall accumulation, since the injury occurred several hours after the snow had begun to accumulate. Further, an agent of the landlord had been warned by one of the tenants that there was a dangerous accumulation of snow on the sidewalk.

In *Langley Park Apartments v. Lund*²⁰ the Court of Appeals of Maryland held that an accumulation of ice or snow upon common approaches to multiple dwellings may impose on the landlord liability for injuries therefrom provided he knew or in the exercise of reasonable care should have known of the existence of a dangerous condition and failed to act within a reasonable time thereafter to protect against injury by reason thereof.

In the principal case, the court recognized the landlord's duty to remove natural accumulations of ice and snow from common passageways under the theory that this duty is included under the landlord's general duty to exercise ordinary care in maintaining common ways in a reasonably safe condition. In the decision of the case the court stated that "[Generally] a landlord is not liable for injury except such as results from his negligence with respect to parts of devised property over which he has retained control."²¹ However, the court neither discussed expressly, nor made an issue of the requirement that a landlord must have notice of the unsafe condition. Nor did the court make any reference concerning the rule that a landlord is not an insurer of all those persons rightfully using the common passageways.

The *Sidle* case may possibly constitute an extension of the landlord's liability with respect to his duty of care in relation to common passageways on his premises. The court

19. *Supra* note 16.

20. 234 Md. 402, 199 A.2d 620 (1964).

21. 220 N.E.2d 678, at 684 (Ohio 1966).

used the generally accepted theory of liability,²² yet it did not mention the requirement of notice which has been stated to be a prerequisite to recovery in other cases dealing with this subject. Also, in other cases deciding the question involved in the principal case the courts have relied heavily on the rule that a landlord is not the insurer of those persons using the common ways. It is this rule which is primarily responsible for limiting the liability of the landlord.²³ The omission of this rule from the opinion of the principal case is worthy of special note. By omitting this rule the court has removed the major obstacle to the establishment of a rule of strict liability for a landlord in relation to the duty of snow removal. With respect to this it should also be noted that the *Sidle* case dealt with a common passageway made dangerous because of natural accumulations of snow and ice, and found a duty on the part of the landlord to remove this snow and ice through an extension of the common law duty to exercise reasonable care with respect to common ways. The duty of snow removal was not a part of this duty at common law. The requirement of notice was also a part of this common law doctrine, and when the courts extended the reasonable care rule to include snow removal, they also included the requirement of notice. The *Sidle* case, however, seems reluctant to apply the notice requirement to the duty of snow removal. The court did not require the plaintiff to show that the landlord had notice of the dangerous condition. In this respect the court is limiting the defenses available to a landlord in these circumstances. The court here may feel that the notice requirement with respect to other obstructions on common ways is still applicable. The important distinction, however, seems to be that with respect to natural accumulations of snow the requirement of notice is not so important. A possible basis for this reasoning may lie in the fact that at the present time there are many apartment and multiple dwelling units being established and there is therefore arising a need for a rule which will provide broad protection to those rightfully using the common ways of these premises. The landlord is the person responsible for the presence of such premises and should be ready to

22. The duty to use reasonable care to keep common passageways reasonably safe.

23. *Langhorne Road Apartments, Inc. v. Bisson*, *supra* note 16.

compensate for injuries occurring upon them. He is in a better position to insure for such occasions. By omitting the rule that a landlord is not an insurer, the *Sidle* case seems to advocate this reasoning.

The court in the *Sidle* case seems to be moving toward the requirement of strict liability with respect to landlord's duty to remove snow. The general trend of the case decisions also seems to demonstrate this reasoning. The first courts found no duty of snow removal whatsoever. Then they began to find such a duty in a limited number of cases. The courts then moved to a broader extension of the duty by including it under the landlord's general duty to use reasonable care with respect to keeping the common ways reasonably safe. The next logical extension of the rule seems to be the extension to strict liability with the landlord as an insurer for all persons rightfully on the common ways of his premises.

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