

2013 IL App (2d) 121408-U
No. 2-12-1408
Order filed August 13, 2013

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

DAVID ULRICH,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellant,)	
)	
v.)	No. 10-L-448
)	
COSMOPOLITAN, INC., and CHERRY)	
LOGISTICS CORPORATION,)	Honorable
)	Christopher C. Starck,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly granted defendants summary judgment on plaintiff's negligence claim: as snow-removal contractors, defendants owed no duty to plaintiff, a third party, to remove a natural accumulation of snow or ice; to the extent that plaintiff suggested that the accumulation was unnatural, it was not caused or aggravated by defendants.

¶ 2 Plaintiff, David Ulrich, an employee of Kohl's, sued defendants, Cosmopolitan, Inc. (Cosmopolitan), and Cherry Logistics Corporation (Cherry), for damages sustained when he slipped and fell on ice in the parking lot of a Kohl's store. The trial court granted summary judgment to defendants, finding that defendants, as snow-removal contractors, owed no duty to plaintiff, a third

party, to remove natural accumulations of snow and ice. Plaintiff timely appealed. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 The relevant facts are as follows. Kohl's (which is not a party to this action) had entered into a snow-removal contract with Cherry, which provided that "[i]f snow or conditions require contractor to provide service during business hours, contractor will respond within (2) hours of such request[.]" Cherry (whose business was to engage third-party snow-removal contractors to remove snow and ice for its customers), entered into a service agreement with Cosmopolitan for the performance of snow removal and salting at Kohl's.

¶ 5 Plaintiff testified during his deposition that, on December 13, 2008, he worked at Kohl's in Algonquin. At about 9:30 p.m., he went outside to take a break. As he was walking across the main drive to the parking lot, he slipped and fell on ice. According to Nicole Vasels, an assistant store manager at Kohl's, she had spoken with someone from Cherry at 8 p.m. on December 13, 2008, and said that somebody needed to come out and put down salt. Cosmopolitan salted the parking lot at 10:40 p.m.

¶ 6 Cosmopolitan filed a motion for summary judgment, arguing that, under Illinois law, a defendant has no duty to remove natural accumulations of snow and ice. In response, plaintiff argued that defendants' duty arose from defendants' contractual obligations to remove natural accumulations of snow and ice. Cherry filed a combined supplement and reply, which incorporated Cosmopolitan's motion for summary judgment and maintained that Illinois law did not establish a duty to plaintiff.

¶ 7 The trial court granted summary judgment for defendants, finding that any contractual obligations that defendants may have had were owed to Kohl's and not to a third party. Plaintiff moved for reconsideration. The trial court denied the motion, stating:

“[T]he snow removal contractors are responsible for a condition that they create or cause themselves. There is nothing about this that says that that's what happened. There is nothing that says that the plaintiff was a third-party beneficiary of this, of this contract. The contract was between the shopping center or Kohl's and the contractors. I think the purpose of the contractor is really to keep the business open more than anything else.”

¶ 8 Plaintiff timely appealed.

¶ 9 II. ANALYSIS

¶ 10 Summary judgment is appropriate where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2010). To prevail in a negligence action, the plaintiff must prove that the defendant owed a duty to him, that the defendant breached that duty, and that the plaintiff's injury proximately resulted from that breach. *Tzakis v. Dominick's Finer Foods, Inc.*, 356 Ill. App. 3d 740, 745-46 (2005). The existence of a duty is a question of law and, therefore, may be resolved on a motion for summary judgment. *Ralls v. Village of Glendale Heights*, 233 Ill. App. 3d 147, 154 (1992). The entry of summary judgment is subject to *de novo* review. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 11 At issue is whether defendants owed a duty to plaintiff to remove natural accumulations of snow and ice on Kohl's parking lot, based on their snow-removal contracts. There is no question

that defendants owed a duty to *Kohl's* to remove natural accumulations—that duty arose from their contracts. See *Wells v. Great Atlantic & Pacific Tea Co.*, 171 Ill. App. 3d 1012, 1019 (1998) (snow-removal contractor's obligation to comply with his contract was owed only to the store with which he contracted). However, the law is well settled that, as to a third party such as plaintiff, a snow-removal contractor can be liable only where the contractor negligently removes snow and ice and thereby creates or aggravates an unnatural accumulation. *McBride v. Taxman Corp.*, 327 Ill. App. 3d 992, 996-97 (2002) (and cases cited therein).

¶ 12 Plaintiff argues that defendants owed him a duty arising out of the contracts with Kohl's. We disagree. *McBride* is dispositive. In *McBride*, the plaintiff, a Walgreens employee, fell on snow and ice outside the entrance of the store where she worked. *Id.* at 993. She brought a negligence action against Walgreens, the shopping center owner, the property manager, and the snow-removal contractor (Arctic) with which the property manager had contracted. *Id.* After the plaintiff settled with Walgreens and the shopping center owner, the trial court granted summary judgment for the property manager and Arctic, finding that they owed no duty to the plaintiff. *Id.* at 994. The First District affirmed. As to the property manager, the court found that it had entered into the snow-removal contract as the shopping center owner's agent and thus did not assume a contractual obligation to remove snow. *Id.* at 995. As to Arctic, the court found that its duty was "only not to negligently remove snow by creating or aggravating an unnatural accumulation of snow or ice." *Id.* at 996. The court held that, because there was no evidence that the snow and ice upon which the plaintiff slipped unnaturally accumulated due to Arctic's conduct, Arctic could not be found liable to the plaintiff. *Id.* at 997-98.

¶ 13 In so holding, the *McBride* court relied on several cases. *Id.* at 996-97; see *e.g.*, *Madeo v. Tri-Land Properties, Inc.*, 239 Ill. App. 3d 288, 290 (1992) (snow-removal contractor could be liable to grocery store customer, who fell in adjacent parking lot, for either creating an unnatural accumulation of ice or snow or for aggravating a natural accumulation of ice or snow); *Crane v. Triangle Plaza, Inc.*, 228 Ill. App. 3d 325, 330 (1992) (duty of snow-removal contractor to customer of parking lot was to perform snow removal in a nonnegligent fashion; to show breach plaintiffs had to show that contractor caused an unnatural accumulation of ice); *McCarthy v. Hidden Lake Village Condominium Ass'n*, 186 Ill. App. 3d 752, 758 (1989) (snow-removal contractor could be liable to condominium resident for defective plowing creating unnatural accumulation where condominium association contracted for snow plowing); *Wells v. Great Atlantic & Pacific Tea Co.*, 171 Ill. App. 3d 1012, 1018-19 (1988) (snow-removal contractor hired by grocery store had duty to plaintiff, who was not identified in the opinion as a customer or otherwise and who fell in the parking lot, only to abstain from negligence; store was under no contractual obligation to remove snow, and contractor's obligation was owed only to the store); *Burke v. City of Chicago*, 160 Ill. App. 3d 953, 957 (1987) (snow-removal contractor hired by city, which leased portion of airport to airline, could breach duty to airline employee, who fell on ice at airport after snow was plowed, only by causing an unnatural accumulation or by negligently plowing).

¶ 14 The cases relied on by plaintiff do not warrant a departure from that well-settled precedent. In *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill. App. 3d 640, 642 (1980), the plaintiff slipped on some snow in the driveway of her parents' condominium. She sued the condominium association for negligent breach of a contractual duty to remove the snow, which had fallen in the morning and still remained in the evening when she returned. *Id.* The plaintiff's parents had entered

into an agreement with the association, under which the association agreed to perform snow removal; and her parents' monthly assessments included a snow-removal fee. *Id.* The court held that this contractual obligation created liability to the plaintiff even though she did not own the condominium unit, because it was foreseeable that the association's failure to perform its contractual obligation to clear snow could cause harm to a nonowner resident. *Id.* at 644-45.

¶ 15 In *Tressler v. Winfield Village Cooperative, Inc.*, 134 Ill. App. 3d 578, 579 (1985), a tenant brought suit against her landlord for negligent failure to comply with a covenant to remove snow from her walkway. The plaintiff had entered into a written lease with the defendant, who, at the time of signing, provided her with a handbook stating that he would arrange for snow removal. *Id.* The court stated that a landlord can be liable for breaching a covenant to remove snow only if he failed to use due care in performing the covenant, but held that the issue regarding the reasonableness of the landlord's delay in removing the snow precluded summary judgment. *Id.* at 581.

¶ 16 Although *Schoondyke* and *Tressler* certainly support the proposition that a *property owner* can assume a duty to a third party to remove natural accumulations of snow and ice pursuant to a contract, the question here is whether the contract at issue imposed such a duty not upon Kohl's but upon the snow-removal contractors with whom Kohl's contracted. As the *McBride* court noted, *Schoondyke* "cannot be considered to have expanded the liability of snow-removal contractors." *McBride*, 327 Ill. App. 3d at 997. The same can be said about *Tressler*.

¶ 17 The only other case relied on by plaintiff, *Eichler v. Plitt Theatres, Inc.*, 167 Ill. App. 3d 685 (1988), is similarly unpersuasive. There, we primarily addressed the duty of property owners to a third party. As to the snow-removal contractor, we determined that it did not breach its contractual

duty, *i.e.*, to remove a natural accumulation of snow. Thus, we had no occasion to consider whether a breach would have subjected it to liability to a third party. *Id.* at 691-92.

¶ 18 Based on the foregoing, we find that defendants owed no duty to plaintiff to remove natural accumulations of snow and ice in the parking lot.

¶ 19 We note that plaintiff also suggests that the ice she slipped on was an unnatural accumulation caused by a defect in the premises, specifically a “seam” in the “crown slope” of the driveway where water accumulated and turned to ice. According to plaintiff, defendants had a “contractual duty to survey the site for damage or defects.” Be that as it may, plaintiff does not allege that this unnatural accumulation was caused or aggravated by defendants. See *McBride*, 327 Ill. App. 3d at 996-97.

¶ 20

III. CONCLUSION

¶ 21 For the reasons stated, we affirm summary judgment for defendants.

¶ 22 Affirmed.