FIRST DIVISION
January 5, 2015

No. 1-13-3774
2014 IL App (1st) 133774-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROSE TOOTOOIAN, Plaintiff-Appellant, v. ROYALE CATERING INC., and Illinois Corporation d/b/a CASA ROYALE BANQUETS, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County. No. 11 L 062010 Honorable Roger G. Fein, Judge Presiding

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Harris concurred in the judgment.

ORDER

Held: Trial court correctly granted defendant's motion for summary judgment, finding that defendant's unwritten policy of removing snow before events at the banquet hall did not create a contractual obligation to always remove snow before events.

¶ 1 Plaintiff Rose Tootooian filed a claim against defendant Royale Catering Company for personal injuries sustained when she slipped on ice at defendant's banquet hall. Defendant filed a motion for summary judgment alleging that the fall was caused by a natural accumulation, and therefore it was not liable to plaintiff. The trial court granted defendant's motion and plaintiff

now appeals, arguing that defendant had an unwritten policy of removing ice before events, and therefore was liable when it failed to remove the ice that plaintiff slipped on. For the following reasons, we affirm the judgment of the trial court.

¶ 2 Plaintiff alleged in her first amended complaint that she sustained injuries on February 21, 2009, when while in the process of entering defendant's banquet hall, she slipped and fell "on the outside entrance ramp from the driveway to the front entrance door." Plaintiff claimed that the cause of her fall was "an unnatural accumulation of ice and/or snow on the sloped outside entrance ramp, which was exposed to the outside weather conditions and/or the failure of the Defendant to salt or otherwise address the area of the sloped outside entrance ramp, contrary to its custom and practice of salting or otherwise removing or mitigating the slippery conditions thereon caused by certain weather conditions such as snow, ice, or sleet." Plaintiff claimed that defendant breached its duty of reasonable care to her when it failed to follow its custom and practice of salting or otherwise mitigating slippery or icy conditions in the front entrance of the banquet hall "on the day of the occurrence before plaintiff's incident."

¶ 3 Following several depositions, defendant filed a motion for summary judgment, alleging that in Illinois, a landowner has no duty to remove or take other precautions against the dangers inherent in natural accumulations of ice or snow. Defendant stated that Gregory, plaintiff's son, had testified that the conditions on the road were icy because it was sleeting and that there was snow and ice covering the area where plaintiff fell. Plaintiff herself testified that she slipped on ice. Accordingly, defendant argued that the burden was on plaintiff to show that the accumulation of snow or ice was "unnatural."

¶ 4 Plaintiff responded alleging that it was her position that "defendant failed to follow [its] own policy of snow and ice removal/mitigation which should have taken place before guests

arrived." Specifically, plaintiff claimed that defendant assumed a duty of ice removal, natural or unnatural, as part of its business policy and practice, and it failed to follow that practice on the night in question. Plaintiff pointed to deposition testimony of plaintiff's son, in which he stated that there was no salt in the area when plaintiff fell and that he saw "three or four guys" spreading salt on the area minutes after plaintiff fell. Plaintiff testified that the ground was icy and wet and that she fell on ice. Pasquale Ergastolo, defendant's owner and president, testified that he was present on the evening of the incident, and that the area in which plaintiff fell was salted at around 5:00 p.m. by "Enrique." He said that this was based on a standard procedure to shovel snow and salt the entrance and sidewalk outside the banquet hall before an event. Ergastolo testified that he saw salt granules around the area in question after plaintiff fell, and that no one added more salt after she fell.

¶ 5 Enrique Virgil testified in his deposition that his job is maintenance. When snow falls he clears the walkways and spreads salt in the front of the banquet hall, as well as the parking lot. He performed snow and ice removal activities on the day in question at about 5:00 p.m. There was no ice in the front entrance are and ramp when he spread salt on it, but he did it anyway because it was cold and wet. Enrique testified that he went out again at around 6:30 p.m., but did not see any ice. He would have spread more salt out if he had seen any. He was then told someone had fallen at around 7:00 p.m. Based on all this testimony, plaintiff contended that it was defendant's policy to remove snow and ice, and that defendant failed to do so.

¶ 6 The trial court granted defendant's motion for summary judgment. It noted that there was no dispute that it was sleeting and raining and icy at the time of the incident and that plaintiff's fall occurred because of her slipping on ice. The court found that plaintiff failed to show that defendant had a contractual obligation regarding snow and ice removal, and that therefore

plaintiff could not show that defendant assumed such a duty. Furthermore, the court found that regardless of whether defendant salted, it was not enough to establish that the accumulation was unnatural.

¶ 7 Plaintiff then filed a motion to reconsider, arguing that while the general rule is that a landowner has no duty to remove natural accumulations of snow and ice, there are exceptions to this general rule. Plaintiff relied on Illinois Pattern Jury Instruction, Civil, No. 125.00 (3d ed. 1994) (hereinafter, IPI Civil 3d No. 125.00), which states that a contract or a lease agreement that requires snow removal could create a duty to remove natural accumulations. Plaintiff then noted that the comment sections of the jury instructions for snow and ice removal state that if a duty to remove or protect against natural accumulations of snow or ice is created by conduct or contract, then the plaintiff need not prove the existence of unnatural accumulation. IPI Civil 3d Nos. 125.01 and 125.02. Plaintiff contended in her motion to reconsider that defendant, by its conduct, created a duty to remove natural accumulations of snow and ice. Specifically, plaintiff argued that the testimony of Enrique Virgil and Pasquale Ergastolo established that defendant had an unwritten policy of snow and ice mitigation, and that they should have done so before plaintiff's fall. She argued that while defendant contends that this was done before the fall, both she and her son testified in their depositions that there was no salt on the ground when plaintiff fell. Accordingly, plaintiff argued that whether defendant did or did not spread salt in the area of the fall before the accident is a disputed issue of material fact that could not be decided by a motion for summary judgment.

¶ 8 Defendant responded to plaintiff's motion to reconsider, stating that all of plaintiff's authority that she relied on in her motion contained a written contract, and thus were inapplicable to the case at bar.

¶ 9 After a hearing where arguments were heard, the trial court issued a written order in which it found that whether defendant did or did not spread salt on the area before plaintiff's fall may be a disputed fact issue, but that if defendant did not owe a legal duty to plaintiff, then that disputed fact issue is irrelevant and immaterial. The trial court found that what "is most relevant in this case is whether, as Plaintiff asserts, Defendant assumed a duty of care because it had an oral policy, custom or practice of ice mitigation" which is "a question of law for the Court, and not the jury, to resolve." The trial court noted that the parties agreed that there was a natural accumulation of ice and snow. The court further found that none of the cases cited by plaintiff held that an oral policy of ice mitigation is an exception to the general rule that there is no duty to remove natural accumulations of ice. The court noted that plaintiff's attempts to stretch the holdings of those cases to support her legal theory were not persuasive.

¶ 10 Plaintiff now appeals, contending that summary judgment was inappropriate because defendant's internal business policy and practice of removing natural accumulations of snow and ice imposed a duty to remove such snow and ice immediately prior to plaintiff's accident. We review the grant of a motion for summary judgment *de novo*. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 595 (2011). Summary judgment is only appropriate when the pleadings, depositions, admissions, affidavits, and other relevant materials demonstrate that there is no genuine issue of material fact entitling the moving party to judgment as a matter of law. *Id.*

¶ 11 It is well established in Illinois that a landowner has no duty to remove or take other precautions against the dangers inherent in natural accumulations of snow or ice. *Selby v. Danville Pepsi-Cola Bottling Company, Inc.*, 169 Ill. App. 3d 427, 435 (1988). " 'It may be stated as a general rule that there is no absolute duty to keep outside steps free from ice or snow at all times. Where the precipitation is recent or continuous, the duty to remove such obstruction

as it forms cannot be imposed, and the dangers arising therefrom are viewed as the normal hazards of life, for which no owner or person in possession of property is held responsible.' " *Durkin v. Lewitz*, 3 Ill. App. 2d 481, 491 (1954) (quoting *Goodman, et al. v. Corn Exchange National Bank & Trust Co.*, 331 Pa. 587 (1938)). The only question before this court, then, is whether an unwritten internal policy of removing natural accumulations of snow and ice creates a duty as an exception to this general rule. Plaintiff relies on the comments to IPI Civil 3d Nos. 125.01 and 125.02, three Illinois appellate court cases, and a Seventh Circuit case, in support of her contention. The comments to both IPI Civil 3d No. 125.01 and IPI Civil 3d No. 125.02 state that if a duty to remove natural accumulations of snow or ice is created by conduct or contract, then the plaintiff need not prove the existence of an unnatural accumulation. Plaintiff contends that defendant's past conduct of removing snow or ice before events created a duty to remove the ice before the event in question. Because the comments to an Illinois Pattern Jury Instruction do not constitute binding authority on this court, we will look at the cases cited by plaintiff in support of her contention.

¶ 12 Plaintiff first cites *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill. App. 3d 640 (1980), in support of her proposition that defendant's past conduct created a duty to remove natural accumulations of snow or ice as an exception to the general rule. In *Schoondyke*, the plaintiff brought an action against the defendants for injuries she sustained in a fall on the common portions of the premises known as Cedar Run Condominiums. The plaintiff noticed an inch or two of snow on the ground when she left for work in the morning, and upon her return that evening, no snow removal had taken place. *Schoondyke*, 89 Ill. App. 3d at 642. The plaintiff slipped and fell while walking from her car into Cedar Run Condominiums. The pleadings and depositions revealed that monthly assessment charges levied with respect to each

condominium unit included a charge for snow removal. The court found that the defendants, by their agreement with the unit owners as contained in the "Declaration of Condominium" and "Condominium By-Laws," had assumed a duty of snow removal not imposed upon them by common law. *Id*. at 643-44. The court further found that this duty extended to plaintiff as a tenant, and not just owners, because tenants were foreseeable beneficiaries of the contract for snow removal.

¶ 13 *Schoondyke* is inapposite to the case at bar because here defendant did not have a contractual obligation to remove snow or ice from the banquet hall before events. Plaintiff contends that defendant's internal policy of "always" removing snow and ice before events created a contractual relationship like the one in *Schoondyke* and that plaintiff was a foreseeable beneficiary of the contract as an invitee to the banquet hall on the night in question. We are unwilling to extend the holding of *Schoondyke* in this way. If a business or landowner gratuitously chooses to take on snow or ice removal, we are in no position to make it binding law that the business owner must then always continue to remove snow or ice, lest it be held liable for resulting injuries due to natural accumulations of snow or ice. We note that plaintiff is not alleging here that defendant undertook snow or ice removal in a negligent manner. *Judge-Zeit v. General Parking Corp*., 376 Ill. App. 3d 573, 581 (2007) (although a property owner has no duty to remove natural accumulations, he may be subject to liability if his voluntary undertaking to remove snow and ice is performed in a negligent manner). Rather, plaintiff is alleging that defendant failed to salt the area in which she fell, and that defendant's past conduct of salting created a contractual obligation for defendant to always remove natural accumulations of snow and ice before events held at the banquet hall. We can find no support for this contention in Illinois case law, and plaintiff's reliance of three additional cases does not persuade us otherwise.

¶ 14 In both *Tressler v. Winfield Village Cooperative, Inc*., 134 Ill. App. 3d 578, 581 (1985), and *Eichler v. Plitt Theatres, Inc*., 167 Ill. App. 3d 685, 692 (1988), there were lease agreements that required the removal of snow and ice. In *Ciciora v. CCAA, Inc*., 581 F. 3d 480 (7th Cir. 2009), a federal case that is not binding on this court, the plaintiff slipped and fell on ice present on the sidewalk directly in front of a restaurant, Burrito Jalisco. Burrito Jalisco leased the property from Bridgeview Bank Group, Trust 13137 (Bridgeview) at the time of the fall. According to the lease, Bridgeview was responsible for the maintenance of the parking lot, driveway, and sidewalk, including snow and ice removal. *Ciciora*, 581 F. 3d at 481. The parties agreed that there was an informal, unwritten agreement that Burrito Jalisco would shovel and salt the sidewalks and that a contractor hired by Bridgeview would plow the parking lot. *Id*. at 482. The Court noted that "[a] defendant who voluntarily undertakes the removal of snow and ice can be liable where the actions resulted in an unnatural accumulation of snow or ice, or added to the existing hazard, and caused injury to plaintiff." *Id*. The Court then found that the plaintiff had failed to allege any facts from which a jury could conclude that the fall resulted from an unnatural accumulation of snow or ice or the aggravation of an existing condition. *Id*. The Court noted that the plaintiff "presented no evidence at all that the ice was anything other than a natural formation." *Id*. at 483.

¶ 15 The Seventh Circuit further noted that even if the plaintiff could rely on the lease between Bridgeview and Burrito Jalisco to establish a duty, she had to demonstrate that Bridgeview failed to exercise reasonable care in fulfilling that duty and that the breach proximately caused her injuries. *Id*. at 483. Plaintiff in the case at bar misrepresents a portion of the Court's opinion, arguing that the Court "went on to note that a contract[-]based duty was not required stating that 'Illinois courts have allowed third-party invitees to rely on such contracts in

establishing a duty.' " Rather, while the Seventh Circuit did stated that "Illinois courts have allowed third-party invitees to rely on such contracts in establishing duty," it was in relation to the plaintiff not being a party to the lease agreement between Burrito Jalisco and Bridgeview, a concept that has already been established by the above cases stating that foreseeable beneficiaries can be included in lease agreements for snow removal. The Court's comments regarding third-party invitees, therefore, had nothing to do with whether a contract-based duty was required. *Id.*

¶ 16 The Seventh Circuit then noted that "[plaintiff] acknowledges that Bridgeview and Burrito Jalisco had an informal agreement under which Burrito Jalisco's employee would clear snow and ice from the sidewalk." *Id.* The court noted that plaintiff "provided no evidence that the Burrito Jalisco employee failed to exercise reasonable care in performing that duty." *Id.* We note that the Court cites to no authority for the alleged proposition that informal agreement created a duty to remove snow and ice. As stated above, we are unwilling to make Illinois business owners and landowners liable for injuries resulting from natural accumulations of snow or ice based entirely on past conduct or an informal policy of snow removal.

¶ 17 Moreover, this court has held that "Illinois law is fairly clear that the negligent performance of a gratuitous undertaking would impose liability for injuries proximately resulting therefrom, but the mere reliance by a party upon defendants' gratuitous performance in the past, without more, is insufficient to impose any duty thereafter." *Burke v. City of Chicago*, 160 Ill. App. 3d 953, 958 (1987) (citing *Chisolm v. Stephens*, 47 Ill. App. 3d 999, 1007 (1977) (the gratuitous performance of clearing snow and/or spreading of salt does not create a continuing duty to perform the function. See also *Frederick v. Professional Truck Driver Training School, Inc.*, 328 Ill. App. 3d 472, 479 (2002) (plaintiff's testimony established that on past occasions

defendant's employees had removed ice and snow from steps of training vehicles, but record was devoid of any evidence that defendant attempted to remove the ice and snow from steps of semi-truck used by plaintiff; without such evidence, we cannot conclude defendant assumed a duty to remove snow and ice from the vehicle's steps). Accordingly, we find that the trial court properly granted summary judgment in favor of defendant.

¶ 18 For the foregoing reasons, we affirm the judgment of the Circuit Court of Cook County.

¶ 19 Affirmed.