2015 IL App (2d) 140593-U
No. 2-14-0593
Order filed March 12, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

ROLAND BRONIATOWSKI, Plaintiff-Appellant, v. McGILL MANAGEMENT, INC., and SAVANNAH TOWNHOME OWNERS ASSOCIATION, Defendants-Appellees.	)	Appeal from the Circuit Court of Du Page County. No. 11-L-1352 Honorable Dorothy French Mallen, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted defendants summary judgment on plaintiff's negligence claim, as plaintiff provided no evidence that defendants (the owner and the manager of a townhome development) had contractually assumed the duty to salt common areas such as the one on which plaintiff slipped on ice.

¶ 2 Plaintiff, Roland Broniatowski, sued defendants, McGill Management, Inc. (McGill), and Savannah Townhome Owners Association (Savannah), for damages sustained when he slipped and fell on ice located on a common driveway that was owned by Savannah and managed by

McGill.[1] The trial court granted defendants' motion for summary judgment, finding that they owed plaintiff no duty to salt the common driveway. Plaintiff timely appealed. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Plaintiff testified at his deposition that he lived in a townhome owned by his mother, Lucy. Each townhome had a garage at the rear of the building that faced other garages across a common driveway. Each garage had a 20-foot driveway from its door to the common driveway. The common driveway led to the street. On January 17, 2011, the common driveway was free of snow and ice; however, that evening, freezing rain began to fall, and it eventually turned to snow. On the morning of January 18, plaintiff left around 4 a.m. to visit a friend. As he exited the garage, he saw a snow-removal company removing the snow that had fallen the night before. Plaintiff returned home sometime between 1 p.m. and 3 p.m. that day. There was no precipitation falling, the snow-removal company was gone, and the common driveway had been plowed. He parked his car in the garage and applied salt on his mother's driveway. According to plaintiff, at the beginning of winter, Savannah had given them a bag of salt to apply to their driveway after it was plowed. After applying the salt, plaintiff walked his dog on a leash along the common driveway. He walked about 100 to 150 feet from his garage. While walking, he did not feel ice or slip; however, as he approached the portion of the common driveway that met the sidewalk, he fell on ice.

¶ 5 Plaintiff's third amended complaint alleged that defendants owed plaintiff "a duty, contractual and/or voluntarily assumed, to perform snow & ice removal services, including salting and/or application of anti-slip substances." Plaintiff alleged that defendants were

[1] Plaintiff also sued Valerie M. Bruns Inc. (Bruns). However, the trial court subsequently dismissed Bruns with prejudice, and Bruns is not a party to this appeal.

negligent by (a) failing to remove the snow and/or ice; (b) failing to apply salt; (c) failing to inspect the area; (d) failing to notify the snow-removal company that services were needed; (e) failing to properly remove the snow and/or ice; (f) removing the snow and/or ice in a manner that created an unnatural accumulation of ice; (g) failing to warn plaintiff of the snow and/or ice; and (h) retaining an unqualified snow-removal company.

¶ 6 Defendants moved for summary judgment, arguing that it is well established that property owners (and property managers) do not owe a duty to remove natural accumulations of snow or ice. *Flight v. American Community Mgmt., Inc.*, 384 Ill. App. 3d 540, 544 (2008).

¶ 7 In response, plaintiff argued that defendants assumed a duty to salt the common area, where "(a) residents, through their association fees, paid for salting services to be done in addition to the snow removal services that they paid for; (b) defendants customarily applied salt after significant snow/ice storms; and (c) the resident relied on defendants to salt the common areas after significant snow/ice storms[.]" Plaintiff attached to his motion deposition testimony from Lucy, Carol Hoalt, and Melissa Khan and a copy of a document entitled "Savannah 2012 Proposed Budget."

¶ 8 Hoalt, a resident of the townhomes, testified that the common areas would be salted "[i]f needed" after being plowed. When asked if she expected the common areas to be salted if ice was present, she replied yes. Lucy testified that she was told that defendants would salt the common areas and that, on at least one occasion, defendants salted the common areas in response to Lucy's complaint that salting had not been done. She stated that it "[t]ook [a] little bit longer than [a] couple days." Khan, one of McGill's employees, testified that, as shown on the "Savannah 2012 Proposed Budget," a portion of the residents' association fees were allocated to "Salting, Snow/Salt Extras."

¶ 9 Following argument, the trial court granted defendants' motion for summary judgment. The court found that defendants owed no duty to remove natural accumulations of ice and that the fact that funds had been budgeted toward "Salting, Snow/Salt Extras" was insufficient to create such a duty. Plaintiff timely appealed.

¶ 10 II. ANALYSIS

¶ 11 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 2012). Where there is a dispute regarding a material fact, or where reasonable persons could draw divergent inferences from the undisputed material facts, summary judgment should be denied and the issue decided by the trier of fact. *Espinoza v. Elgin, Joliet and Eastern Railway Co.*, 165 Ill. 2d 107, 114 (1995). However, a "reasonable inference" sufficient to forestall summary judgment "cannot be established on mere speculation, guess or conjecture." *Salinas v. Werton*, 161 Ill.App.3d 510, 515 (1987). We review *de novo* the entry of summary judgment. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 12 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).

¶ 13 In the context of a duty to remove snow and ice, courts have found:

> "One is generally not liable for injuries caused by natural accumulations of ice or snow, and there is no duty to remove natural accumulations of ice or snow. [Citation.]

> However, a duty may arise on the part of the defendant-premises owner, if the defendant voluntarily undertook the task of removing natural accumulations of ice or snow and did so negligently or if the defendant was responsible for an unnatural accumulation of ice or snow. Liability will be imposed on a defendant where the plaintiff shows an injury that was caused by such an unnatural accumulation of ice or snow. [Citation.]" *Ordman v. Dacon Management Corp.*, 261 Ill. App. 3d 275, 279 (1994).

¶ 14 Here, although plaintiff alleged, *inter alia*, that defendants "[r]emoved the snow and/or ice *** in a manner that created an unnatural accumulation of ice," on appeal plaintiff makes no such argument. Instead, he contends only that defendants negligently "fail[ed] *** to perform a required duty." Accordingly, the question is whether defendants had a duty to salt the common areas.

¶ 15 Plaintiff concedes in his reply brief that "[defendants] probably do[] not have an automatic or absolute duty to ensure that [the] common areas are salted." Nevertheless, plaintiff maintains that defendants assumed a duty to salt the common areas. Plaintiff argues that, here, defendants' duty to apply salt arises from the fact that the residents "pay separate monies specifically for salting services." Thus, according to plaintiff "the salting service is no longer a gratuitous undertaking but rather is a 'contracted for' service."

¶ 16 As an initial matter, we note that, although plaintiff states multiple times in his argument that the residents "paid for salting services," he cites to nothing in the record to support this claim. For instance, at page 6 he states that the "residents, through their association fees, paid for salting services to be done" and that "the residents here *** paid additional monies for the separate and specific service of salting." At page 7, he states that "the residents paid money consideration for salting services." At page 8, he states that "the residents agreed to pay

additional (in addition to monies paid for snow removal services generally) monies specifically for salting services." None of these claims is supported by a record citation. Although below plaintiff relied on the 2012 budget, he makes no such argument in this court. Instead, he generally refers to "association fees." Given the above, we find that there is insufficient evidence to support plaintiff's claim that the residents were charged or paid a separate fee for salting.

¶ 17 Even if we were to consider the 2012 budget, we find that the budget is insufficient to raise a genuine issue of fact as to whether salting the common areas was a " 'contracted for' service." We find instructive *Schoondyke v. Heil, Heil, Smart & Golee, Inc.*, 89 Ill. App. 3d 640, 643 (1980), and *Tressler v. Winfield Village Cooperative, Inc.*, 134 Ill. App. 3d 578, 580 (1980). In *Schoondyke*, the court found that the defendant condominium association assumed a duty to remove snow "by their agreement with the unit owners as contained in the 'Declaration of Condominium' and 'Condominium By-Laws[.]' " *Schoondyke*, 89 Ill. App. 3d at 645. In *Tressler*, the court found that the defendant landlord assumed a duty to remove snow, based on representations contained in a handbook given to the plaintiff when she entered into a lease agreement with the defendant. *Tressler*, 134 Ill. App. 3d at 579. The handbook stated that the defendant would arrange for snow removal. *Id.* Here, unlike in *Schoondyke* and *Tressler*, a budget that allocates funds for "Salting, Snow/Salt Extras" is simply not evidence of any representation by defendants of a contractual duty to salt the common areas.

¶ 18 In *Ordman*, the sole case that plaintiff cites, the court said that "it is reasonable to assume that the tenants of the *** [a]partments paid for snow removal as an expense included in their rent payments." *Ordman*, 261 Ill. App. 3d at 281. Initially, we question whether an assumption, no matter how reasonable, can avert summary judgment. See *Salinas*, 161 Ill. App. 3d at 515 (a

"reasonable inference" sufficient to forestall summary judgment "cannot be established on mere speculation, guess or conjecture."). In any event, however, we reject the *Ordman* court's implication that a landlord's unilateral decision to spend a tenant's rent on snow removal creates a contractual duty to remove snow. See *Academy Chicago Publishers v. Cheever*, 144 Ill. 2d 24, 30 (1991) ("An enforceable contract must include a meeting of the minds or mutual assent as to the terms of the contract."). That said, we note again that plaintiff does not merely argue that the owners' payment of fees created a contractual duty; he argues that the owners paid "separate monies specifically for salting services." As noted, there is no support for that assertion.

¶ 19 We note that plaintiff makes no argument that defendants, either by the 2012 budget or by other means, *gratuitously* undertook the duty to salt the common areas. See Restatement (Second) of Torts § 323, at 135 (1965). Therefore, having found no evidence of a contractual duty, we affirm the trial court's summary judgment for defendants.

¶ 20 III. CONCLUSION

¶ 21 For the reasons stated, we affirm the order of the circuit court of Du Page County granting summary judgment for defendants.

¶ 22 Affirmed.