2016 IL App (2d) 150578-U
No. 2-15-0578
Order filed March 28, 2016



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| KAREN P. FUGETT and ROBERT FUGETT,<br><br>Plaintiffs-Appellants,<br><br>v.<br><br>ERNEST D. TOLLI, Individually and d/b/a Ernest D. Tolli, D.D.S., Ltd.,<br><br>Defendants and Counterplaintiffs and Third-Party Plaintiff-Appellants<br><br>(Beverly A. Tolli Trust Dated 2/11/98 By and Through Its Cotrustees Ernest D. Tolli and Beverly A. Tolli, Defendant and Counterplaintiff; Wayne Hummer Trust Company, N.A., f/k/a Wintrust Asset Management Company, N.A., as Trustee Pursuant to Trust Agreement 2702, Commonly Known as Trust No. LFT 1648, Defendants; Evan B. Goodman, Individually and d/b/a Evan B. Goodman, D.D.S., Ltd., Defendants and Counterdefendants and Third-Party Plaintiffs-Appellees; Horizon Bay Management, LLC, and Gray Enterprises, Inc., Third-Party Defendants). | ) | Appeal from the Circuit Court of Lake County.<br><br>No. 10-L-87<br><br>Honorable Jorge L. Ortiz, Judge, Presiding. |

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JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court did not err in granting summary judgment to defendant on the basis that, as a tenant in a commercial complex, his duty to provide safe ingress and egress to his patrons did not extend to physical maintenance of the common area side driveway. Additionally, defendant did not have a duty to warn this particular plaintiff of a dangerous condition in the common area in route to the business, because the record undisputedly established that she was already aware of the condition. Affirmed.

¶ 2 Plaintiffs, Karen and Robert Fugett, sued defendants, dentist Ernest D. Tolli (individually and as a business and the trust to whom the business paid rent) (collectively, Tolli, the landlord) and dentist Evan B. Goodman (individually and as a business) (collectively, Goodman, the tenant), after Karen slipped and fell in the parking lot while taking her charge to see Goodman. Goodman and Tolli filed claims for contribution against one another. Goodman obtained summary judgment against the Fugetts and against Tolli (as to Tolli's contribution claim against Goodman), where the trial court found, *inter alia*, that Goodman, as a tenant in the building, did not have a duty to clear the snow in the parking lot. Where Goodman had no duty, the Fugetts could not successfully recover from him, nor could Tolli seek contribution. The Fugetts and Tolli now join in appeal, challenging the trial court's duty determination. We agree with the trial court that Goodman's duty to provide his patrons with a reasonably safe means of ingress and egress did not extend to physical maintenance of the common area side driveway, which was the landlord's responsibility. Additionally, Goodman had a no duty to warn Karen of a dangerous condition in the common area *en route* to the business. The record undisputedly established that Karen was already aware of the condition. We affirm.

¶ 3 I. BACKGROUND

¶ 4 At this stage, we take as true those facts set forth in Karen's complaint and supporting record that have not been rebutted by the record. Karen testified in deposition that, as an employee of Horizon Bay Management, LLC (Horizon), she drove her charge, a disabled gentleman, to dentist Goodman. She first went into the clean, freshly salted front entrance, but Goodman's receptionist told her that the handicapped entrance was in the back of the building. She then headed toward the back of the building in her 16-seater bus, with her charge still seated in the bus. Ideally, she would have pulled alongside the back handicap entrance door and allowed her charge to exit the bus through a wheelchair lift. However, *she only made it to the side of the building*. On the drive along the side of the building, there were several inches of ice-like compacted snow with no asphalt showing through, as though "we had four storms and they cleaned the front of the building, but they pushed it all [off to the side and] [i]t was all packed down." Karen observed the snow on the ground, and she knew it to be below freezing outside. Karen could not turn the bus around the corner to the back of the building. A large snow pile, higher than the hood of her bus, and a dumpster infringed on the space available to navigate the bus around the final corner. She could not even see the back entrance area due to the mound of snow. She called Horizon to tell them about the snow, and they told her to see if she could (somehow) take her charge to the back entrance. She planned to exit the bus and walk to the back entrance herself, to see if it would be possible to push her charge there in a wheelchair. However, as soon as she stepped out of the bus, her foot landed on the compacted snow, and she slipped, fell, and suffered injury.

¶ 5 Tolli's receptionist, Sandra Leckman, testified in deposition that she had worked in the same building for Tolli for over 25 years. For all those years, both Tolli and Goodman, the only two businesses in the building, had utilized the same handicap entrance at the back of the

building. It is wheelchair-accessible. There had never been a complaint regarding accessibility. There was enough room for a Pace bus to pull past the back entrance doors and drop off patients. Approximately one patient per week used the back entrance. Tolli hired a company to plow the snow (Gray Enterprises, Inc. (Gray)), and there had never been a complaint. From time to time, Sandra would salt the back entrance. Each night, Sandra took the garbage out the back entrance. She never experienced or observed anything dangerous as she herself walked out the back entrance each day. However, she could not testify to the exact conditions on the day Karen slipped, because Sandra was not aware that Karen slipped until after Karen filed the lawsuit.

¶ 6 Goodman's receptionist, Julie Leckman (Sandra's sister), testified in deposition that she had worked in the same building for Goodman for over 25 years. She has never noticed ice near the back entrance, nor has she ever received a complaint about ice near the back entrance. She did not observe the back entrance on the morning of the incident.

¶ 7 Tolli testified in deposition that he purchased the building through a trust in 1986. His only employee was Sandra. Tolli agreed that approximately one patient per week used the back entrance. He had seen side-loading vans drop off patients without difficulty. Tolli himself would salt the back entrance from time to time. Additionally, he hired a company, Gray, to plow the larger area. For many years, Gray plowed each time there was more than an inch of snowfall. Tolli was pleased with Gray's work, and there had never been any complaints. Tolli had a policy of checking Gray's work to make sure that everything was clear. He was sure that the parking lot was clear the day before the incident, and, if there were any hazards that day, he would have taken corrective action. Tolli leased space in his building to Goodman. Per their lease, Goodman did not have a responsibility to maintain the outside of the building. The lease stated, *inter alia*:

"Lessor will cause the halls, corridors[,] and other parts of the building adjacent to the premises to be lighted, cleaned[,] and generally cared for, accidents and unavoidable delays excepted.

* * *

1. Tenants cannot place signage inside or outside the building without landlord approval.

* * *

5. No persons other than the janitor of the building can take care of the premises or building ***.

* * *

12. Lessor reserves the right to make changes in the rules and regulations for the safety, care[,] and cleanliness of the premises."

¶ 8 Goodman testified in deposition consistent with Tolli regarding maintenance responsibilities and the frequency of back entrance use. Goodman knew that suburban utility vehicles, large vans, and side-loading vehicles used the back entrance. He was not aware of any vehicle that would have been too big for the area. On the morning of the incident, Goodman arrived at work at 5 a.m. The parking lot was plowed. The plowing company pushed the snow off to the side. Goodman could not testify to the condition of the back entrance on that day. However, Goodman has been renting the building from Tolli for over 25 years, and he has never had any knowledge of snow or ice near the back entrance or on the back driveway.

¶ 9 The Fugetts sued Goodman, alleging, *inter alia*, that he breached a duty to provide safe ingress and egress to his business (by making sure it was clear of snow and ice). The Fugetts

also sued Tolli, alleging, *inter alia*, that, as owner of the building, he breached a duty to clear the snow.

¶ 10 A series of third-party suits then arose. Tolli sued Goodman for contribution, should the court ultimately rule against him. Goodman sued Tolli for contribution, should the court ultimately rule against him. Tolli and Goodman each sued Karen's employer, Horizon, and the company hired to plow the snow, Gray, for contribution, should the court ultimately rule against them. Horizon filed a motion for summary judgment, arguing that it breached no duty of care. However, the trial court ordered that Horizon remain part of the suit, finding that it arguably breached a duty of care to Karen by telling her to proceed with a dangerous situation.

¶ 11 Goodman moved for summary judgment against both the Fugetts and Tolli (as to Tolli's claim for contribution), arguing, *inter alia*, that he, Goodman, had no duty to Karen. In October 2013, the trial court granted the motions, agreeing that, as the tenant in the building, Goodman did not have a duty to clear the snow. The court further found that, even if Goodman did breach a duty, that breach did not proximately cause Karen's injuries.

¶ 12 In December 2013, the trial court denied the Fugetts' motion to reconsider. It expressly stated that it would *not* grant Rule 304(a) language so as to make Goodman's summary judgment final and appealable.

¶ 13 In April 2014, the Fugetts voluntarily dismissed their suit against Tolli in an agreed order, with leave to refile within one year. 735 ILCS 5/2-1009 (West 2014). However, nothing in the record indicated that Tolli took action at that time to dismiss *his* pending suits against Horizon and Gray.

¶ 14 In May 2014, the Fugetts appealed the trial court's grant of summary judgment to Goodman. However, as set forth in *Fugett v. Tolli*, 2015 IL App (2d) 140496-U, ¶ 15, the appeal

was premature. We explained that section 2-1009(d) of the Code of Civil Procedure expressly states that a voluntary dismissal under subsection (a) of that Section does *not* dismiss a pending counterclaim or a third party complaint. *Id.* ¶ 13 (citing 735 ILCS 5/2-1009(d) (West 2010)). Thus, Tolli's claims against third-party defendants Horizon and Gray remained pending. *Id.* ¶ 14. Therefore, absent a resolution of the pending claims, or an Illinois Supreme Court Rule 304(a) finding (Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010)), the appeal was premature. *Id.* ¶ 15.

¶ 15 On remand, Tolli voluntarily dismissed his pending claims against the third-party defendants Horizon and Gray. Thus, the trial court's grant of summary judgment to Goodman is now ripe for appeal. Tolli joins the Fugetts in this appeal.

¶ 16 II. ANALYSIS

¶ 17 On appeal, appellants argue that the trial court erred in granting summary judgment to Goodman based on its legal determination that Goodman, as a business tenant, did not owe Karen a duty. Summary judgment is proper where there is no genuine issue of material fact and judgment may be granted as a matter of law. *Mitchell v. Jewel Food Stores*, 142 Ill. 2d 152, 165 (1990). The court must construe all pleadings, depositions, affidavits, and admissions strictly against the movant. *Id.* Where other facts are not in dispute, resolving the issues as a matter of law may be suitable for summary judgment. *Williams v. Prudential Property and Casualty Insurance*, 223 Ill. App. 3d 654, 658 (1992). An appellate court reviews summary judgment orders *de novo*. *Schulenburg v. Rexnord, Inc.*, 254 Ill. App. 3d 445, 449 (1993).

¶ 18 Appellants contend that Goodman's common-law duty to provide a reasonably safe means of ingress and egress to his business extended to the common area of the side drive where Karen slipped. The question of Goodman's duty in this case involves the intersection of two general rules concerning duty: (1) when a plaintiff is injured on a common area of a commercial

property area, the duty is owed by the landlord and not the individual business tenant (*Simmons v. Columbus Venetian Stevens Buildings*, 20 Ill. App. 2d 1, 24 (1959)); and (2) a business, regardless of whether it owns the premises, has a duty to provide a reasonably safe means of ingress and egress to its business (*Bloom v. Bistro Restaurant Ltd. Partnership*, 304 Ill. App. 3d 707, 712 (1999)). If the undisputed facts in this case fell neatly into one rule or the other, a resolution of the duty question would be clear. Here, however, the area where Karen slipped is both a common area of a commercial property and part of the ingress route to the business, and, thus, both rules are implicated.

¶ 19 The parties each set forth cases involving the intersection of the two general rules concerning duty, the most helpful of which are *Bloom*, set forth by appellants, and *Hougan v. Ulta Salon, Cosmetics and Fragrance, Inc*., 2013 IL App (2d) 130270, set forth by Goodman. As will be set forth in more detail below, these cases show us that, *generally*, unless the business has commandeered the area for its exclusive use, has undertaken care of the area, or has pushed its patron out into a known dangerous condition, the business does not have a duty to physically care for or make physical changes to the common area some distance away from the threshold of the business. Under certain circumstances, however, the business may have a less onerous duty to warn patrons of a dangerous condition of which the patron is not already aware. After discussing general duty principles, we address *Bloom* and *Hougan* in turn, and we determine that *Hougan* controls this case. Goodman's duty to Karen did not extend to the common area of the side drive where Karen slipped.

¶ 20 A. General Duty Principles

¶ 21 To prevail on a negligence action, the plaintiff must plead and prove: (1) the defendant owed the plaintiff a duty; (2) the defendant breached that duty; and (3) the breach proximately

caused plaintiff's injury. *Hougan*, 2013 IL App (2d) 130270, ¶ 20. Typically, whether the defendant owes the plaintiff a duty of care under a particular set of circumstances is a matter of law for the court to decide. *Id*. The question of whether a duty exists turns in large part on policy considerations, such as: (1) the reasonable foreseeability of the injury; (2) the likelihood of injury; (3) the magnitude of the burden of guarding against the injury; and (4) the consequences of placing that burden on the defendant. *Marshall v. Burger King Corp*., 222 Ill. 2d 422, 433 (2006). If there is no duty, the analysis ends, as the plaintiff cannot recover. *Hougan*, 2013 IL App (2d) 130270, ¶ 20. If there is a duty, breach and proximate cause must be considered. *Id*. Typically, duty is a question of law appropriate for determination at summary judgment, while breach and proximate cause are questions of fact that must be tried, unless there is no material question of fact regarding those issues. *Id*.

¶ 22 A defendant's duty to a plaintiff is rooted in the nature of their relationship. *Hougan*, 2013 IL App (2d) 130270, ¶ 21. "The court must determine whether the plaintiff and the defendant stood in such a relationship that the law imposed upon the defendant an obligation of reasonable conduct for the plaintiff's benefit." *Id*. Certain special relationships, such as that between a business and its invitees, give rise to an affirmative duty to protect against an unreasonable risk of physical harm. *Id*. ¶ 22. Thus, it is generally accepted that businesses have a common-law duty to provide a reasonably safe means of ingress and egress into the business. *Id*. The duty to provide a safe ingress and egress does not necessarily end at the threshold of the business. *Hougan*, 2013 IL App (2d) 130270, ¶ 31.

¶ 23 B. *Bloom*

¶ 24 In *Bloom*, the plaintiff dined at a restaurant located on the first floor of a high-rise building. While waiting for her valet under the canopy immediately outside the restaurant, she

was hit by falling ice that fell through the canopy covering the entrance. The plaintiff sued both the building owner and the restaurant tenant. The trial court granted summary judgment to both defendants; the appellate court reversed. *Bloom*, 304 Ill. App. 3d at 707.

¶ 25 As to the restaurant, it held that, *even though the restaurant did not own or possess the section of the building from which the ice fell*, it did owe its patrons a duty to provide a safe means of ingress or egress. *Id.* at 712. The court noted that, to survive summary judgment, the plaintiff must provide *some* evidence that the restaurant had actual or constructive knowledge of the alleged defect and failed to take a "reasonable precaution" to avoid injury to its patrons. *Id*. The court held that the knowledge element was satisfied for the purposes of summary judgment, because the general manager had testified in deposition that, in the five-plus years she had been at the restaurant, she received approximately six complaints about snow or falling ice around the canopy area where the plaintiff was injured. *Id*. After determining that the restaurant owner had a duty to provide safe ingress and egress into the business, and, arguably, had knowledge of a situation stemming from an adjacent part of the building that could impact the canopy area, the court reversed the grant of summary judgment and remanded the case. *Id*.

¶ 26 C. *Hougan*

¶ 27 In *Hougan*, the plaintiff shopped at the defendant Ulta's cosmetic store in a strip mall. Because it was raining, the plaintiff waited under a canopy in front of the store entrance on a sidewalk. The sidewalk was approximately eight feet wide. Parking spaces lined up perpendicular to the sidewalk. The parking spaces were separated from the sidewalk by a five-inch curb. While the plaintiff stood under the canopy, a driver attempted to pull into one of the parking spaces but panicked and hit the accelerator, causing the car to continue over the curb, hitting the plaintiff. The plaintiff filed a tort complaint, arguing that Ulta had breached its duty

to provide its business invitees with a reasonably safe means of ingress and egress. The plaintiff contended that a car jumping a curb due to pedal error was relatively common and, thus, a foreseeable occurrence. In the plaintiff's view, Ulta should have taken reasonable preventative measures, such as the installation of an inexpensive bollard barrier. Ulta moved for summary judgment, and the trial court granted the motion. *Hougan*, 2013 IL App (2d) 130270, ¶ 1.

¶ 28 This court affirmed. *Id*. We acknowledged that Ulta had a common-law duty to provide its customers with a reasonably safe means of ingress and egress, that an ingress and egress zone does not automatically stop at the threshold, and that a patron had to walk across the common area where the accident occurred in order to enter the store. *Id*. ¶ 31. We further acknowledged that, in some cases, there could be coextensive duties over the common area owed by both the landlord (to maintain the premises) and by the business (to take reasonable precautions to ensure safe ingress and egress). *Id*. ¶ 40.

¶ 29 However, we explained that the ultimate determination of whether a duty is owed can be influenced by the terms of the lease. *Id*. While a business cannot use a lease between itself and a landlord to exempt itself from all common-law duties owed to third-party patrons to take reasonable precautions to ensure safe ingress and egress, the terms of the lease may inform the boundaries of what duty is owed by the business. *Id*. ("Ulta is not relying on the lease to attempt to create an exception to a duty to [the plaintiff] while she stood on the sidewalk, but rather the terms of the lease are relevant to determining whether there was such a duty in the first place.") The terms of the lease that assigned the landlord control over the common area were "relevant" to the question of whether the tenant Ulta had a duty to make changes to the common area, because a person's duty can "extend no further than the person's right, power, and authority to implement it." *Id.* (quoting *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 47 (2013)).

Ulta's lease assigned total physical control of the area to the landlord. *Id*. ¶ 8. We noted that Ulta did not commandeer the common area for its exclusive use, take affirmative steps to care for the area despite the lease terms, or push a patron out into a known dangerous area. *Id*. ¶ 44. Thus, we concluded that Ulta did not have a duty to make physical changes to the parking design or to ensure that such changes be made. *Id*.

¶ 30 Having determined that Ulta's duty to ensure safe egress did not include a duty to make physical changes to the common area portion of the egress route, we then considered whether Ulta's duty included a less onerous duty to warn. *Id*. ¶ 41. The plaintiff had testified in deposition that, prior to the accident, she remarked both to her husband and to a store clerk that it was dangerous for cars to be able to drive so close to the store's entrance. *Id*. We noted that, generally, there is no duty to warn against possible consequences of which a person is already aware. *Id*. Knowledge of a danger is equivalent to notice, and no one needs notice of that which he already knows. *Id*. Thus, we held that Ulta did not have a duty to warn, because the record established that the plaintiff already knew of the dangerous condition. *Id*.

¶ 31 D. The Instant Case

¶ 32 Here, appellants never say what, exactly, Goodman should have done to make the common area side drive safer.[1] As in *Hougan*, we divide Goodman's potential duties into physical duties and warning duties.

[1] She did suggest that Goodman build a wheelchair ramp for the front entrance or buy or design his own new building. These changes do not concern the area where Karen slipped and fell. Additionally, they so far exceed the bounds of *reasonable* precautions the case law has placed upon a tenant business, that we must reject them. This is not a case, as in *Johnson v. Abbott Laboratories, Inc*., 238 Ill. App. 3d 898 (1992), where the business also owned the

¶ 33 Physically, appellants complain that the compacted snow on the ground was slippery and that the high snow piles, in combination with a dumpster, made it difficult to turn the vehicle around the building. Thus, we consider whether Goodman had a duty to salt the area of compacted snow or clear the snow piles in the common-area driveway. In our view, neither of these actions by Goodman would constitute "reasonable precautions" against injury to his patrons. Requiring Goodman to salt the *entire* commercial premises each winter day exceeds the bounds of reasonableness *for a tenant*. This is different than salting the threshold of one's business door. Similarly, the snow piles were on a different side of the building from the threshold of Goodman's back door. The terms of Goodman's lease dictated that the landlord would be responsible for maintenance and care of the common areas, which, Tolli acknowledges, includes snow plowing. Like the tenant in *Hougan*, there is no indication in the record that Goodman ever commandeered the area in question for his exclusive use, took affirmative steps to care for the area despite the lease terms, or pushed his patrons out into a known dangerous area. Even in *Bloom*, where the court held that the restaurant had a duty to take "reasonable precautions" against icicles forming on a portion of the building it did not control or possess, the court did not impose on the restaurant a duty to physically remove the icicles itself. Rather, it was because the restaurant took *no* precautions, not even warning despite notice, that the court denied the restaurant's motion for summary judgment.

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premises and, thus, was charged with constructing a safe and well-lit route extending far from the threshold. Rather, as in *Hougan*, the lease in this case assigned total physical control of the area to the landlord. In any event, the latter suggestion that Goodman move out and buy and design his own building does not recognize the legitimacy of a business tenancy.

¶ 34 Our determination that Goodman did not have a duty to take a physical precaution against the snowy conditions in the common area drive is consistent with the four policy considerations informing the existence of a duty: foreseeability of injury, likelihood of injury, burden of guarding against the injury, and the consequences of placing that burden on the defendant. As to foreseeability, Goodman could not reasonably expect that a patron would exit her vehicle in the driveway or alleyway portion of the parking lot, meant for moving vehicles. He had no reason to think that Karen would exit her vehicle at that location; he did not expel her from her vehicle into a known dangerous condition. Unlike *Bloom*, where the business knew of falling icicles, Goodman testified in deposition that he knew large vehicles frequently made the turn without incident. As to the likelihood of injury, a patron would not be likely to get injured by slipping on a portion of a driveway typically used for vehicles, not pedestrians. As to the magnitude of the burden of guarding against the injury, we cannot support a policy requiring a tenant business to extend physical care, here, snow removal and salting, to common areas typically used by vehicles and far from the business door. In any case, compacted snow on winter roadways is a common sight and, indeed, one which Karen observed. This common winter condition is very different than the icicles in *Bloom*, which were likely obscured from patrons' view by an overhead canopy at the threshold of the business. Placing a burden on the tenant business to take physical precautions against the widespread snowy conditions in the common area drive would unduly extend the current limits of a tenant business's duty to its patrons as set forth in *Bloom* and *Hougan*.

¶ 35 We next consider whether Goodman had a duty to warn Karen of the snowy conditions in the common area drive. We determine that he did not, because the record undisputedly establishes that Karen herself was aware of the dangerous condition. She saw the piles of snow

reaching to the top of the hood of her vehicle. She called her employer to inform them of the dangerous condition. According to Karen, her employer told her to exit the vehicle and investigate whether she might nevertheless be able to get her charge to the door. She saw compacted snow on the ground, and she chose to step down. As in *Hougan*, where the plaintiff already knows the common area in route to the business has a dangerous element, the business does not have a duty to warn. *Hougan*, 2013 IL App (2d) 130270, ¶ 41.

¶ 36 This case is unlike *Bloom*, where a strong case can be made for the restaurant's duty to warn. There, the plaintiff was likely prevented by the canopy from seeing the icicles for herself, the restaurant had knowledge that the ice had previously fallen outside the door of its restaurant, and the restaurant encouraged people to stand under the icicles to wait for the valet. In *Bloom*, the restaurant was on notice of the falling ice and had a duty to warn the patrons of the icicles, or, at a minimum, *not* virtually direct its patrons to stand right under them while waiting for the valet. In short, the circumstances of *Bloom* called for the restaurant to do something rather than nothing.

¶ 37 Although Karen argues that Goodman's receptionist *told* her to use the back entrance, this does not mean that Goodman pushed Karen into a dangerous condition. Karen chose to exit her vehicle at the *side* of the building to investigate the area at the direction of her employer. Karen was injured at the side of the building. Karen never testified to the conditions at the back entrance, the area where Goodman's receptionist directed her to go, and the area most obviously thought of as the ingress zone to Goodman's business. Because Karen never made it to the back entrance, much of the deposition testimony concerning the parties' uncertainty of the condition of the back entrance upon which Karen relies is irrelevant. It is unfortunate that Karen chose to proceed on foot into a dangerous condition and, subsequently, slipped and fell. But, we are

charged with determining who had a duty to guard against that occurrence, and we cannot find it to be Goodman.

¶ 38 Because Goodman had no duty to address the snowy conditions on the side of the building, we need not consider whether the snowy conditions were natural or unnatural accumulations. That issue speaks to the landlord's liability, not Goodman's. See, *e.g.*, *McLean v. Rockford Country Club*, 352 Ill. App. 3d 229, 236 (2004). Similarly, we need not reach the issues of breach or proximate cause. We appreciate the cautionary language in *Marshall*, 222 Ill. 2d at 443, that courts must be careful not to conflate concepts of duty and breach of that duty. The instant case does not call upon us to mark that line. Even if we look at this case as whether Goodman breached a *general* duty of care, rather than look at this case, as we have, as whether Goodman's general duty of care *included* addressing the snowy conditions or warning Karen, there would be no issue of material fact. It is undisputed that Goodman is a tenant, the side area where Karen slipped and fell is part of a common drive under the landlord's control far from the door, the drive was intended for vehicles, and Karen herself was aware of the snowy conditions.

¶ 39 III. CONCLUSION

¶ 40 For the aforementioned reasons, we affirm the trial court's judgment.

¶ 41 Affirmed.