

Pennsylvania Superior Court Affirms That Out-of-Possession Landlord May Shift Premises Liability to Tenant, If Done Properly

In a recent unpublished opinion, *Mills v. Gubbio's LLC*, 2016 Pa. Super. Unpub. LEXIS 2240 (Pa. Super. Ct. 2016), the Pennsylvania Superior Court affirmed Lackawanna County Court of Common Pleas Judge Nealon's order granting summary judgment in favor of an out-of-possession landlord. In doing so, the Court found that there were no exceptions to the general rule that an out-of-possession landlord is not liable for injuries to individuals while on the leased premises.

In *Mills*, the plaintiff allegedly slipped and fell on snow and ice on the sidewalk located in front of Gubbio's restaurant, which was being leased from the defendant-landlord. The Court noted that the general rule is that an out-of-possession landlord is not liable for injuries to individuals while on the leased premises. The evidence of record established that the lease required the tenant to perform snow removal and this was confirmed by deposition testimony of the tenant. The plaintiff argued that the "reserved control" and "public use" exceptions to the general rule applied in this case, thereby creating liability for the landlord.

The "reserved control" exception to the general rule applies when "the landlord retains control of a part of the leased premises, which is necessary to the safe use of the leased portion, he is liable to the lessee and others lawfully on the premises for physical harm caused by a dangerous condition existing upon that part over which he retains control, if by the exercise of reasonable care he could have discovered the condition and the risk involved, and made the condition safe." The Court found that the reserved control exception did not apply where the lease agreement charged the tenant to perform snow removal on the sidewalks. The fact that this was a multi-tenant building did not mean that defendant-landlord retained any control over the sidewalk in question, contrary to the plaintiff's argument.

The "public use" exception to the general rule applies when a landlord leases a property for public admission, but fails to inspect for and repair dangerous conditions on the property before commencement of the lease. The plaintiff argued that the public use exception applied where the plaintiff alleged that he fell on "black ice" from snow that had melted onto the sidewalk and refroze. The Court rejected the plaintiff's argument and stated that there was no evidence of record that any alleged defect in the sidewalk existed prior to the commencement of the lease, more than 18 months before the plaintiff's alleged fall.

Comment: The Superior Court continues to recognize the general rule that an out-of-possession landlord is not liable for injuries to third persons on a leased property. However, for a landlord to ensure that liability is limited or severed, he or she must unequivocally and contractually shift duties such as snow removal and maintenance to tenants. Additionally, the landlord must thoroughly inspect and repair property prior to the tenant taking possession, especially where the public will be admitted to the site.

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