

Landowners May Delegate Snow Removal Duties on Commercial Property to Tenants

For nearly forty years, New Jersey courts have recognized that commercial landowners have a non-delegable duty to maintain public sidewalks abutting their properties for pedestrians. However, in *Shields v. Ramslee Motors*, 2020 N.J. LEXIS 17 (N.J. 2020), the New Jersey Supreme Court recently ruled that an owner of commercial property could delegate its duties to maintain private portions of the premises, such as a driveway, through a lease agreement. *Shields* involved a Plaintiff who was injured when he slipped and fell on snow and ice on a driveway while delivering a package at the premises. Plaintiff then brought suit against both the landowner and tenant of the premises.

To determine whether the landowner could delegate maintenance of the driveway to the tenant, the Supreme Court first examined the lease. It noted that the landowner assigned responsibility for maintenance and repair of the premises to the tenant "as if it were the de-facto owner of the leased premises." The Court found that under this provision, the tenant exercised exclusive control over the driveway and had undertaken the responsibility to clear snow and ice from the driveway. Moreover, the Court observed that the lease limited the landlord's right to enter the premises to make repairs necessary for the safety and preservation of the premises.

After examining the lease, the Court then evaluated control and the four fairness factors outlined in *Hopkins v. Fox & Lazo Realtors*, 132 N.J. 426, (1993). As to control, the Court found the terms of the lease and the tenant's actions in maintaining the premises showed that only the tenant exercised control over the driveway at the time of the accident. Additionally, the Court examined the Hopkins factors as follows:

1. **Relationship of the Parties**: Since the plaintiff and the landowner did not have a direct relationship, and visitors to the premises had no reason to know that the tenant was not the owner, this factor weighed against the imposition of a duty.
2. **Nature of the Attendant Risk**: Since snow and ice are only transient conditions, it would not be fair to impose a duty to remove these conditions upon a commercial landowner who did not exercise daily control over the premises.
3. **Opportunity and Ability to Exercise Care**: Since the landowner did not maintain a presence on the premises and did not have access to information about the condition of the premises, this factor also weighed against imposing a duty.
4. **Public Interest in the Proposed Solution**: Since an injured party could seek redress from the tenant, imposing a duty on the landowner did not serve a public interest.

Comment: Many commercial landowners enter into lease agreements with similar maintenance provisions as the one at issue in *Shields*. The Supreme Court's ruling respects the agreement of two contracting parties by ruling that a landowner who has relinquished control of a commercial premises to a tenant may delegate responsibility for maintaining private portions of the premises. However, this decision may not absolve a landowner from all maintenance responsibilities. Less temporary conditions, such as the formation of sinkholes or inadequate lighting, may still fall under a commercial landowner's purview, despite the terms outlined in a lease.

For now, the Supreme Court has taken a clear step to uphold the agreement of contracting parties, thereby shielding landowners from responsibility for transient conditions, such as the formation of snow and ice, on private portions of commercial premises over which the tenant exercises control.