

Watch Out for the Exceptions as the New Jersey Supreme Courts Adopts the “On-Going Storm Rule”

The Supreme Court of New Jersey has recently formally adopted, as the law of the land for New Jersey, the “ongoing storm rule” as a valid defense for commercial landowners. As a result, in New Jersey, a commercial landowner does not have a duty to remove the accumulation of snow and ice until the conclusion of a storm absent two exceptions: 1) if the owner’s conduct increases the risk; or 2) the danger is pre-existing.

In Pareja v. Princeton, 2021 WL2371260 (2021), the plaintiff slipped and fell on black ice in the defendant’s commercial landlord’s parking lot during a winter event described by the plaintiff as “drizzling sleet”. The Appellate Court reversed the trial court’s issuance of Summary Judgment. Its rationale for rejecting the ongoing-storm defense was that it arbitrarily relieves commercial landowners from any obligation to render their property safe while sleet or snow is falling and that such a “bright-line rule” ignores situations when it is reasonable for a commercial landowner to remove or reduce foreseeable and known snow or ice hazards, during the weather event.

The New Jersey Supreme Court disagreed and reversed the Appellate Court ruling. In so holding, the Court recognized that not all commercial landowners are created equal and that while larger companies may have the capacity and resources to continuously remediate an ongoing storm, smaller corporations are less able to do so. Therefore, the Court declined to impose a duty that cannot be adhered to by all commercial landlords. The Court took the view that the ongoing storm rule is the more practical approach because it is categorically inexpedient and impractical to remove or reduce hazards from snow and ice while precipitation is ongoing. As a result, the trial court’s Summary Judgment ruling in favor of the defendant was reinstated.

Comment: The ruling by the New Jersey Supreme Court is a significant development for defending premise liability cases that establishes a more expansive pathway for Summary Judgment under certain fact patterns. Notably, in writing for the dissent, Justice Albin expresses concerns that the effect of the majority ruling insulates a commercial landlord from liability even for circumstances where the precipitation is insignificant such as in Pareja. That said, the New Jersey Supreme Court ruling establishes exceptions to the ongoing storm rule that will be an invitation for further litigation on the subject matter. For instance, a commercial landowner will still be liable where the risk pre-existed the storm, such as where the landowner neglected to remove snow from a prior storm.

In addition, a commercial landowner may still be liable in “unusual circumstances” such as where the landowner’s actions increase the risk of harm to pedestrians and invitees on its property. An example cited in the majority opinion is where a defendant actively increased the risk of harm by placing the plaintiff’s vehicle so far distant and then directing her to make the long trip over icy treacherous terrain. While the Pareja ruling certainly favors commercial landowners, we should expect that the parameters of the ongoing storm rule will continue to evolve as the noted exceptions, as well as the concerns expressed by Justice Albin in his dissent, are tested by the plaintiffs’ bar.