FOURTH DISTRICT APPELLATE COURT UPHOLDS THE NATURAL ACCUMULATION DEFENSE TO SLIP-AND-FALL CLAIM

In 2007, the Fourth District of the Illinois Appellate Court issued a Supreme Court Rule 23 Opinion entitled *Krzyszton v. Hamelberg*, docket # 4-07-0988. This opinion upheld Champaign County Circuit Court Judge Jeffrey Ford's grant of summary judgment in favor of our client, a landlord and against the plaintiff who resided at the apartment complex.

Here, we represented Dan Hamelberg, the principal of a firm that owned a number of apartment complexes in the City of Champaign. The Plaintiff alleged that she suffered a severely fractured arm when she slipped on ice-and-snow covered stairs leading from her apartment. The evidence showed that the partially-covered stairs at her apartment down which she fell had snow in the corners of each of them and ice on the one on which she fell. However, there was no evidence as to what caused the snow piles or caused ice to form in the center of the stairs, where she slipped and fell. Moreover, the Plaintiff admitted that she had no firsthand knowledge of where the ice came from or how it developed.

During the discovery phase of the litigation, we secured weather records indicating not only the amounts of snow that had fallen, but also that the temperatures were not above freezing between the day of the most recent snow before the fall and the day of the fall. We also deposed each post-occurrence witness named by the plaintiff, all of whom were her roommates, to confirm that they did not know the source of the ice upon which the plaintiff slipped

We prepared and argued a motion for summary judgment before Judge Jeffrey Ford. We argues that there was no issue of material fact that the ice the plaintiff encountered when she fell down the stairs and broke her arm was a natural accumulation of same. As a result, there could be no liability for our client. Judge Ford agreed and entered judgment in our favor and against the Plaintiff.

The Fourth District upheld Judge Ford and re-applied the rule of law that a property owner has no duty to remove a natural accumulation of ice and snow. It added that a property owner that does remove snow or ice must do so in such a manner so as to not cause it to accumulate artificially or in a manner that does not aggravate a natural condition.

Here, the allegations of the Plaintiff's complaint, and the arguments in her brief at both the trial and appellate court levels, showed that the Plaintiff could provide nothing more than speculation as to how the snow piles caused the ice to form and that could not form the basis of liability against the landowner.

This case is instructive in that it shows that an attorney who knows which types of accumulations of ice and snow which are and which are not actionable can instruct his client early in the litigation as to what to expect during litigation. This allows the client the ability to make an offer to try to exit the case early via settlement, or allows the client to budget for

defense costs after the practitioner advises the client as to what discovery will be needed before the case is in a posture for summary judgment.

Please contact Scott Gillman of Condon & Cook, LLC, who can answer any questions you may have about this appellate decision.