Superior Court of New Jersey

Appellate Division

Docket No. A-001889-24

JUAN MANUEL ARCE CALYECA, *Plaintiff-Appellant,* vs. HYUNYOON JUNG, *Defendant,* GALAXY TOWERS CONDOMINIUM ASSOCIATION, *Defendant-Respondent,* CALI CARTING INC., JOHN DOE 1-10 (fictitious unidentified individuals presently unidentifiable), and ABC CORP. 1-10, (fictitious corporations or other business entities presently unidentifiable), *Defendants.*	CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MIDDLESEX COUNTY DOCKET NO.: MID-L-7795-19 Sat Below: HON. DANIEL H. BROWN, J.S.C.

BRIEF FOR PLAINTIFF-APPELLANT

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Date Submitted: June 23, 2025

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PROCEDURAL HISTORY

Plaintiff filed a Complaint against defendants Hyunyoon Jung (hereinafter "Jung") and Galaxy Towers Condominium Association (hereinafter "Galaxy") on November 18, 2019 asserting negligence-based claims. (Pa32-Pa42). Defendant Galaxy filed an Answer on January 13, 2020. (Pa45-Pa57). Defendant Jung filed an Answer on January 27, 2020. (Pa59-Pa67). Plaintiff filed an Amended Complaint on June 17, 2021 naming Cali Carting (hereinafter "Cali") as a defendant. (Pa71-Pa80). Defendant Cali filed an Answer on July 1, 2021. (Pa87-Pa97). Galaxy filed an Amended Answer on July 1, 2021. (Pa99-Pa113). Galaxy substituted its attorney on February 2, 2022. (Pa114-Pa115).

Defendant Galaxy moved for summary judgment on April 29, 2022. (Pa116-Pa225) Plaintiff filed opposition on May 17, 2022. (Pa226-Pa539) Defendant Galaxy filed a reply brief on May 23, 2022. (Pa540-Pa561) The trial court granted the summary judgment motion on May 27, 2022. (Pa1-Pa2) (1T)[1] Plaintiff filed a motion to reconsider the summary judgment order on June 14, 2022. (Pa562-Pa576) Galaxy filed an opposition on June 30, 2022. (Pa577-Pa580). The trial court denied the motion to reconsider on July 28, 2022. (Pa3-Pa4) (2T)[2]

[1] 1T refers to the Motion Transcript, dated May 27, 2022
[2] 2T refers to the Motion Transcript, dated July 28, 2022

Plaintiff moved for an interlocutory appeal on August 17, 2022. Plaintiff moved to stay the underlying matter to permit an interlocutory appeal on August 19, 2022 which was granted on September 9, 2022. Defendant Jung moved to deposit the entirety of his insurance funds with the trial court September 1, 2022 which was granted on September 23, 2022. The Appellate Court advised plaintiff on September 15, 2022 that his interlocutory appeal was to be dismissed for failure to provide sufficient justification to permit piecemeal litigation. (Pa581). Plaintiff filed a motion *in limine* on May 3, 2023 requesting the trial court again reconsider its May 27, 2022 summary judgment order. (Pa582-Pa618). That motion *in limine* was denied on March 1, 2024. (Pa5-Pa10).

Plaintiff then moved to appeal on April 12, 2024 which was dismissed without prejudice due to lack of finality with respect to the remaining Jung defendant. (Pa622-Pa623). On November 6, 2024 the parties entered into consent order with the trial court and same was certified by the trust fund unit. (Pa624-Pa625). A stipulation of dismissal with prejudice was entered into between plaintiff and defendant Jung on February 27, 2025. (Pa627) A stipulation of dismissal with prejudice was entered into between plaintiff and defendant Cali on March 5, 2025. (Pa628-Pa629) Plaintiff then filed a notice of appeal on April 2, 2025 which was accepted.

FACTUAL BACKGROUND

This matter arises out of a vehicular accident that occurred on May 2, 2019, at approximately 11:10 p.m. Plaintiff was in the course of his employment with Cali Carting ("Cali"), and was at the Galaxy Towers ("Galaxy") service entrance on River Road, which was approximately 100 feet north of Ferry Road. At the aforesaid time and location, plaintiff was in the process of emptying dumpsters into the Cali Carting garbage truck that was parked at the curb directly outside the service entrance. At the aforesaid time and location, the vehicle operated by Defendant Hyunyoon Jung struck Plaintiff as he was in the process of emptying a dumpster into the garbage truck. Plaintiff's Written Discovery Responses, Form A #2 (Pa248); Police Report (Pa260-Pa275); Galaxy Towers Loss Control Evaluation and November 2018 Management Agreement (Pa324-Pa347); Cali's Written Discovery Responses and Scene of Accident Photographs Produced by Cali; (Pa348-Pa359); Galaxy Tower 2 Video (Pa375).

As a result of the accident, Plaintiff sustained the following injuries and underwent the following surgeries: Grade III open fractures of the right and left tibia and fibula with vascular injury; May 3, 2019 open reduction and internal fixation of the right tibia and fibula; May 3, 2019 left leg amputation above the knee; May 7, 2019 removal of external fixator at the right tibia and calcaneus

with injection of the right leg .5% Marcaine, irrigation and debridement of the bone and soft tissue with application of a bone stimulator; May 8, 2019 right leg debridement and muscle flap reconstruction; May 14, 2019 right leg debridement and muscle flap reconstruction and open reduction and internal fixation with implantation of antibiotic cement spacer and skin graft; May 21, 2019 right leg split thickness skin grafts; October 10, 2019 bone graft and complex repair of the right leg; osteomyelitis and acute embolism and thrombosis of the right leg; L3 vertebral body fracture; high-grade partial thickness articular side tear of the left anterior supraspinatus and DVT; scarring and deformity at the surgical sites. Form A #3 (Pa246-247); Injury Photographs (Pa378-Pa440). Cali stated in its written discovery responses that "Galaxy Towers provided the pickup location that was serviced at the time of the accident," and the "[s]chedule of service was provided as set forth in the specifications of the Solid Waste Collection contract with the Town of Guttenberg." Cali Answer to Supplemental Interrogatory #6 & 8 (Pa359).

On the date of the accident, Plaintiff was provided with only an orange vest with reflective stripes by Cali. Galaxy did not furnish any flashlights, lighting devices or other safety equipment. (Pa446-Pa449), Plaintiff's Transcript, 15:13 to 16:23; 17:24 to 18:2. On the date of the accident, two other people from Cali/temp agency were working with him. (Pa447-Pa448), 16:24 to

17:23. Galaxy did not provide Plaintiff with traffic cones to use at the scene of the accident. (Pa448-Pa449), 17:24 to 18:2. The trash containers at the site of the accident were owned by Galaxy. (Pa457), 33:5-22.

The Plaintiff had been picking up garbage at the Galaxy Towers since 2014 on his normal 10:00 p.m. to 10:00 a.m. work schedule. (Pa450), 19:11-20. Galaxy was the first stop on his work route. There were three stops at this location and he was able to visit all three stops before the accident occurred. (Pa451-Pa452), 20:7-24; 21:6-19. At the first stop at the Galaxy tower complex, the garbage truck was able to pull the rear of the garbage truck away from the road and into a door-protected parking lot area. (Pa453), 22:7-18. At the second stop at the Galaxy tower complex, the garbage truck was able to be taken completely off the roadway and perform its duties. (Pa453-Pa454), 22:23 to 23:5.

At the third location, the garbage truck was forced to stop in the right-most lane in the three-lane highway for a prolonged period of time (this is because this access point was never designed for the safe removal of trash, and thus required Plaintiff to remove trash at the location, unnecessarily exposed him to oncoming traffic). (Pa454), 23:16-25.

At the area of the third stop, the trash containers are kept in an area where Plaintiff was forced to drag the containers out of the storage area inside of

Galaxy's building, into the street in order for them to be emptied into the garbage truck (a process that took an extended period of time). (Pa455), 24:1-11. Immediately prior to the accident, Plaintiff was standing at the rear side of the truck that was closest to the sidewalk/Galaxy's premises. (Pa458-Pa459), 34:8 to 35:5. Plaintiff recalled disconnecting the cable to the trash container and then waking up in the hospital (he does not recall the actual accident or his emergency treatment). (Pa461-Pa462), 37:13 to 38:11.

Hyunyoon Jung, the driver of the other vehicle, stated that she did not see the garbage truck or container in the roadway before the accident occurred. (Pa533-Pa534), 51:24 to 52:5. Ms. Jung believed that the lighting visibility was improved in the area of the accident post-crash and that the garbage truck now picked up trash in the presence of the police (for only a short time after the accident occurred). (Pa535-Pa539), 70:10 to 71:22; 131:9-18; 195:17 to 196:23.

John F. Cali, III, president of Cali, was deposed on March 4, 2022. As president, he oversaw Cali's departments, various aspects of operation, putting together bids for public contracts, some sales and overall management. (Pa138), Cali Transcript, 7:20 to 8:18. Cali was supposed to collect trash at Galaxy six days a week, including at the location of the accident. (Pa140), 15:6- to 16:9. Cali had provided waste collection for Galaxy (and the Guttenberg municipality) since 2003. (Pa141), 18:8-18. Mr. Cali indicated that at the beginning of the

Galaxy/Guttenberg-Cali relationship, the third location at Galaxy where Plaintiff's accident occurred was not a place where Cali would pick up waste. Mr. Cali became aware of that change in 2019. (Pa141), 20:21 to 21:18.

Mr. Cali recalled that the change in pickup procedures occurred due to Galaxy's inability to transport certain trash containers down to the Tower 3 location due to "some kind of equipment issue." Thus, they instructed Cali to add the third pickup location on the public roadway (and which was not approved by the municipality). (Pa141-Pa142, Pa154), 21:19 to 23:4; 24:20 to 25:9; 72:9-19. The inescapable conclusion from Mr. Cali's testimony is that Galaxy in fact asserted control over where the garbage was to be picked up throughout the complex, including specifically the area where Plaintiff was injured, choosing that location because it could not be bothered with repairing/correcting its own internal means of transporting dumpsters to the safer Tower 3 location.

Mr. Cali recalled t that Cali did not provide the dumpsters used at the Galaxy premises (which still is the case). (Pa146-Pa147, Pa155), 39:16-23; 41:3 to 42:11; 76:16 to 77:16. Mr. Cali indicated that the City of Guttenberg subsequently offered to place a police vehicle at the third Galaxy pick-up site where Plaintiff was injured. (Pa145-Pa146), 37:20 to 38:11. These facts further speak to the enhanced danger Cali workers were placed in when moving and

emptying the Galaxy dumpsters from the exposed Tower 2 location over an extended period of time.

Miguel Colasco, the driver of the garbage truck that was involved in Plaintiff's accident, was deposed and confirmed that Galaxy owned the dumpsters and that the containers had to be accessed from a hallway in the Galaxy premises. Additionally, the traffic cones used at Tower 2 were locked behind away with the dumpsters. (Pa469-Pa471), Colasco Transcript, 17:12-15; 18:9 to 19:18. The keys to access the dumpsters in the Galaxy building were taken from a Galaxy receptionist (further evidencing Galaxy's control over the entire process). (Pa473), 21:17-24.

William Flemm, Galaxy's designated representative, confirmed that the dumpsters were stored behind Galaxy's locked doors and that only authorized personnel could access them with certain keys. Mr. Flemm confirmed that the other two towers (Towers One & Three) had areas where the garbage trucks could safely pull in and load trash into the truck without any exposure to the public roadway and active traffic. (Pa506-Pa508), 46:23 to 47:18; 48:11-24. Galaxy was aware that the dumpsters at Tower Two were being brought into the public thoroughfare to be unloaded. (Pa509-Pa510), 50:25 to 51:24. Galaxy never made a determination as to whether how trash was picked up at Tower Two was safe or unsafe. (Pa511-Pa512), 54:7 to 55:4. Mr. Flemm confirmed

that the procedure for picking up trash at Tower Two has changed since the accident, namely that the township has provided a police escort parked sufficiently behind the garbage truck with additional traffic cones. (Pa512-Pa513, Pa521), 55:5 to 56:1; 68:11 to 71:18.

There was nothing to prevent Galaxy from placing one of its own service vehicles behind the garbage truck during Tower Two pick up. (Pa514-Pa515), 62:15 to 63:21. Mr. Flemm agreed that the property management service-Galaxy agreement required Galaxy to oversee the provision of any services being provided at the property and for Galaxy to formulate a safety plan for the provision of services at the property, including ensuring the trash area that was fenced in. (Pa516-Pa517), 66:5 to 67:19. Galaxy would sometimes redirect traffic around the complex and has procured the services of the police department whenever repairs (to be performed by third-party vendors) are necessary in the area abutting the property. (Pa522-Pa524), 91:1 to 93:11. In the performance of his duties, Mr. Flemm has (at the behest of insurance carriers) surveilled the complex and attempted to identify safety hazards. (Pa525-Pa527), 96:14 to 98:19.

Mr. Flemm believes that 1/3 of the town of Guttenberg's entire population (12,017 people according to the 2020 census) resides at the Galaxy premises. (Pa528), 119:6-13. Plaintiff and his Cali workers were not simply picking up a

garbage can, emptying it into the truck on the street, placing the can back and then moving onto the next stop. In fact, the change in location, coupled with the fact that these individuals were tasked with moving multiple, heavy dumpsters holding the trash of thousands of people at ground level over a long period of time and were exposed to unregulated public traffic while doing so. Thus, a duty to protect these workers has to exist for Galaxy, who created and organized the hazard.

The opinion of the Defendant, Jung's, liability expert Scott Kline, BSME, ACTAR, makes clear that the environment created by Galaxy when it changed the location of trash pick up to Tower Two was dangerous. Particularly, it exposed the Plaintiff and his co-workers to moving vehicular traffic by remaining on an active roadway as there was no other means to position the truck to avoid this at Tower Two. Moreover, in recognition of the enhanced risks presented by mandating a new pick up location, Galaxy took no actions to create temporary traffic control zones or deploy advance warning devices for approaching drivers such as the Defendant, Jung. Lastly, a viable, safer alternative existed by simply returning to the locations that had been used by Cali for the sixteen years leading up to the subject accident. (Pa617-618)

LEGAL ARGUMENT

POINT I

The lower court improperly ruled that there existed no facts from which a reasonable jury could conclude that Galaxy Towers controlled where and how Cali Carting removed trash/debris from the condominium association and that it forced Cali Carting workers to remove these materials in an unprotected manner for an extended period of time. (Pa1-2;Pa3-4; and Pa5-10)

In the instant matter, to the extent that the trial court considered it necessary for the ruling it reached, there were abundant facts which would allow a jury to conclude that Galaxy exercised a measure of control over the trash removal at its property. In a summary judgment setting, "[T]he court must look at the evidence and inferences which may reasonably be deduced therefrom in a light most favorable to the plaintiff, and if reasonable minds could differ as to whether any negligence had been shown, the motion should be denied." Bell v. Eastern Beef Co., 42 N.J. 126, 129 (1964). Thus, the proper analysis must begin with not only accepting facts which have been established in the record but considering them and the reasonable inference that may be drawn from them in favor of the plaintiff. To conclude that there were no facts presented which would permit this was erroneous.

In this case, the unquestioned facts, at a minimum, established an inference of control of the trash pickup operation on the part of Galaxy which should have give rise to the imposition of a duty upon it. Galaxy plainly

controlled where trash at its complex of towers was to be collected. This is beyond any legitimate dispute. There were options as to collection locations available to Galaxy, so it was certainly not as if it had no choice other than to designate Tower Two as the new collection point. The change in location was not one occasioned by any decision on the part of the plaintiff's employer, Cali, nor does the record suggest that it had any ability to resist that decision once it was made.

This is underscored by the fact that for many years, trash collection at Galaxy was made at locations other than Tower Two. Particularly, collection at least as far back as 2003 occurred at Towers One and Three both of which allowed the garbage truck to be off the surrounding roadways, away from moving vehicles, while dumpsters were being emptied. Thus, by virtue of its decision alone, one ostensibly made for the purely economic reason of not wanting to repair a forklift, Galaxy alone dictated the use of the location where the plaintiff was catastrophically injured.

Inseparable from Galaxy's unilateral decision was that, in changing the location, it also controlled the positioning of the truck in the travel lanes of an active roadway. As explained by the expert, Scott Kline BSME, ACTAR in order to collect trash at Tower Two, there was no way to accomplish this other than to stop the garbage truck on the active roadway.

Lastly, as it would bear upon the control, Galaxy's position of its dumpsters and the manner in which it required them to be moved assured that not only would the Cali employees be required to work in the active roadway, but that they would need to remain there for a protracted period of time. The Galaxy Towers are commonly referred to as a "city within a city" with upwards of thirty percent of Guttenberg's total populations residing within the three towers of the complex. Consequently, when the plaintiff and his co-workers were required to stop in the roadway to collect trash at Tower Two, they were removing trash for something approaching ten percent of the Guttenberg's residents while in that position.

Further elongating the process was the fact that the only access to the dumpsters at Tower Two was through a locked door and down a corridor to the location of the trash chutes. Galaxy tailored-made work conditions which exposed Cali workers to oncoming traffic on a highway for an extended period of time.

In sum, it is posited that there were sufficient facts for the trial court to conclude that Galaxy had exercised such a degree of control over the work environment in which the plaintiff was place in as to carry with it a corresponding duty of care. Only Galaxy dictated the decision that trash collection would be required to be made at Tower Two, shortly before the

plaintiff's accident, after being limited for many years to the other tower locations. In addition to controlling the location, Galaxy exercised de facto control requiring that the Cali workers and their truck remain in the active roadway during the collection process. Simply put, when dictating that Tower 2 would become a new pickup location, there was no other way to accomplish the collection other than having it occur in large part in the roadway. Finally, in requiring the Cali workers to unlock the sole access door and wheel the dumpsters up and down the service corridor by hand it held control over the extended amount of time they would need to be working in the road at Tower Two. Thus, Galaxy controlled nearly all aspects of the trash collection process.

POINT II

Public policy dictates that a duty of care should be imposed upon Galaxy given the circumstances of this case. (Pa1-2;Pa3-4; and Pa5-10)

It is submitted that the trial court erred in concluding that a commercial property owner such as Defendant Galaxy bore no duty to the Plaintiff for a set of circumstances and conditions it was largely, if not entirely, responsible for creating. The trial court overlooked the relationship between the parties, and Galaxy's unquestioned opportunity and ability to exercise care to prevent a catastrophic accident. Likewise, it would be counterintuitive to suggest or conclude that imposing a duty would be unfair to Galaxy since it only needed to

do what it had done for years, limit collection to the two towers which did not place workers in the active roadway.

Instead, the court's rulings were predicated upon an erroneous perception that the imposition of a duty of care upon Galaxy, limited to the context of this case, would somehow operate to uniformly extend liability to any town resident disposing of trash, commercial or otherwise. The trial court's rationale in this regard ignored the logic central to the controlling decisional law and the Plaintiff's legal argument. It is the specific circumstances and relationships of the parties unique to this case, when considered against the analytical framework explained by our New Jersey Courts, that give rise to a duty.

The trial court's limited analysis of the issues involved in this matter was not in keeping with the well settled approach to be employed when considering such cases as explained by our New Jersey appellate courts. In the first instance, the trial court seemed mired in the belief that liability could only arise on the part of Defendant Galaxy if the accident was related to a physical condition on its property. Secondarily, the trial court largely limited its consideration to the impact the imposition of a duty of care would have on an enormous commercial operation if such a duty were extended to wholly dissimilar private property owners. Respectfully, had the trial court adhered to the well-established criteria

regarding the determination as to whether Galaxy owed the Plaintiff a duty of care, the inescapable result would be a denial of summary judgment.

Initially, to the extent that the trial court's decisions were influenced by the thought that the duty of a landowner can only arise for conditions squarely on its property, such an approach is incorrect. "The notion that a land occupier's duty of care extends only as far as the boundaries of its property ... is simply out of step with the modern course of the common law." Nielsen v. Wal-Mart Store No. 2171, 429 N.J. Super. 251, 258 (App. Div. 2013). In Monaco v. Hartz Mountain Corp., 178 N.J. 401 (2004), the Supreme Court considered whether a commercial landowner could be held liable for an injury sustained when a traffic sign, installed by the municipality on the sidewalk next to its property, became dislodged by a gust of wind and struck the plaintiff. The Court in Monaco reversed the Appellate Division's holding of no duty owed, stating that "our traditional jurisprudence clearly recognizes that neither ownership nor control is the sole determinant of commercial landlord liability when obvious danger to an invitee is implicated" and that:

> [D]ecisions, based solely on ownership and control, too narrowly conceived the obligations of a commercial landowner. Applying well-settled principles, we are satisfied that a landowner owes a duty to its invitees to maintain its land in a safe condition, to inspect, and to warn of hidden defects whether within its power to correct or not, and that it was for the jury to determine whether a breach of that duty occurred." Id. at 404, 417.

In departing from such a myopic analysis of commercial landowner liability, our New Jersey courts have explained that the inquiry should be, whether in light of the actual relationship between the parties under all of the surrounding circumstances, the imposition of a general duty to exercise reasonable care in preventing foreseeable harm should be imputed. Mulraney v. Auletto's Catering, Nat. Valet Parking Services, 293 N.J. Super. 315, 320 (1996); Butler v. Acme Markets, Inc., 89 N.J. 270 (1982); Palsgraf v. Long Island R.R. Co., 248 N.Y. 339, 162 N.E. 99 (N.Y. 1928). "[W]hether a person owes a duty of reasonable care toward another turns on whether the imposition of such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Hopkins, supra, 132 N.J. at 439 (citing Goldberg v. Hous. Auth. of City of Newark, 38 N.J. 578, 583, 186 A.2d 291 (1962)). That inquiry involves "identifying, weighing and balancing several factors [including] the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." Hopkins, supra, 132 N.J. at 439. Had the trial court objectively adhered to this bright line test here, the consistent and appropriate conclusion results in a duty of care being imposed upon Defendant Galaxy.

It is the relationship of the actual parties that governs. That is because the existence of duty is examined within the specific factual confines of a given case alone. This is where the trial court erred in its belief that to find duty in the setting of the instant matter would create a global duty for all town residents.

In considering the above cited criteria, it is abundantly clear that the Plaintiff has established that a duty of care should be imposed. The relationship of the parties here plainly puts the Plaintiff in the most disadvantageous position as it regarded safety. Cali, Plaintiff's employer, had no ability to contest Defendant Galaxy's directive to change a pick-up location. This trash removal was also done under a pre-existing municipal contract as opposed to a private commercial agreement with Galaxy. Certainly, the Plaintiff, as a garbageman, was powerless to influence any change within the dynamic of this relationship either as to his employer Cali or as to Galaxy. Nonetheless, Plaintiff is the one who paid most dearly. It is precisely an examination of contours of the specific relationship at hand that is meant to be looked to in considering who among the parties can best, and most effectively, take on the mantle of duty. In the context of this case, there can be no serious question that Galaxy had the best position to take steps which would have enhanced safety for the plaintiff. Instead, Galaxy did nothing whatsoever. This analytical prong is in keeping with the overarching principle that an abiding sense of fairness to all involved is to be achieved. It is

inconceivable to consider that the trial court's sense of fairness in the context of this case is to subordinate the safety of a powerless garbage man so that an enormous commercial operation such as Galaxy would need to do nothing to ameliorate an unsafe scenario that it had a part in creating.

The nature of the apparent risk here is self-evident, and contrary to the observation of the trial court, it presented a foreseeable risk of precisely the type of harm encountered by the Plaintiff. It defies logic to suggest that being on an active roadway, at night, for a twenty-five to thirty minute period of time with no real measure of traffic safety would not make it foreseeable that the Plaintiff would be struck by an inattentive driver such as the Defendant, Jung. It is difficult to fathom how Galaxy, whose decision to change pick-up locations forced the Cali crew to remain on an active roadway, at night, for an extended period of time, would not have an obligation to take some step for the safety of the garbagemen servicing its premises for the benefit of its residents. This becomes even more incomprehensible when viewed against the holding in Mulraney v. Auletto's Catering, Nat. Valet Parking, Inc., 293 N.J. Super. 315 (App. Div.) certif. denied, 147 N.J. 263 (1996). There, the court imposed a duty upon a caterer when the plaintiff was struck by car while crossing an unlit county road from the defendant's property to a parking lot across street.

In further considering the analytical criteria, Defendant Galaxy had both the ability and opportunity to exercise care. Primarily, Galaxy could have simply continued the collection as it had for years. Logically, this was both the best and easiest way to achieve safety. Even in electing to require collection at Tower Two, Galaxy had the ability and opportunity to provide and store lighted traffic barrels of both minimal weight and cost. It could have deployed one of its on-duty security officers to alert approaching drivers by using a lighted wand. It could have integrated flashing lighting on the side of Tower Two to be activated when garbage removal was taking place. Firstly, the trial court created its own vision of what safeguards would be reasonable at a point in time when expert opinions as to this point had not been exchanged. Then, after there was an expert opinion in the case, and a final application for reconsideration on that basis was brought, the opinion was seemingly not considered or given any weight. Moreover, the trial court summarily rejected the concept that any ability to improve safety would be acceptable to the extent that it would be beyond the reach of residential homeowners.

Again, this is a flawed approach to the issue. It presumes that an average homeowner would, or would be allowed to by town ordinance, to produce multiple dumpsters of waste on essentially a daily basis. There is no evidence on record that this ever occurs, or that Guttenberg would ever allow that

behavior without the homeowner being required to take additional measures involving the issuance of permits or arranging for private waste removal. The touchstone for the imposition of a duty does not turn on whether the resulting solution is "one size fits all." Rather, it is confined to whether the totality of the circumstances indigenous to the specific parties and case call for a duty out of basic fairness.In Monaco v. Hartz Mountain Corp., 178 N.J. 401 (2004), the Supreme Court considered whether a commercial landowner could be held liable for an injury sustained when a traffic sign, installed by the municipality on the sidewalk next to its property, became dislodged by a gust of wind and struck plaintiff. The Court in Monaco reversed the Appellate Division's holding of no duty owed, stating that "our traditional jurisprudence clearly recognizes that neither ownership nor control is the sole determinant of commercial landlord liability when obvious danger to an invitee is implicated" and that:

> [D]ecisions, based solely on ownership and control, too narrowly conceived the obligations of a commercial landowner. Applying well-settled principles, we are satisfied that a landowner owes a duty to its invitees to maintain its land in a safe condition, to inspect, and to warn of hidden defects whether within its power to correct or not, and that it was for the jury to determine whether a breach of that duty occurred.

Id. at 404; 417.

> Hartz had a duty toward its invitees, including Monaco, to maintain a safe premises, including areas of ingress and egress and to inspect and give warning of a dangerous condition.

Id. at 413.

> Moreover, in a long line of cases, our courts have extended a commercial landowner's duty, when warranted by the facts, to cases in which the landowner had no control over the dangerous condition and the condition was not located on its property.

Id. at 415. (citing Warrington v. Bird, 204 N.J. Super. 611 (App. Div.), certif. denied, 103 N.J. 473 (1986) (although the defendant could not change the county road, it could have placed better lighting, a sign or flashing signal); see also, Zepf v. Hilton Hotel & Casino, 346 N.J. Super. 6, 16 (App.Div.2001) (finding a casino owed a duty to an employee regarding criminal activity on "perimeter" of property); Mulraney v. Auletto's Catering, Nat. Valet Parking, Inc., 293 N.J. Super. 315, (App. Div.) (imposing a duty upon a caterer when plaintiff was struck by car while crossing unlit county road from defendant's property to parking lot across street), certif. denied, 147 N.J. 263 (1996); Jackson v. K–Mart Corp., 182 N.J. Super. 645 (Law Div. 1981) (holding defendant had duty to patrons regarding ingress and egress from parking lot to store even though defendant had no control over public sidewalk). "The notion that a land occupier's duty of care extends only as far as the boundaries of its property ... is simply out of step with the modern course of the common law." Nielsen v. Wal-Mart Store No. 2171, 429 N.J. Super. 251, 258 (App. Div. 2013) (finding that a duty not only extended to business invitees, but also to passerbys).

The inquiry should be, whether in light of the actual relationship between the parties under all of the surrounding circumstances, the imposition of a

general duty to exercise reasonable care in preventing foreseeable harm should be imputed. Mulraney v. Auletto's Catering, Nat. Valet Parking Services, 293 N.J. Super. 315, 320 (1996); Butler v. Acme Markets, Inc., 89 N.J. 270 (1982); Palsgraf v. Long Island R.R. Co., 248 N.Y. 339, 162 N.E. 99 (1928). "[W]hether a person owes a duty of reasonable care toward another turns on whether the imposition of such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy." Hopkins, supra, 132 N.J. at 439 (citing Goldberg v. Hous. Auth. of City of Newark, 38 N.J. 578, 583 (1962)). That inquiry involves "identifying, weighing and balancing several factors [including] the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." Hopkins, supra, 132 N.J. at 439.

Considering all of the well settled factors the trial court should have considered in determining the existence of a duty, it is argued that the facts of this case present a compelling instance where one should have been justly imposed upon Galaxy.

CONCLUSION

For the above-stated reasons, the Appellate Division should reverse its grant of summary judgment to Defendant Galaxy Towers and remand the matter for additional proceedings.

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BY: *<u>/s/ Joseph A. Reardon</u>*
JOSEPH A. REARDON III, ESQ.

DATED: June 23, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-001889-24

JUAN MANUEL ARCE CALYECA, *Plaintiff-Appellant,* vs. HYUNYOON JUNG, *Defendant,* GALAXY TOWERS CONDOMINIUM ASSOCIATION, *Defendant-Respondent,* CALI CARTING INC., JOHN DOE 1-10 (fictitious unidentified individuals presently unidentifiable), and ABC CORP. 1-10, (fictitious corporations or other business entities presently unidentifiable), *Defendants.*	CIVIL ACTION ON APPEAL FROM AN ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, MIDDLESEX COUNTY DOCKET NO.: MID-L-7795-19 Sat Below: HON. DANIEL H. BROWN, J.S.C.

BRIEF FOR DEFENDANT-RESPONDENT

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Date Submitted: August 21, 2025

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PRELIMINARY STATEMENT

Plaintiff, Juan Manuel Arce Calyeca, a municipal sanitation worker, was injured when he was struck by a vehicle operated by Defendant Hyunyoon Jung ("Jung") while performing his regular duties on a public street. Video footage of the incident shows that Defendant Jung struck the plaintiff in a well-lit area of the roadway. As a garbage collector working for Cali Carting Inc. ("Cali"), he performed garbage removal pursuant to Cali's municipal contract with the Town of Guttenberg. He performed 95% of that work in the public street.

At the time Jung struck plaintiff, he was providing municipal services to Defendant-Respondent Galaxy Towers Condominium Association ("Galaxy"), a group of residential property owners—one of many residential stops on Cali's route. Plaintiff and his coworkers performed their task as they normally would by parking their truck in the public roadway and emptying containers into the truck.

Cali provided this service to Galaxy, as the owners of the abutting property—specifically for the benefit of the residents of Tower 2—just as it would for any other residents within the Town of Guttenburg, where the collection occurred. In fact, this stop was added to Cali's route at the request of

the Town of Guttenburg, which asked Cali to meet with Galaxy regarding the addition. With Cali's consent, the stop was incorporated into the route and raised no concerns.

As the court below correctly found in granting Galaxy's motion for summary judgment—and reaffirmed in two subsequent rulings—it would be both unreasonable and unpredictable to impose a duty on a resident or property owner to ensure the safety of municipal workers operating in a public roadway, particularly where garbage volume is the basis for such a duty. This is especially true where the resident, lacking any expertise in safety protocols, is effectively being asked to protect the worker from the duties of the job itself. Such a duty cannot logically or legally be extended to every resident who does not offer the use of their driveway to a municipal garbage truck.

The relationship between the parties does not support the imposition of a legal duty in this context. As the trial court correctly noted, there is no evidence of an increased risk or foreseeable harm associated with a sanitation worker performing his duties in a public roadway, which is where such work is routinely carried out.

The trial court correctly concluded that public policy weighs against imposing a duty on Galaxy. Imposing such a duty would create substantial practical challenges, including uncertainty as to when protective measures are required and what those measures must entail. It would also place an undue burden on municipalities to develop, implement, and enforce corresponding policies. Moreover, recognizing such a duty could set a far-reaching precedent, potentially exposing private residents to liability for a wide range of municipal workers performing duties in public roadways.

For these reasons, and as further set forth below, this Court should affirm the order granting summary judgment in favor of Galaxy and dismissing it from the case.

PROCEDURAL HISTORY

Galaxy does not dispute the procedural history as outlined by plaintiff. However, plaintiff fails to address the fact that the trial court considered Galaxy's motion for summary judgment on three separate occasions, and each time either granted the motion or reaffirmed that it had been properly granted.

Galaxy's Successful Motion for Summary Judgment

On April 29, 2022, defendant Galaxy moved for summary judgment dismissing all claims against it on the basis that it owed no duty to a municipal garbage worker (Pa116; 1T5-10[1]). Galaxy argued that, as a property owner, it owed no duty to a municipal garbage worker who was injured while emptying containers into a truck on a public roadway, nor any duty to protect a municipal contractor's employee from hazards arising out of the performance of his work (1T5-10; 24). Galaxy had no control over the public roadway adjacent to its property (1T8). And the manner in which Cali Carting and its employees collected garbage from Galaxy—including where the truck parked along the street and how the pickup was performed—was entirely within Cali's control (1T7–8, 20–21).

Galaxy emphasized that public policy weighs against imposing a duty on a property owner who merely requests municipal trash collection, arguing that such a duty would have far-reaching implications for all state residents (1T9; 21). The act of pulling dumpsters and loading their contents into a truck on a

[1] 1T refers to the Motion Transcript dated May 27, 2022. 2T refers to the Motion Transcript dated July 28, 2022.

public roadway is a routine practice performed at various locations and was not unique to Galaxy (1T22).

Plaintiff opposed the motion primarily on the basis that Galaxy asked Cali to pick up garbage at Tower 2, the stop where the accident occurred (1T12). No party submitted any expert testimony or report in opposition (PA226). Nor did the opposing parties seek more time to oppose the motion to permit them to obtain expert testimony (PA226).

Following oral argument, on May 27, 2022, the Superior Court, the Honorable Daniel H. Brown, J.S.C., granted Galaxy's motion, and dismissed plaintiff's complaint and all cross-claims against Galaxy with prejudice (1T32). The court determined that Galaxy owed no duty of care to plaintiff as Cali removed and emptied the containers on the public roadway "pursuant to the oft used company procedure of Cali" (1T32).

Galaxy did not create any dangerous condition on its property that would foreseeably pose a risk of, or lead to, the type of injury sustained by plaintiff while working in the public roadway (1T32). The trial court stated that Galaxy could not have foreseen that a worker like plaintiff would be struck on a public

roadway during garbage removal "consistent with the matter discussed and agreed upon at a meeting between movant and Cali Carting, for whom the plaintiff was employed" (1T32).

Moreover, the trial court rejected plaintiff's argument that Galaxy had a duty to ensure that the trash removal location was safe even if it did not have control over the roadway. The location was determined at a meeting between Cali and Galaxy (1T33). The trial court reasoned:

> the service provider Cali Carting was ultimately responsible for the means and the method of picking up the trash. As stated by Mr. Cali in his deposition, this was not a unique arrangement set by the movant defendant. But rather 95 percent of Cali's collection occurs in the public street.

(1T33).

After evaluating the public policy considerations, the trial court determined that public policy mandated that no duty be imposed on Galaxy (1T33).The trial court explained that "[t]o accept plaintiff's position would be tantamount to imposing a duty on every homeowner whose Municipality performs collection of Solid Waste and the Recycling on a public roadway, to make arrangements to implement safeguards on the public roadway to prevent random drivers from striking the employee performing services" (1T33).

Plaintiff's Successive Attempts to Obtain Review of the Decision Granting Galaxy Summary Judgment

On June 14, 2022, plaintiff moved for reconsideration of the order granting Galaxy summary judgment. Although Defendant Jung retained Scott Kline, BSME, ACTAR, an accident reconstructionist who issued a report dated July 19, 2022, the plaintiff did not rely on that report in support of his first motion for reconsideration (Pa602). Nor did plaintiff retain his own liability expert or serve an expert report. Rather, plaintiff relied on the same arguments made in opposition to Galaxy's summary judgment motion and argued that the trial court incorrectly applied an analysis applicable to the condition of property rather than a totality of the circumstances analysis in evaluating whether Galaxy owed a duty of care (2T5). In essence, plaintiff argued that Galaxy helped create a situation that led to the accident resulting in a duty of care. Plaintiff further argued that any concern about an impact on homeowners could be alleviated by limiting the duty of care to the facts at hand (2T5).

Galaxy opposed the motion, arguing that the underlying evidence and legal arguments remained unchanged, and that the trial court had neither erred nor overlooked any relevant fact or principle of law (2T11–12). Moreover, the plaintiff failed to establish any reason why Galaxy—a collective of

homeowners—should be treated differently from any other property owner (2T13).

After holding oral argument on July 28, 2022, the Honorable Daniel H. Brown, J.S.C. denied plaintiff's motion, holding that the interests of justice did not require reconsideration of the order granting Galaxy summary judgment (2T21). In adhering to its original determination, the court reasoned that requesting a pickup at all three towers rather than just Towers 1 and 3 did not create a duty to plaintiff, as Galaxy did not force Cali to remove trash for an extended period in the roadway. Rather, Cali participated in a meeting in this regard (2T22-23). There was no foreseeable danger created by a garbage collector collecting garbage in the far-right travel lane where 95 percent of all of Cali's work occurred (2T23-24).

The trial court again found the public interest weighed against extending a duty to Galaxy (2T26). It reasoned that establishing a rule whereby the use of dumpsters and the generation of more trash than the average citizen creates a duty would be problematic in that

> it would require the average citizen to make a determination as to whether the quantity of garbage they had put curbside on any given waste collection day can simply be left curbside in the ordinary course or whether

> the particular volume of waste on a given day rises to the level where they must take active efforts to somehow assist the waste management or recycling company in their collection process

(2T26).

After Galaxy had been awarded summary judgment, plaintiff conducted the *de bene esse* deposition of Mr. Kline on January 20, 2023 (Pa603). Galaxy, who was not a party to the case at that time, was not present (Pa603).

Thereafter, on January 30, 2023, plaintiff made a second attempt to obtain review of the summary judgment decision by in essence seeking reconsideration within a motion in limine (Pa582). This time, plaintiff attempted to rely upon the opinion of Jung's expert Mr. Kline and sought reconsideration on that basis, even though plaintiff had never retained his own expert (Pa582).

Galaxy opposed that motion on procedural grounds as well as grounds similar to those raised in response to plaintiff during the prior motion practice. Among other arguments, Galaxy argued that the expert's testimony is not a good faith change in circumstance and did not support a different outcome.

By Order dated March 1, 2024, and supported by a Statement of Reasons, the trial court denied plaintiff's second motion for reconsideration (Pa5). After

reviewing the report submitted by Defendant Jung's liability expert, the court concluded that it was "not in the interests of justice to disturb the ruling of summary judgment in favor of Galaxy" (Pa8), and it adhered to its prior findings (Pa8). The court explained that:

> The removal of waste from Tower 2 implicitly required it to be done on a public roadway, which Mr. Cali stated at his deposition, was not a unique arrangement set by Galaxy, but rather, 95% of Cali's collection occurs in the public street. The contention that Galaxy forced Cali to remove trash for an extended period in the middle of the street is legal argument, unsubstantiated by the record.

(Pa8). The court considered that plaintiff testified that the truck stopped in the rightmost lane of a three-lane road, that Cali had a meeting about Tower 2 waste removal, including where the dumpsters were stored and where the pick-up would occur, and thus Cali was not forced into the actions plaintiff claims (Pa8). The court thereafter applied and considered the factors outlined in Monaco v Hartz Mountain Corp. (178 NJ 401 [2004]) before determining that the facts did not warrant an imposition of a duty (Pa8-9).

The court noted that the relationship between Galaxy and Cali was one between sophisticated entities with coordinated trash removal — a large residential complex and a solid waste recycling company (Pa9). It noted the risk of being struck when anyone is in the roadway, but concluded that "the record

does not suggest that there was a reasonably foreseeable risk that waste being collected on a roadway in the far, right lane would lead the waste collector to be struck by another vehicle" (Pa9).

The court also considered the opportunity and ability to exercise care and the impact imposing a duty would have on public policy and the public interest (Pa9). The court noted that accepting plaintiff's argument that Galaxy could have and should have arranged for protections, including service vehicles, traffic redirection, or a request for police traffic control (on the six nights per week trash is collected from Galaxy), would be tantamount to imposing a duty on all resident homeowners to do so during trash collection (Pa9). The trial court concluded that this was against public policy in that:

> to have accepted Plaintiff's argument would require the "average citizen" to make a determination as to whether the quantity of garbage that they put curbside on any given waste collection day can simply be left curbside in the ordinary course, or whether the volume of waste rises to the level where they must take active efforts to somehow assist in the collection process

(Pa9).

COUNTERSTATEMENT OF FACTS

Plaintiff's claim and injuries arise from a motor vehicle accident (Pa34), which occurred when Defendant Jung's vehicle struck a dumpster and plaintiff

while he worked as a municipal garbage collector for Cali. Defendant Jung's vehicle struck the back of plaintiff's body at approximately 11:00 p.m. (Pa255; 256; 263). The plaintiff was behind Cali's garbage truck between the car and the container, with the container abutting the truck (Pa224 [p.54-55]).

The accident occurred on River Road, near its intersection with Ferry Road, in Guttenberg, New Jersey (Pa32;357). River Road has three lanes in the direction of travel that Jung was traveling (Pa454). Cali's truck was stopped in the right-hand lane, including in a yellow-and-white buffer area to load dumpsters (Pa269; 454). An aerial view of the area is included in plaintiff's appendix (Pa549; see also, 326).

Cali's truck had been stopped for approximately 10 minutes in the rightmost lane (Exhibit A, 18:3 to 19:8; Pa269). Plaintiff was in the process of moving an empty dumpster from the garbage truck back to the curb when he was struck by Defendant Jung's vehicle at a high rate of speed (Exhibit B, Nolasco 54:13 to 55:17; Da5). Jung said she struck the dumpster that was off to the side of the road and plaintiff who was behind the dumpster (Pa269).

The accident occurred after Jung changed lanes (Pa539). However, Jung had no recollection of applying the brakes or of doing so (Pa534). Apparently, Jung saw "nothing at all" (Exhibit D, Excerpts of Hyunyoon Jung's Deposition Transcript, 51:7 to 52:5; Da10). Before the accident there were no sounds of screeching tires (Pa461). There was little traffic on River Road (Pa460).

Lights on Cali's truck were operating at the time of the accident. Plaintiff wore a reflective vest, and Cali's garbage truck had numerous stationary and rotating lights, of various colors, on and operating while it was stopped on the public road (Pa446-49; 450-52). [2]Additionally, three to four orange reflective cones were placed in the public road behind the stopped truck (Pa223 [p. 23, 24]; 475-77).

A Galaxy security camera captured the accident (Pa202 [p. 139]). The video of the incident shows the area was well lit (Pa202 [p. 139]).

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[2] Lights on the back of the truck included white lights, stationary red lights, three amber smart strobes (which were strobing), all to alert people that work is being done behind the truck (Pa163 [p.106]; see also, 214; 269). The truck had a total of four white lights, two on the side and two in front of the hopper, all of which were operational on the date of accident (Pa213). The white lights were strong and would light the area quite a bit, including up to where they had the cone placed in the roadway (Pa217-16).

Galaxy Towers as a Residential Community

At the time Defendant Jung's vehicle struck the plaintiff, Cali's stop on its garbage removal route was located at Tower 2 of the Galaxy Towers apartment complex, which consists of three residential high-rise buildings—Towers 1, 2, and 3 (Pa201 [p.27]; Pa141 [p.21]). Galaxy Towers Condominium Association is the condominium association for the property which owns the buildings and common areas (Pa. 201 [p.26]).

Cali's Responsibility for Trash Removal For the Town of Guttenberg, Including at Galaxy Towers

The Town of Guttenberg's Department of Public Works arranges for coordination of garbage removal and recycling (Pa132). Cali is "a full service solid waste and recycling company" (Pa7). At the time of the accident, Cali conducted trash removal pursuant to a pre-existing municipal contract with the Town of Guttenberg Department of Public Works under which it collected all municipal trash, recycling and bulk trash from its residents, including the residents of Galaxy (Pa139 [p. 13:15] to 140 [p. 15:25]). Every stop Cali has is a residential pick-up, including Galaxy (Pa161 [p. 100]).

Pursuant to their municipal contract, Cali performed garbage pick-ups at Galaxy six nights per week (Pa140 [p. 15:10-17:14]; 467). Each evening's pick-up would involve emptying two to four dumpsters per tower into Cali's truck (Pa223 [p. 22]).

The original garbage pick-up locations were at Towers 1 and 3, where the previous hauler had picked-up from (Pa141[p.20:16-20]). Guttenberg had asked Cali to meet with Galaxy about a new pick-up location (Pa142 [p.23:11-13]). At the meeting, Cali learned the place where the dumpsters would be stored at Tower 2 and where the pick-up would occur (Pa142). The meeting was held right outside the pickup area (Pa153 [p. 69]). Following the meeting, in 2019, a few months before the accident occurred, a third location at Tower 2 was added (Pa141[p.21:10-11]; 143[p. 27]).

At Tower 2, Cali would need to retrieve the dumpster from inside the building. These particular containers were two cubic yards in size and fitted to the particular trash compactor in use at the building (Pa142[p.25]). Cali used a key it had been given to access the dumpsters' location, as they would at other locations within their contract (Pa142[p.25]). On the night shift, it was common to need keys for access to perform pick-ups (Pa156 [p.79])

Cali's Control Over The Garbage Removal Process

Plaintiff was part of the regular crew who performed pick-ups at Galaxy six nights per week (Pa155 [p.74]). Plaintiff and his crew would empty the containers and after each one was emptied, they would place it by the side of the road (Pa210 [p.15]).

Trash pick-up at Tower 2 involved rolling dumpsters out of doors leading to the public sidewalk, on the sidewalk, and into the right lane abutting the sidewalk (Pa204; 151 [p.60-61]; 154 [p.70 -71]).

Ed Matos of Cali worked as the field supervisor of the night shift (Pa143 [p.28]). He would follow the trucks in a pick-up truck, covering all seven Cali crews, to make sure their workers worked safely and were performing the pick-ups correctly (Pa143 [p. 29]; 144[p.31]). Each crew was comprised of three people (Pa144 [p.31]). The driver on plaintiff's crew was, Miguel Nolasco (Pa144 [p.32]). Nolasco was the foreman of the crew (Pa148[p.49]).

Cali, as the entity that was conducting the trash removal, was responsible for all safety protocols according to its president, Mr. Cali:

> Q. So at the time of this meeting at Galaxy Towers was there any discussion had at that moment about any

> particular safety protocols as to the garbage pickup on River Road?
>
> A. No. It was our assumption at the meeting that we would use our general company safety protocols because we would be the ones that were actually picking up. They were simply showing us the storage location of where the containers were going to be located and that there was going to be a door that would require access via key. As far as actually making the collection, that's something that our employees were going to carry out. So as far as our methods and how we are going to do everything, we don't, we generally don't explain that to the apartment owners of how we're going to do our job.

(Pa159 [p.91]).

Cali was responsible for the means and methods of how the trash would be removed including all safety protocols and training, and would not explain their methods to a property owner (Pa156 [p.80; Pa159 [p.91]).

It was their position that Cali's safety protocols alone were enough as they are made with the assumption that work will be performed in the roadway (Pa163 [p.109] ["reminders to make sure, look, try to stay aware of what is going around in your surroundings, make sure you have your PPE]). Cali would be the one to evaluate any proposed additional protocol (Pa163 [p.113]; 165 [p.114]).

Working in the Roadway Was Normal
For Cali and its Workers

Cali raised no objection to the Tower 2 pick-up location at any time (Pa154 [p.70]). As Mr. Cali explained, the pickup area was only "slightly off the sidewalk" so he did not recall any discussion of it being an issue (Pa154 [p.71]). It was not discussed, but it was understood that the pick-up would be in the street (Pa154 [p.71]). It is generally assumed that their work will be done in the roadway (Pa163 [p.109]). Mr. Cali testified:

> Ninety-five percent of our collection occurs in the public street. While we do our work throughout the shift, our trucks are driving on the public traveled portion of the street. There is only a very limited amount of our pickups that are done on private property. So while we are collecting the entire municipality in all our municipal contracts, all of the regular household garbage via bags, via cans, all that is being transported back and forth to the truck while the truck, and dumped into the truck, while the truck is in the traveled portion of the street. In Hudson County particularly, a city like Hoboken, which we also service, and Guttenberg, there's numerous locations where we pull dumpsters and dump them in the public traveled portion of the street. So that's kind of where our work is performed. So it's very commonplace in our business to work in the street.

(Pa154 [p.71-72]).

LEGAL ARGUMENT
POINT I

THE TRIAL COURT CORRECTLY HELD THAT, AS A MATTER OF LAW, GALAXY—A COLLECTIVE OF HOMEOWNERS—OWED NO DUTY TO PLAINTIFF, A MUNICIPAL GARBAGE COLLECTOR PERFORMING HIS WORK IN A PUBLIC ROADWAY (PA1, PA3, PA5, 1T32, 2T21)

"[W]hether a party owes a duty to another party is a question of law for the court to decide." Rivera v. Cherry Hill Towers, LLC, 474 N.J. Super. 234, 240 (App. Div. 2022). Generally with respect to its property "a landowner must exercise reasonable care for an invitee's safety." Monaco v. Hartz Mountain Corp., 178 N.J. 401, 414 (2004). Such a duty includes "making reasonable inspections of its property and taking such steps as are necessary to correct or give warning of hazardous conditions or defects actually known to the landowner." Id. Liability would stem from "failing to correct or warn of defects that, by the exercise of reasonable care, should have been discovered." Id. at 415. Issues of ownership and control are not determinative, and consideration is given to the invitee's expectations. Id. at 415; 417.

However, a potential duty to address off premises conditions is not the same between residential and commercial properties. A condominium

association, like Galaxy, is generally treated like residential property owners when it comes to such conditions, including for example, conditions on abutting sidewalks. Luchejko v. City of Hoboken, 207 N.J. 191, 195 (2011) (determining that an overwhelmingly owner-occupied 104-unit condominium complex had no duty to maintain the abutting public sidewalk); see also, Dupree v. City of Clifton, 175 N.J. 449 (2003); and Gottsleben v. Annese, A-3851-23, 2025 WL 1830408, at *6 (N.J. Super. Ct. App. Div. July 3, 2025) ("It is not our role to create new exceptions to the sidewalk liability principles that have been repeatedly enunciated and modified by the Supreme Court. . . . this is a subject that could affect large numbers of New Jersey homeowners and sidewalk pedestrians and could be a public policy matter of interest to the Legislature."). Plaintiff relies exclusively on cases involving commercial property owners, which are distinguishable on that basis.

To evaluate the existence of a duty, a court is required to weigh different factors including "the relationship of the parties, the nature of the attendant risk, the opportunity and ability to exercise care, and the public interest in the proposed solution." Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 439 (1993). "Although a foreseeable risk is the indispensable cornerstone of any formulation of a duty of care, not all foreseeable risks give rise to duties." Dunphy v. Gregor,

136 N.J. 99, 108 (1994). The imposition of a duty is the conclusion of a rather complex analysis that considers the relationship of the parties, the nature of the risk—that is, its foreseeability and severity—and the impact the imposition of a duty would have on public policy." Id. The imposition of a duty turns on whether "such a duty satisfies an abiding sense of basic fairness under all of the circumstances in light of considerations of public policy" Hopkins, 132 N.J. at 439. This analysis' conclusion should "resolve[ ] the current case and allow[ ] the public to anticipate when liability will attach to certain conduct." G.A.-H v. K.G.G., 238 N.J. 401, 414 (2019).

Considerations of fairness and public policy must temper the duty analysis because "imposing a duty based on foreseeability alone could result in virtually unbounded liability." Estate of Desir ex rel. Estiverne v. Vertus, 214 N.J. 303, 319 (2013); see also, Funtown Pier Amusements, Inc. v. Biscayne Ice Cream and Asundries, Inc., 477 N.J. Super. 499 (App. Div. 2024), cert. denied, 257 N.J. 408 (2024).

Looking first at the relationship between the parties, plaintiff was employed by Cali, the municipal contractor responsible for conducting the trash collection. As plaintiff's employer and the entity in control of how the garbage

pickup was carried out, Cali bore the responsibility for ensuring plaintiff's safety. Galaxy exercised no control over the manner in which Cali performed its work. As the trial court correctly recognized, Cali is a sophisticated commercial entity, fully capable of managing the safety of its own operations and employees.

As plaintiff's employer and the employer of his on-site supervisor, Cali had the duty, opportunity, and ability to exercise reasonable care for plaintiff's safety. Cali raised no objections to performing a collection at Tower 2 that required its workers to operate in the public roadway, nor was it compelled to perform the work under objectionable conditions. A private resident of the Town cannot be expected to be present to assist or protect municipal workers as they carry out their duties in the roadway; such responsibility properly rests with the employer and the municipality that contracts for the work.

The risk of injury from a third-party vehicle while performing sanitation work in the roadway is not unique to the Galaxy pick-up location; rather, it is a risk inherent in 95 percent of Cali's collection stops. Accordingly, there was no heightened or particularized risk at this location that Galaxy could reasonably be expected to identify or take steps to mitigate. Imposing a duty under these

circumstances would effectively render municipal residents potentially liable for the very risks that are inherent in the duties of municipal workers.

As the trial court explained, it was not reasonably foreseeable that merely requesting Cali to perform a routine garbage collection—which, as is typical, required its workers to be present in the public roadway—would place those workers at risk of being struck by a passing vehicle.

As addressed in further detail below, public policy does not support such a duty either.

POINT II

THE TRIAL COURT CORRECTLY DETERMINED THAT PUBLIC POLICY DOES NOT SUPPORT IMPOSING A DUTY OF CARE UNDER THE CIRCUMSTANCES OF THIS CASE (PA9, 1T33, 2T25)

No sense of fairness supports the imposition of a duty on Galaxy. And imposition of such a duty would be problematic. G.A.-H v. K.G.G., 238 N.J. 401, 414 (2019); Hopkins, 132 N.J. at 439. Last year, the Appellate Division decided Funtown Pier Amusements, Inc. v. Biscayne Ice Cream and Asundries, Inc. 477 N.J. Super. 499. Although it involves a different type of action, Funtown's discussion of public policy considerations demonstrates that the trial court appropriately applied the law to the facts of this case in granting Galaxy's motion for summary judgment.

In Funtown, the Appellate Division evaluated whether to extend a duty to a public utility to inspect customer owned equipment which may have been damaged in a storm before reenergizing a building. 477 N.J. Super. 499. At issue was whether this duty should be imposed even despite prior municipal involvement before the reenergizing of the buildings. The Appellate Division determined that the risk of harm that occurred, a structural fire caused by

electrical components damaged in Hurricane Sandy, was clearly foreseeable. Id. at 25. It also acknowledged that the risk of this harm will only increase in the future with an increasing risk of superstorms due to climate change. Id. at 27. Nevertheless, the imposition of such a duty would still be unfair and against the public interest. Id. at 28. Among the reasons cited by the Appellate Division included jurisdictional confusion as to who would need to conduct the inspection as well as confusion as to when the duty would arise, i.e. what type or level of storm or event would require this inspection. A lack of clarity as to when liability would attach to certain conduct was against public interest. Id. at 26-28.

Funtown demonstrates that mere foreseeability of a risk, i.e. here knowledge that a worker may be struck by a car in the roadway, alone is not enough.

Although the utility in that case was an entity that *could* foresee the risk of harm and *had the capacity* to take steps to mitigate it, the court still declined to impose a duty of care. Considerations of fairness and public policy weighed against recognizing a duty under the circumstances. The court also rejected the plaintiff's argument that a limited duty should be recognized solely based on the unique facts surrounding Hurricane Sandy, noting that even a narrowly tailored duty risked problematic and unpredictable applications in future cases.

As the trial court outlined, imposing a duty under these circumstances would effectively extend an obligation to all residents to protect municipal workers performing tasks in the roadway adjacent to their homes. Such a duty would place an unreasonable burden on residents, requiring them to know precisely when collections would occur, to be physically present during those times, and—despite having no training or expertise in safety—to take affirmative steps to protect municipal workers. Requiring residents to make arbitrary judgments based on the volume of garbage to determine whether such protective measures are necessary would lead to unpredictable outcomes and create significant uncertainty as to when and how such a duty might be breached.

Prior cases discussing abutting landowner liability for accidents occurring on a public roadway do not require a different result. "There is no duty on the commercial landowner to maintain a safe passageway to patrons outside of their property lines" other than when a duty to maintain abutting sidewalks is imposed. MacGrath v. Levin Properties, 256 N.J. Super. 247, 250 (App. Div. 1992). No duty applies to individuals injured on abutting highways. Id.

In MacGrath, after leaving the defendant Levin's shopping center, the plaintiff crossed the abutting road, Route 22, at a jughandle intersection that

allowed vehicular access to the shopping center. At that point, one vehicle ran a red light, striking another vehicle which in turn struck the plaintiff. There, the Appellate Division determined that Levin owed no duty to protect the plaintiff from the hazards of the highway. "Liability rests with the State, if there exists a dangerous condition in the public way which caused the accident, or with the operator of the vehicle whose negligence caused the injuries to the crossing pedestrian." Id. at 253. The fact that Levin may have caused the jughandle intersection to exist to provide access to their shopping center was not determinative. As the Court reasoned: "Such a thesis would impose a similar duty upon all proprietors owning property abutting a public street who enjoy the 'benefit' of traffic access from the street to their business enterprises. Imposition of such a duty would be an extension of the law which we decline to make." Id. at 255.

The Appellate Division further explained that "the proximate cause of plaintiff's injuries was the negligent operation of a vehicle or vehicles on the highway, not the highway's defective design or condition. In that regard, refusal to impose a duty upon Levin does not leave 'innocent parties,' who may suffer injuries while crossing Route 22, without a remedy." Id. at 255 (Internal citations omitted).

Here, too, plaintiff was injured by a third-party driver, Jung, while performing the routine duties of his job—an incident arising solely from the driver's actions, with no connection to Galaxy's ownership of a neighboring property. The mere fact that Galaxy, like any other resident of the Town of Guttenberg, received municipal trash collection does not give rise to a duty on its part for accidents occurring in the public roadway.

Any reliance on Mulraney v. Auletto's Catering is misplaced. 293 N.J. Super. 315 (App. Div. 1996). There, a factual issue existed as to Auletto's duty to a decedent, who was struck and killed after she crossed the street to return to a parking area after attending a bridal fair. Issues of fact existed as to whether Auletto owed a duty to the decedent because she was crossing the street to a parking area, and it was unclear whether Auletto's knew attendees parked in that area. What is critically important about the Mulraney decision is that the Court did not determine that Auletto's would owe a duty to any business invitee who leaves its property and crosses the street. Rather, the basis of the duty was the fact that at the time of the incident *Auletto's was conducting a special fair on its property, which was not within its routine business*. The Appellate Division qualified its determination that Auletto could have owed the decedent a duty to provide safe passage by stating that the duty could apply "*at least where a*

dangerous condition arises only on those isolated occasions when the business conducts special functions that attract an unusually large number of attendees." Id. (Emphasis added). For certain special functions, Auletto's knew it had a duty and would hire off-duty police officers to regulate traffic and purchase and place signage for pedestrian safety. Id. In no way did the Appellate Division state that a duty would extend to an abutting property owner at all times or for routine activities like trash collection.

The remaining cases relied upon by plaintiff are likewise inapplicable to the facts of this case. Some involve circumstances in which an individual was required to cross a street to travel between a defendant's property and a parking area as was the case in *Warrington v. Bird*, 204 N.J. Super. 611 (App. Div. 1985). Others concern injuries caused by defects in areas where courts have already recognized that a commercial landowner exercises sufficient control to impose a duty to warn of or remedy the condition such as an abutting sidewalk, as addressed in *Monaco v. Hartz Mountain Corp.*, 178 N.J. 401, 419 (2004). Those scenarios are readily distinguishable from the present case, which involves a public employee injured in the public roadway during the performance of municipal services at a residential property.

Thus, in granting Galaxy's motion for summary judgment dismissing the complaint against it, and in denying plaintiff's two subsequent motions for reconsideration, the trial court correctly concluded on three separate occasions that Galaxy owed no duty of care to plaintiff.

POINT III

SCOTT KLINE'S OPINION, EVEN IF CONSIDERED, CANNOT CREATE AN ISSUE OF FACT (PA9, PA604)

Despite relying heavily on Scott Kline's opinion as a central aspect of his appeal, plaintiff fails to address the substance of that opinion. Consequently, plaintiff has not demonstrated why Kline's report would warrant reversal by this Court. Moreover, even if the Court were to consider the opinion, it does not affect the outcome of this case. Kline's opinion is speculative and lacks an adequate foundation. As such, even if considered, it is of no probative value.

N.J.R.E. 703 requires that an expert's opinion be supported by "facts or data derived from (1) the expert's personal observations, or (2) evidence admitted at the trial, or (3) data relied upon by the expert which is not necessarily admissible in evidence but which is the type of data normally relied upon by experts." Townsend v. Pierre, 221 N.J. 36, 53 (2015) (Internal quotations

omitted). The net opinion rule precludes the admission of expert opinion without an adequate foundation and requires that experts "give the why and wherefore that supports the opinion, rather than a mere conclusion." Id. at 53-54 (Internal citations and quotations omitted); see also, Anderson v. A.J. Friedman Supply Co., Inc., 416 N.J. Super. 46, 74 (App. Div. 2010).

At the outset, Kline never opined that Galaxy, as an abutting property owner, owed a duty to ensure plaintiff's safety (Pa617-18). Instead, he merely suggested that certain actions might have made plaintiff's work "safer" or represented a "better" option (Pa617-18). Such opinions, standing alone, do not establish the existence of a legal duty nor, assuming such a duty exists, a breach of that duty.

Nevertheless, Kline's opinion is purely a net opinion. He fails to cite any applicable regulation, industry standard, or recognized practice that would support imposing a duty on a property owner like Galaxy to ensure the safety of a municipal trash collection pick-up area.

Any regulation cited as support does not apply to Galaxy as a property owner. For example, Federal Motor Carrier Safety Administration, 49CFR

"Driving of Commercial Motor Vehicles," §392 "Stopped Commercial Motor Vehicles," notably not a New Jersey source, and the New York State Commercial Driver's Manual (Pa617), apply to drivers and commercial businesses who operate vehicles in the public roadway. The regulations apply to "employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce." 49 CFR § 390.3T. CFR § 392 refers to the "driver" as the entity who must place warning devices in the road. [3] They do not apply to property owners. Kline cites no other objective source or authority to support his opinions. Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 412 (2014).

[3] Even if one were to consider the substance of the regulation further, it would not apply to ordinary roadway stops of garbage collectors. 49 CFR § 392.22 (b)(2) exempts operations in municipal business or residential districts from the regulations otherwise outlined in subsection (a) and (b) absent a demonstration that "during the time lighted lamps are required *and* when street or highway lighting is insufficient to make a commercial motor vehicle clearly discernable at a distance of 500 feet to persons on the highway." (Emphasis added). Considering the presence of Galaxy Towers, the area would be a residential district within the Town of Guttenberg. 49 CFR § 390.5; see also, Jospeh M. Petrongolo, Zoning Map – Town of Guttenberg, September 20, 2021, guttenbergnj.org/_Content/pdf/forms/Zoning-Map-Guttenberg.pdf). There has been no opinion based upon evidence before the Court indicating that lighting was inadequate at the time of the accident or that the incident was caused by any lighting issue.

Kline cites nothing to establish that the garbage collection location—which Cali accepted without objection—differs in any meaningful way from routine garbage collection sites across the State, nor does he provide any basis to support his opinion that the location was somehow impermissible. C.f., Townsend, 221 N.J. at 57 (finding that opinions with respect to the duty of entities that design and maintain roadways to ensure that shrubbery does not impede the view of drivers, and of *landowners to comply with ordinances* in the maintenance of landscaping, are adequately supported by relevant standards.). Notably, the regulations cited by Kline *permit stopping on the roadway*, and only pertain to the driver's duty to utilize lights on the vehicle, and thereafter place warning devices within 10 minutes. Certainly, nothing in Kline's opinion cites to any standard precluding garbage removal operations at the subject location at Tower 2, requires any type of specific paint or reflective material on a dumpster, or requires the use of a security crew. Kline also ignores that New Jersey Statute 39:4-92.2 contemplates that municipal sanitation vehicles, like first responder vehicles, will need to be stopped in a travel lane during the performance of their services.

The ability to act or the opportunity to take action is not dispositive when there is simply no reasonable predicate upon which to impose a duty. Innes v.

Marzano-Lesnevich, 435 N.J. Super. 198, 212 (App. Div. 2014) (holding in relevant part that expert opinion submitted on a motion for reconsideration of a prior order dismissing the defendants' third-party complaint against third-party defendant Van Aulen, did not warrant reconsideration where although the expert report "proposed some 'straightforward and prudent steps' Van Aulen might have taken, it did not state that he breached any professional standards or that proximately-caused damages resulted"), aff'd as mod., 224 N.J. 584 [2016] (modifying regarding the payment of legal fees only).

Any opinion of Kline regarding what actions Galaxy should have taken to protect the plaintiff garbage collector is net opinion without objective support. Funtown, 477 N.J. Super. 499 (determining that the plaintiff's expert offered only net opinion, as citation to unspecified industry standards was insufficient and he had "no factual or methodological support for the proposition that JCP&L had a duty to act, or refuse to act, in a manner different than it actually did. He did not identify evidence of what industry standard JCP&L failed to follow, or how JCP&L did not comply with legal standards.").

In sum, Kline's opinion is an unsupported attempt to shift blame from Jung to Galaxy. It disregards the video evidence, which clearly shows the area was well-lit and that Jung, had she been attentive, would have seen the truck. Furthermore, Kline concedes—based on Jung's own testimony—that Jung struck the plaintiff head-on without attempting to stop.

Moreover, Kline explicitly acknowledges that he did not consider Jung's role in causing the accident. On this basis alone, any opinion suggesting that Galaxy should have taken additional measures—and that such measures would have prevented the accident—is purely speculative. Without accounting for Jung's conduct, these opinions lack foundation. Accordingly, the summary judgment order should be affirmed.

CONCLUSION

For all of the foregoing reasons, the order granting Galaxy's motion for summary judgment dismissing plaintiff's complaint—and the subsequent orders upholding that determination—should be affirmed. All relevant factors, including public policy considerations, weigh overwhelmingly against imposing a duty on an abutting property owner to protect municipal workers performing their duties in the public roadway.

Dated: August 21, 2025

Respectfully Submitted,

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September 5, 2025

Via E-Courts Appellate:
Superior Court of New Jersey – Appellate Division
Richard J. Hughes Justice Complex PO Box 006 Trenton, New Jersey 0625-0006

Re: Juan Manuel Arce Calyeca vs. Hyunyoon Jung; Galaxy Towers Condominium Association; Cali Carting Inc., Appellate Docket No. A-001889-24; Trial Docket No. MID-L-7795-19; Sat Below: Hon Daniel H. Brown, J.S.C.
Appellant's Reply to Respondent's Opposition

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ADDITIONAL TABLE OF AUTHORITIES

POINT I: THE GALAXY TOWERS COMPLEX IS NOT SOLELY RESIDENTIAL, AND REGARDLESS, ITS STATUS AS A RESIDENCE IS NOT GERMANE TO THE COURT'S DUTY ANALYSIS

Please accept this letter brief in lieu of a more formal reply to respondent's opposition to the appeal. Firstly, it should be noted that the Galaxy Towers is not purely a residential premises, as the lower levels have thousands of square feet of commercial space under the name of "Galaxy Mall." https://www.thegalaxytowers.com/neighborhood; See Stewart v. 104 Wallace St., Inc., 87 N.J. 146, 157 (1981) It is well settled that("[C]ommercial landowners are responsible for maintaining in reasonably good condition the sidewalks abutting their property and are liable to pedestrians injured as a result of their negligent failure to do so."); Restivo v. Church of St. Joseph of Palisades, 306 N.J. Super. 456, 468 (App. Div. 1997) (A church's use of its property for rental purposes was commercial and thus it was responsible for maintaining adjacent sidewalk); Luchejko v. City of Hoboken, 207 N.J. 191, 202 (2011). Importantly, however, this is not a sidewalk liability case despite the inaccurate narrative the respondents seek to create.

Rather, Galaxy's negligence in this case arises from the manner in which Galaxy conducted its business operations, and by extension, the hazards to which it

Galaxy's conducted is to be weighed, and the imposition of a duty considered. It requires a comparison of apples to apples based upon the particular facts of this case. Arguments that sidewalk liability law governs, when the condition of the sidewalk is not at issue, or that duty should be considered by the circumstances attendant a residential homeowner, as opposed to the commercial monolith it actually is, skirt the point.

As stated in the moving papers, the respondent Galaxy provided the subject garbage dumpsters and instructed Cali that a new pickup spot would be located at Tower in an area where Cali's workers would be exposed for an extended period of time to oncoming traffic while they transported several dumpsters of debris from the interior of the building to the road and lifted those loads into the truck. Pa141, 142, 146-147, 151, 154-156, 204, 210, 454, 455. As such, Galaxy had full control over where and how the trash was removed by Cali and specifically demanded Cali workers remove large volumes of trash from the premises while exposed to vehicular traffic, thus creating the hazard that ultimately injured the appellant. Additionally, Cali was in no position to contest the change in location for trash removal as respondent Galaxy, which houses a mixture of retail/office space and 1,075 residential units (which in turn house almost 1/5th of the Township of Guttenberg's 11,000+ residents), is likely Cali's largest contract.

The appellant again emphasizes that the lower court improperly ruled that there were no facts from which a reasonable jury could conclude Galaxy controlled the trash removal at the premises. The facts highlighted in the original appellate papers

POINT II: REVERSAL OF SUMMARY JUDGMENT WOULD NOT SIGNIFICANTLY ALTER NEW JERSEY LAW AND PUBLIC POLICY DICTATES THAT A DUTY OF CARE SHOULD BE IMPOSED

Furthermore, the lower court improperly extrapolated that a ruling in plaintiff's favor would forever change New Jersey law and impose a duty upon all resident homeowners during the collection of their trash. Such a conclusion is ridiculous. It is readily apparent that Galaxy Towers not only is a "mixed use" renter that hosts commercial business (New Jersey law imposes greater duties upon commercial landowners with regards to the area surrounding those premises), but that a high-rise condominium complex where trash removal requires garbagemen to stay exposed in the roadway for an extended period of time is easily distinguishable by a competent lower court from the more classical scenario where the garbagemen spend only a few seconds or minutes in the roadway before climbing back onto the back of the truck and travelling to the next pickup spot. "Unbounded liability" would not stem from a reversal of the lower court's cavalier ruling because of the unique composition of the Galaxy Towers. Galaxy's negligent behavior exposing subcontractor workers to oncoming traffic for a long period of time on a road known for fast drivers absolutely has public policy and public interest considerations to impose a duty of care upon Galaxy.

For the reasons stated in the original moving papers and re-iterated above, reversal of the trial court's summary judgment ruling is appropriate.

/s/ Joseph A. Reardon III
By: _____
JOSEPH A. REARDON III, ESQ.

Date: September 5, 2025