SHERRY SINGH and SURINDER SINGH Plaintiffs-Appellants, vs. BORGATA HOTEL CASINO & SPA, MGM RESORTS INTERNATIONAL., MARINA DISTRICT DEVELOPMEMT COMPANY, LLC, JOHN DOES 1-10 (names being fictitious), JANE DOES 1-10 (names being fictitious), ABC CORPORATIONS 1-10 (names being fictitious), Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002596-24 CIVIL ACTION ON APPEAL FROM: SUPERIOR COURT LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-2147-22 SAT BELOW: RUSSELL J. PASSAMANO, JSC

APPELLANTS' AMENDED BRIEF

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Preliminary Statement

The trial judge erroneously dismissed the appellants' complaint based upon the appellants' failure to present expert testimony on the respondent's standard of care. The trial court's decision was based upon the incorrect conclusion that appellants' slip and fall claim was so esoteric that jurors of common judgment and experience could not form a valid judgment as to whether the conduct of respondent was reasonable.

Appellants' negligence claim was premised upon the common law of premises liability and the Hotel and Multiple Dwelling Law *N.J.S.A.* 55:13A-1 et seq. (hereinafter the "Act"). In passing the Act, the New Jersey legislature supplemented and broadened the common law duty of a hotel owner by imposing an affirmative obligation on hotel owners to maintain their property in such a way that no hazards exist for innocent guests who accept the hotel owner's invitation to stay at their property.

The Act requires a hotel owner to provide their guests with a room free from hazards. Respondent, Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa's (hereinafter "Borgata"), failed to do so. This failure constituted evidence of negligence which was the proximate cause of appellants' injuries and entitled appellants to a trial by jury. The appellants' claim was supported by undisputed facts. Expert testimony was not required

and the trial court's dismissal of appellants' action and denial of appellants' cross-motion for summary judgment was error and must be reversed.

Procedural Statement

The Complaint in this matter was filed on April 7, 2022. (Pa1) An Amended Complaint was filed on April 26, 2020 (Pa28), and respondent Borgata filed an Answer to the Amended Complaint on July 20, 2020. (Pa9) Discovery ensued and at the conclusion of discovery, respondent Borgata filed a motion for summary judgment on December 6, 2024. (Pa16)

On December 24, 2024, appellants filed Opposition to respondent's Motion for Summary Judgment and a Cross-Motion for Partial Summary Judgment (Pa79). On December 30, 2024, respondent filed a Letter Reply Brief to Plaintiffs' Opposition to Borgata's Motion for Summary Judgment and Opposition to Plaintiffs' Cross-Motion for Partial Summary Judgment. (Pa104). On February 13, 2025, appellants filed a Letter Brief in Reply to Defendant's Opposition to Cross-Motion for Partial Summary Judgment. On February 18, 2025, respondent filed a Response to Plaintiff's Sur-Reply.

Oral Argument was held before the Hon. Russell J. Passamano J.S.C. on March 14, 2025.[1] Judge Passamano granted respondent's motion for summary judgment and denied appellants' cross-motion for partial summary judgment

[1] The March 14, 2025 transcript of the oral argument and oral opinion of Judge Passamano is designated as T.

because appellant did not retain an expert to opine on the standard of care. T28.10-29.1; T33.7-20; T34.17-21. An Order granting respondent's Motion for Summary Judgment was filed on March 14, 2025 (Pa140) and an Order denying appellants Cross-Motion for Partial Summary Judgment was filed on March 14, 2025 (Pa142)

This Notice of Appeal was filed on April 23, 2025. (Pa134)

Statement of Facts

On December 27, 2020, appellant Sherry Singh slipped and fell on a wet ceramic tile floor in the bathroom of Guestroom 2807 while she was a customer at Borgata. (Pa1) (Pa34) She arrived at Borgata with her husband on December 26, 2020, and was given a room that smelled like smoke. (Pa44; 54.3-12). She requested a new room and went with her husband to the front desk and was given a key to Room 2807. (Pa44; 54.21-25). Her husband decided he wanted to gamble so he went to the casino floor while appellant Sherry Singh went up to Room 2807 with the luggage. (Pa45; 55.1-11). She entered the room and removed her shoes and intended to use the toilet. (Pa45; 55.6-25: Pa47; 57.17-22).

Appellant Sherry Singh opened the door to the bathroom, turned on the light and entered the bathroom. The toilet was in a water closet. She opened

the door to access the toilet, and water came flowing out and under her feet and she slipped and fell on the ceramic tile floor. (Pa48; 58.5-23).

Borgata documented the leak in the bathroom of Room 2807 and identified the source of the leak as the hose under the toilet tank. (Pa61) After the appellant's accident, the leaking under toilet tank hose was replaced. (Pa88; 14.11-22: Pa88; 15.15-19).

It was the policy of Borgata that when Housekeeping prepares the room for its customers to check into, they are required to report any issues they may come across, including maintenance issues. (Pa68) The maintenance log of Borgata during the month of December 2020 did not record any issues with the toilet in Guestroom 2807. (Pa60) Room 2807 was last occupied on December 20, 2020. (Pa60)[2]

Prior to December 27, 2020, Borgata conducted a Preventative Maintenance Program where a team in the general maintenance department would inspect unoccupied rooms on a schedule to make sure that things were in working order for the guests that would rent the rooms. (Pa88; 17.1-20). The purpose of these inspections was to make sure that all the things in the room

[2] Respondent admitted in its Response to Plaintiff's Supplemental Interrogatories that Room 2807 was last occupied on December 20, 2020, prior to appellant's accident.

were working properly. (Pa89; 19.11-15) This would include the bathroom. (Pa89; 19.11-21)

The purpose of the preventative maintenance inspection was room upkeep. (Pa98; 20.23-21.1) The preventative maintenance inspections were continuous. When one inspection finished the scope of work changed, and the inspections started over again. (Pa97; 14.11-15)

In 2020, Governor Phil Murphy shut the casinos down due to the Covid-19 epidemic. (Pa97; 15.24) When the casinos reopened, there was a limitation on the percentage of rooms that could reopen and there were no preventative maintenance inspections being conducted. (Pa97; 16.12-23) No preventative maintenance inspections were conducted in December 2020 prior to appellant's fall. (Pa97; 15.20-23) The preventative maintenance program was reinstated in 2021. (Pa97; 17.8-13)

Daryl Henson was a member of the general maintenance department and conducted preventative maintenance inspections before the Borgata was closed because of the Covid-19 epidemic. (Pa96; 12.22 to 13.8) He was trained that if during a preventative maintenance inspection a leaking toilet was discovered, even if it was not on the scope of work for the preventative maintenance inspection, that condition would be reported and addressed. (Pa99; 23.10-16: Pa99; 24.2-9) If the toilet was leaking prior to the preventative maintenance

inspection, it would have been discovered and addressed before the occupancy of the room. (Pa99; 24.24 to 25.4)

Legal Argument

I. Standard of Review.

The review of an order granting summary judgment is *de novo*. *Graziano v Grant*, 326 N.J. Super. 328, 338 (App. Div. 1999).

II. Expert Testimony was not Required to Establish the Applicable Standard of Care for Respondent and the Trial Court's Grant of Summary Judgment to Respondent and Denial of Appellants' Cross-Motion for Summary Judgment was Error. **(Pa140; Pa142; T28.10-29.1; T33.7-20; T34.17-21).**

In most negligence cases, the plaintiff is not required to establish the applicable standard of care. *Davis v Brickman Landscaping, Ltd.,* 219 N.J. 395, 406 (2014)(*citing Sanzari v. Rosenfeld*, 34 N.J. 128, 134(1961)). It is sufficient for [the] plaintiff to show what the defendant did and what the circumstances were. The applicable standard of conduct is then supplied by the jury[,] which is competent to determine what precautions a reasonably prudent man in the position of the defendant would have taken." *Id.* at 406-07. "Such cases involve facts about which 'a layperson's common knowledge is sufficient to permit a jury to find that the duty of care has been breached without the aid of an expert's opinion.'" *Id.* at 407 (quoting *Giantonnio v Taccard*, 291 N.J. Super. 31, 43 (App. Div. 1996).

"[W]hen deciding whether expert testimony is necessary, a court properly considers 'whether the matter to be dealt with is so esoteric that jurors of common judgment and experience cannot form a valid judgment as to whether the conduct of the [defendant] was reasonable.'" *Davis*, 219 N.J. at 407 (quoting *Butler v Acme Mkts., Inc.*, 89 N.J. 270, 283 (1982); *see also Hubbard ex rel. Hubbard v. Reed,* 168 N.J. 387, 394 (2001) (holding expert testimony was not needed when the jury's "common knowledge as lay persons is sufficient to enable them, using ordinary understanding and experience, to determine a defendant's negligence").

a. <u>The respondent's duty was to make reasonable inspections to discover defective conditions</u>.

The respondent's common law duty was to use reasonable care to make the premises safe, and this includes the duty to make a reasonable inspections to discover defective conditions. *See, Handleman v Cox*, 39 N.J. 95, 111 (1962). The determination of whether the respondent satisfied its duty to appellant to make reasonable inspections was not an issue so esoteric that jurors of common judgment and experience could not form a valid judgment as to whether the conduct of the respondent was reasonable. The respondent argued that the policy of Borgata that required Housekeeping to report any issues, including maintenance issues, that they observe when making up a room after a guest checks out satisfied its duty to appellant. The appellant disagrees.

Appellant argued to the trial judge, and would argue to the jury, that respondent should have an employee enter a room that was vacant for more than a day to make sure there were no hazards present before the room is rented to its guests. Room 2807 was vacant for six days before it was made available to appellants. A daily inspection of rooms to determine the existence of any patent hazards would be neither time-consuming nor expensive for the respondent. Our courts have recognized the salutary effect of shifting the costs of preventing harm. *See, Hopkins v Fox & Lazo Realtors,* 132 N.J. 426, 447 (1992). "Negligence has often been defined as the failure to take precautions that cost less than the damage wrought by the ensuing accident." *Id.* Respondent argues that once the bed is made, and the maid leaves the room, it is insulated from all liability to its guests who later occupy its rooms and are injured by a hazardous condition within because they have no notice of the hazardous condition.

The issues presented in this slip and fall case are neither esoteric nor complex. It was an error for the trial judge to find that expert testimony was required to establish an accepted standard of care. The obligation of a business owner to its invitee to use reasonable care to make its premises safe has been long settled in New Jersey. It may be that the jury finds that respondent's conduct was sufficient and should not result in the imposition of liability against respondent; however, it is the jury's decision to make and, like in *Hopkins,*

supra, they are fully capable of making that decision without the assistance of experts. *Hopkins,* 132 N.J. at 451.

Additionally, appellants argue that it was negligent for respondent to re-open the Borgata without conducting preventative maintenance inspections. Borgata documented the leak in the bathroom of room 2807 that was present on December 27, 2020, and identified the source of the leak as the hose under the toilet tank. After the plaintiff's accident, the under-toilet tank hose was replaced, and the leak was fixed.

The preventative maintenance program stopped in 2020 when Governor Murphy shut the casinos down due to the Covid-19 epidemic. Staff were laid off because the hotel was closed. When the casinos reopened, there was a limitation on the percentage of rooms that could be rented. There were no preventative maintenance inspections being conducted in December 2020, the month appellant's accident happened.

Appellant also contended in opposition to respondent's Motion for Summary Judgment that had the preventative maintenance program been in effect, it would have been more likely than not that an employee of respondent would have been in Room 2807 prior to December 26, 2020, and would have discovered the leaking toilet and prevented appellant's injury. Once again, whether the failure to restart the Preventative Maintenance Program constitutes

negligence is not an esoteric issue requiring expert testimony and appellants' complaint should not have been dismissed.

b. *Terrey v Sheridan Gardens, Inc.*, 163 N.J. Super. 404 (App. Div. 1978) is inapposite.

The trial court was influenced by this Court's opinion in *Terrey v Sheridan Gardens, Inc.*, 163 N.J. Super. 404 (App. Div. 1978). In *Terrey*, the Appellate Division reversed the trial court's directed verdict against plaintiff premised upon the absence of evidence that the defendant apartment complex owner was given notice of the hazardous condition of the outside steps that caused plaintiff's fall. The court found that the landlord "is under a legal duty to maintain a common stairway under his control reasonably fit for use by occupants of the premises..." and that "this common law duty has been supplemented and broadened by the...Hotels and Multiple Dwelling Act (*N.J.S.A.* 55:13A-1 et seq.)". 163 N.J. Super. 407.

In making its ruling, the court recognized that the Commissioner of the Department of Community Affairs promulgated rules which were in effect when plaintiff allegedly fell which imposed a nondelegable duty upon landlords. The applicable section was *N.J.A.C.* 5:10-19.4 DUTES OF OWNERS. This administrative code section required that the landlord provide "regular daily care for all common areas..." 163 N.J. Super. at 409. The trial court equated daily care with daily inspection and found that, unlike in appellant's case, the

applicable administrative code provision in *Terrey* established a standard of care, i.e. daily inspections, which did not require expert testimony.

The trial court's reliance on *Terrey* was misplaced because first, the administrative code provisions relied upon by the court have been repealed. Second, the issue in *Terrey* was not the need to establish the standard of care in an esoteric negligence action through expert witness testimony which was the basis of the trial court's decision in this case. Third, the issue in *Terrey* was whether notice to the landlord was required as a *prima facie* element of plaintiff's claim. The *Terrey* court found that the duty of care was established by the administrative regulations of the Act and that the issue of negligence should have been left for jury determination. *Id.* at 410. Appellant prays for the same relief.

c. Expert testimony was not needed to determine the violation of the Hotel and Multiple Dwelling Law *N.J.S.A.* 55:13A-1 et seq. (hereinafter the "Act") .

Appellant moved for partial summary judgment on appellant's negligence claim that the respondent violated the Act, and this violation was the proximate cause of her injuries. The Act was enacted in 1967 as remedial legislation to protect the health and welfare of the public to ensure that they have safe hotel rooms. The Act is to be liberally construed to effectuate its purpose. *N.J.S.A.* 55:13A-2.

The Commissioner of the Department of Community Affairs is directed by *N.J.S.A.* 55:13A-7 to "issue and promulgate . . . such regulations as he may deem necessary to assure that any hotel. . . will be maintained in such manner as is consistent with, and will protect the health, safety and welfare of the occupants . . ." Like the Act, the administrative regulations promulgated thereunder are to be liberally interpreted to secure the beneficial purposes thereof. *N.J.A.C.* 5:10-1.5. These "standards and specifications" represent the commissioner's expert judgment that the given safeguards are "reasonably necessary to the health, safety and welfare of the occupants or intended occupants of any . . . hotel." *N.J.S.A.* 55:13A-7. The regulations therefore define with the force of law, see *N.J.S.A.* 55:13A-7, -9(a), the minimum standards for safety and habitability in hotels. *N.J.S.A.* 55:13A-3(j)(defining "hotels")(See *N.J.S.A.* 55:13A-9(b)).

The Act imposes a duty upon the owner of any hotel to keep the premises free of hazards to the health and safety of the occupants of the premises. *N.J.A.C.* 5:10-6.1. The owner of a hotel is responsible under the Act for providing the occupants of a hotel room with a toilet that "shall be maintained in good operating condition **at all times**. . ." *N.J.A.C.* 5:10-21.1. (emphasis added).

"A statute which establishes a standard of conduct may be considered as evidence of negligence on behalf of one whose benefit it was enacted if its breach was the efficient cause of the injury of which [s]he complains". *Ellis v Caprice*, 96 N.J. Super. 539, 661-662 (App. Div. 1967). A violation of the Act can be considered by the jury on the issue of defendant's negligence. *Id.* at 547. (relying on the Tenement House Law, *N.J.S.A* 55:3-18, the predecessor to the Act); *Trentacost v Brussel*, 82 N.J. 214, 230 (1979) (the statutory and regulatory scheme governing the habitability of [hotels] establishes a standard of conduct for [hotel owners]. It is thus available as evidence for determining the duty owed to [the public]).

It is appellant's position that the Act establishes an affirmative obligation on hotel owners to maintain their property in such a way that no hazards exist for innocent guests who accept the hotel owner's invitation to stay at their property. The trial judge agreed that expert testimony was not needed to establish that water on a ceramic tile floor constituted a tripping hazard. T27.18-28.17. The uncontested fact of the presence of water from the leaking toilet in Room 2807 that caused the appellant's fall was clear evidence of a hazardous condition in violation of N.J.A.C. 5:10-6.1, caused by a violation of N.J.A.C. 5:10-21.1. Expert testimony is not required to prove these violations of the Act. Therefore, the trial court's denial of appellant's cross motion for summary

judgment was error. Appellant is entitled to present to a jury the respondent's violation of the Act which constitutes evidence of negligence that was a proximate cause of appellants' injuries. *See, Trentacost v Brussel*, 82 N.J. 214, 230 (1979) .

III. The Lack of Actual or Constructive Notice to Respondent of the Leaking Toilet is not a Defense to Appellants' Action **(Pa142)**.

Notice to respondent is not part of the appellants' *prima facie* case. The common law duty of care owed by an occupier of land to an invitee is to use reasonable care to make the premises safe, and this includes the duty to make reasonable inspections to discover defective conditions. *See, Handleman v Cox*, 39 N.J. 95, 111 (1962). However, as recognized by the court in *Terrey*, common law duties of landlords and hotel owners have been supplemented and broadened by the Act. *Terrey,* 163 N.J. Super. at 407.

The Act imposes an active duty, not a passive duty, upon respondent. The respondent's position is once the room is made up by the Housekeeping staff, no liability can attach unless respondent has notice of a defective condition inside the room or appellants can prove constructive notice. This position is inconsistent with the Act and the common law.

The duty to perform reasonable inspections is a proactive duty whose purpose is to discover dangerous conditions on respondent's property and protect respondent's guests from harm. The notice requirement in the law of

premises liability is justified only when control over the property is passed from owner to tenant. *See, J.H. v R & M Tagliareni, LLC*, 239 N.J. 198, 221 (2019)("Absent control over property or equipment, it violates a sense of fairness to hold a landlord liable for harm caused by an item in the tenant's control").

In this case, the respondent delivered Room 2807 to appellants in a hazardous condition in violation of the Act. This fact alone should entitle appellant to get to a jury. The respondent's duty to perform reasonable inspections cannot be abrogated by the lack of notice prior to appellant's possession of the premises. The fact that respondent had no notice of the existence of the leaking toilet on December 26, 2020, prior to renting Room 2807 to appellants, is not a defense to liability. The respondents were obligated to discover the existence of the hazardous condition inside Room 2807 before placing appellant in harm's way. To require respondent to conduct an inspection of a room left vacant for more than a day before it is rented to the public is a reasonable standard of care that does not require expert testimony for jurors to understand.

Conclusion

For all the foregoing reasons, appellants respectfully request that this Court reverse the dismissal of appellants' complaint and reverse the denial of appellants' cross-motion for partial summary judgment and remand this matter back to the trial court for trial.

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By: /s/Richard D. Picini
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Dated: July 29, 2025

SHERRY SINGH and SURINDER SINGH, Plaintiffs-Appellants, v. BORGATA HOTEL CASINO & SPA, MGM RESORTS INTERNATIONAL, MARINA DISTRICT DEVELOPMENT COMPANY, LLC, JOHN DOES 1-10 (names being fictitious), JANE DOES 1-10 (names being fictitious), ABC CORPORATIONS 1-10 (names being fictitious), Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-2596-24 ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY LAW DIVISION ESSEX COUNTY DOCKET NO. ESX-L-2147-22 SAT BELOW: HON. RUSSELL J. PASSAMANO, J.S.C. Civil Action

BRIEF ON BEHALF OF DEFENDANTS-RESPONDENT MARINA DISTRICT DEVELOPMENT COMPANY, LLC d/b/a BORGATA HOTEL CASINO & SPA

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PRELIMINARY STATEMENT

This case concerns Plaintiff-Appellant Sherry Singh's ("Plaintiff") alleged fall inside her hotel room bathroom at Defendant-Respondent Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa ("Borgata") on or around December 27, 2020. According to Plaintiff, a leaking toilet in Guestroom 2807 caused her to slip and fall. The fall was unwitnessed by any other person. Borgata's policy is that Housekeeping is to prepare guestrooms before any guest checks in and to report any maintenance issues to Facilities for resolution. Borgata's Maintenance Log indicates that in the entire month of December 2020, up until Plaintiff's report of her alleged fall on December 27, 2020, there were no prior issues with the toilet or with any leaks in the bathroom where Plaintiff alleges she fell.

The trial court below accepted Borgata's Statement of Material Facts which established that Plaintiff and Plaintiff-Appellant Surinder Singh (collectively "Plaintiffs") had not and could not put forth any credible evidence, or in fact any evidence at all, that Borgata had actual or constructive notice of a dangerous condition, that Borgata breached any duty owed to Plaintiffs, or that any action or inaction on the part of Borgata was the proximate cause of Plaintiff Sherry's accident. The trial court properly concluded that there are no genuine

issues of material fact to be presented to a jury, and dismissed Plaintiffs' Complaint in its entirety, with prejudice.

In this appeal, Plaintiffs claim that a jury may have been able to find that a slippery floor might lead to an accident. Plaintiffs have additionally appealed to suggest a litany of policy and procedures that Borgata should adopt. None of Plaintiffs' arguments on appeal relate logically to the reason that summary judgment was entered against them and Plaintiffs continues to misunderstand that a singular issue – lack of notice – determined the outcome of this case. Plaintiffs are simply forging ahead in their attempt to reverse a correctly decided order by repeating the mistaken assertions of fact and law as they did before the trial court.

For the reasons set forth below, Borgata respectfully requests that this court affirm the trial court's well-reasoned decision granting summary judgment and dismissing Plaintiffs' Complaint.

PROCEDURAL HISTORY

On April 7, 2022, Plaintiffs filed their Complaint against Borgata[1] alleging that Plaintiff slipped and fell in the bathroom of Guestroom 2807 while she was a guest at the hotel. (Pa1).[2]

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[1] Plaintiffs incorrectly identified Borgata's entity name in the caption to their Complaint. The correct name is as it appears on Borgata's brief cover.

[2] Pb – Plaintiffs' Brief

Plaintiffs filed an Amended Complaint on July 20, 2020. (Pa28). On July 20, 2022, Defendants answered Plaintiff's Complaint denying all claims. (Pa9).

On December 6, 2024, Defendant filed its Motion for Summary Judgment. (Pa16). On December 24, 2024, Plaintiffs filed their Opposition and Cross Motion for Summary Judgment. (Pa74). Both Plaintiffs and Defendants filed letter brief replies and Defendant, as movant, filed a sur-reply. On March 14, 2025, the trial court heard oral argument on the motions (T), issued an Order denying Plaintiff's Cross Motion (Pa142), and granting Defendant's Motion for Summary Judgment (Pa140).

Plaintiffs filed their Notice of Appeal on April 23, 2025. (Pa134).

STATEMENT OF FACTS

Following a recitation of the standard of granting a motion for summary judgment, the trial court highlighted that all but one of the twenty-six material facts submitted by Defendants on its Motion for Summary Judgment were accepted by Plaintiffs. A recitation of those material facts is therefore prudent to gain an understanding of the twenty-five out of twenty-six material facts that Plaintiffs and Defendants agree upon. It is further important to note that the only

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Pa – Plaintiffs' Appendix
T – Transcript dated March 14, 2025 (Summary Judgment Motion Hearing)

fact is dispute was about the timing of the incident, which is inconsequential.

The material facts are:

1. On or around December 27, 2020, Plaintiff, Sherry Singh, ("Plaintiff Sherry") alleged that she slipped and fell in the bathroom of Guestroom 2807 while she was a customer at Marina District Development Company, LLC d/b/a Borgata Hotel Casino & Spa ("Borgata"). (See Exhibit "A" Plaintiff's Amended Complaint [Pa28]; See also Exhibit "B" Borgata Incident Report [Pa34]).
2. Plaintiff Sherry alleges the purported fall was caused due to a leaking toilet. (See Exhibit "B" at Page 2 of 3 [Pa35]).
3. Plaintiff Sherry alleges she arrived at Borgata in the afternoon from her home in West Orange, New Jersey. (See Exhibit "C" Deposition of Plaintiff, Sherry Singh, at 52:20- 53:1 [Pa42 to Pa43]).
4. Plaintiff Sherry's reservation folio shows that she checked in on December 26, 2020, and checked out on December 27, 2020. (See Exhibit "D" Plaintiff's Room Folio [Pa55]).
5. Upon arrival, Plaintiff Sherry checked in and went to their hotel room, however, Plaintiff Sherry alleges the first room they were given smelled like cigarette smoke and within a half hour, the room was changed. (See Exhibit "C" at 53:16-54:20 [Pa43 to Pa44]).
6. After Plaintiffs were given a new room, Plaintiff, Surinder Singh, Plaintiff Sherry's husband, went to gamble on the casino floor and Plaintiff Sherry went to the new guestroom. (Id. at 55:1-5 [Pa45]).
7. Plaintiff Sherry alleged she got to the new room, took off her shoes, and proceeded to the bathroom. Plaintiff was barefoot. (Id. at 55:6-13 [Pa45]).

8. Plaintiff Sherry alleged the door to the restroom was shut so she opened the door and turned on the light. (Id. at 55:17-56:5 [Pa45]).
9. Plaintiff Sherry testified when she opened the restroom door, the shower was straight ahead, the sink was to the left, and the toilet was to the right. (Id. at 66:1-12 [Pa50]).
10. Plaintiff Sherry alleges upon entering the restroom, she picked up a towel and hung it on the door. (Id. at 66:13-24 [Pa50]).
11. Plaintiff Sherry felt no water on the floor from the time she entered bathroom, got a towel, and hung the towel up. (Id. [Pa50]).
12. Plaintiff Sherry testified she was in the restroom for a "few minutes" before she fell. (Id. at 66:25-67:2 [Pa50]).
13. Plaintiff Sherry testified there is a separate door to get to the area of the bathroom with the toilet. The door to the toilet was also closed. (Id. at 56:24-57:5 [Pa46]).
14. Plaintiff Sherry testified when she went to the toilet, she pushed the handle to the door separating the toilet from the rest of the bathroom down, opened the door, and water came out of the area where the toilet was. (Id. at 58:5-13 [Pa48]).
15. Plaintiff Sherry alleges it was at this time, after opening the door to the toilet, that water came out and she "start[ed] slipping." (Id. at 58:14-23 [Pa48]).
16. Plaintiff Sherry testified she was generally able to see in the restroom. (Id. at 69:14-15 [Pa52]).
17. Plaintiff Sherry testified no one in her party used the restroom before she did. (Id. at 69:16-22 [Pa52]).
18. Plaintiff Sherry does not know when the toilet was last used prior to her alleged fall down accident. (Id. at 69:23-25 [Pa52]).

19. Plaintiff Sherry testified she has no facts or evidence that Borgata knew of the issue with the toilet leaking prior to her fall. (Id. at 70:1-10 [Pa53]).

20. Plaintiff Sherry testified she has no facts or evidence to suggest Borgata caused the toilet to leak. (Id. at 70:11-19 [Pa53]).

21. According to Plaintiff Sherry, the fall down incident occurred in the late afternoon. (Id. at 55:14-16 [Pa45]).

22. However, the Incident Report and Maintenance Log indicate that this matter was reported and responded to by Borgata Security and Facilities at approximately 1:00 a.m. (See Exhibit "B" at Page 1 of 3 indicating the fall was reported at approximately 1:20 a.m. [Pa34]; See also Exhibit "E" Borgata Maintenance Logs indicating the reported time for the toilet leak was 1:02 a.m. [Pa61]).

23. The area where Plaintiff Sherry claims to have fallen was photographed upon Borgata Security Specialist, Larry Watts, consistent with Borgata's investigative procedures when an incident occurred. (See Exhibit "B" at Page 5 [Pa38]; See also Exhibit "F" Deposition of Larry Watts at 18:21-25 and 21:17-24 [Pa65 to Pa66]).

24. It is the policy of Borgata that when Housekeeping prepares the room for its customers to check into, they are required to report any issues they may come across, including maintenance issues. (See Exhibit "G" Relevant Portions of Borgata's Housekeeping Policy [Pa68]; See also Exhibit "H" Deposition of Borgata General Maintenance Mechanic Lyndsay Talavera at 22:14-23:5 [Pa72 to Pa73]).

25. The maintenance log of Borgata during the entire month of December 2020 up until the date of the incident shows that there were no prior issues with the toilet in Guestroom 2807. (See Exhibit "E" Maintenance Log – Page 1 [Pa60]).

> 26. According to the log, the only reported issue with the toilet that month from the dates of December 1, 2020, through December 27, 2020, came from Plaintiff on the date of the incident. (Id. [Pa60])
>
> [Pa20-22.]

Plaintiffs have disputed the timing of the incident from the inception of this matter. However, even in its denial of Paragraph 22 in its Opposition and Cross Motion, Plaintiffs failed to include a citation to the record or any competent evidence to dispute Defendant's timeline of events. R. 4:46-2(b) ("all material facts in the movant's statement which are sufficiently supported will be deemed admitted for purposes of the motion only, *unless specifically disputed by citation conforming to the requirements of paragraph (a) demonstrating the existence of a genuine issue as to the fact*").

After accepting the material facts, the trial court summarized the parties' arguments made in their moving papers and in their oral representations. The court began by agreeing with Plaintiffs that an expert would not be needed in order to report to the jury that if water was present on a ceramic floor that someone might slip. (T27:4-17). The trial court stated that there is difference between making such a representation and claiming that Defendant did not do enough to "ensur[e] that the rooms are put in proper condition" by "industry standards." (T27:18-24). The trial court noted that Plaintiffs failed to establish,

without an expert, that "what the [D]efendants did with respect to ensuring the condition of the room was unreasonable or violated some duty." (T28:5-9).

Given the "evidentiary materials in the motion record" "there was no way" for Plaintiffs to "establish what the standard is and a violation of the standard." (T29:2-6). The court found "there was no testimony to say [']here's the responsibilities, here's what the Borgata was doing, here's what their protocols and inspection procedures were, and here's how it breached the defendant's responsibilities to the defendant's guests.'" (T33:16-20). Plaintiffs failed to provide an "evidentiary basis in - - [sic] on an expert to say here's how a - - the standard of the industry to maintain these items in operating condition, and here's how you inspect when one guest leaves before the next guest comes in and frequency and so forth to be able to say that there's a basis for the jury to have . . . a basis to say whether or not the Borgata has breached some standard." (T34:19-35:1). The trial court found Defendant "ha[d] established a basis for summary judgment in its favor". (T30:22-31:1).

The trial court also addressed the applicability of Plaintiffs' arguments as to the applicability of the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq. The court noted that Defendant argued the statutes did not apply, and even if they did apply would still require a Plaintiff to establish notice. (T31:2-

8). The trial court highlighted that "even if [the statutes] were to apply" Plaintiffs failed to show a violation of a duty by Defendants. (T31:9-13).

STANDARD OF REVIEW

Appellate courts review the trial court's grant or denial of a motion for summary judgment de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73 (2022); Stewart v. N.J. Tpk. Auth./Garden State Parkway, 249 N.J. 642, 655 (2022); Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021). The appellate court considers "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995).

LEGAL ARGUMENT

I. THE TRIAL COURT CORRECTLY DECIDED THAT EXPERT TESTIMONY WAS REQUIRED

In the moving papers and at oral argument below, Defendants acknowledged that Plaintiffs were deemed business invitees of Borgata at the time of the incident. This was a generous acknowledgement as Plaintiffs' themselves confused this point and continuously failed to make a common-sense argument attempting to prove negligence in this way. As such, under the law of the State of New Jersey, Defendants and the trial court agreed that Defendants had duty to Plaintiffs to

exercise ordinary or reasonable care to render the premises safe for their protection, to maintain the premises free from any unreasonable risk of harm, and to warn of unreasonably dangerous conditions known or which should have been discovered by the exercise of reasonable care. Handelman v. Cox, 74 N.J. Super. 316, 331 (App. Div. 1962). Plaintiffs had the affirmative burden to prove that Defendants somehow breached that duty. Plaintiffs did not do so, and have continued to forge ahead with this appeal, again failing to produce any evidence – there is none – linking the alleged accident with any breach of duty or negligence by Defendant.

A. The trial court correctly determined that expert testimony would be required to assist a jury in understanding the standard of care.

Where a "jury is not competent to supply the standard by which to measure the defendant's conduct," Sanzari v. Rosenfeld, 34 N.J. 128, 134-35 (1961), the plaintiff must "establish the requisite standard of care and [the defendant's] deviation from that standard" by "present[ing] reliable expert testimony on the subject." Giantonnio v. Taccard, 291 N.J. Super. 31, 42 (App. Div. 1996). "[W]hen deciding whether expert testimony is necessary, a court properly considers whether the matter to be dealt with is so esoteric that jurors of common judgment and experience cannot form a valid judgment as to whether the conduct of the [defendant] was reasonable." Butler v. Acme Mkts. Inc., 89 N.J. 270, 283 (1982). In such cases, the jury "would have to speculate without the aid of expert testimony." Torres v. Schripps, Inc., 342 N.J. Super. 419, 430 (App. Div. 2001).

Plaintiffs are essentially seeking permission to try their case under the common knowledge exception to forgo expert testimony, common in malpractice cases. "At its core, the common knowledge exception allows jurors to 'supply the applicable standard of care . . . to obviate the necessity for expert testimony relative thereto.'" Cowley v. Virtua Health Sys., 242 N.J. 1, 19 (2020) (quoting Sanzari, 34 N.J. at 141). But "a jury of lay [persons] cannot be allowed to speculate as to whether the procedure followed by a [defendant] conformed to the required professional standards." Ibid. (citation omitted).

Accordingly, it is appropriate to invoke the common knowledge exception in cases only where the "carelessness of the defendant is readily apparent to anyone of average intelligence and ordinary experience." Chin v. St. Barnabas Med. Ctr., 160 N.J. 454, 469-70 (1999) (citations omitted). "The trial of such a case is essentially no different from 'an ordinary negligence case.'" Id. at 469 (quoting Rosenberg v. Cahill, 99 N.J. 318, 325 (1985)). Examples of cases applying the common knowledge doctrine exception include extracting the wrong tooth, Hubbard v. Reed, 168 N.J. 387, 396 (2001), pumping gas instead of fluid into a patient's uterus, Chin, 160 N.J. at 471, and filling a prescription with medication other than the drug prescribed, Bender v. Walgreen E. Co., 399 N.J. Super. 584, 590-91 (App. Div. 2008). In short, cases applying the common knowledge exception "involve obvious

or extreme error." Cowley, 456 N.J. Super. at 290 (citing Bender, 399 N.J. Super. at 590).

The mere fact that Plaintiff claims she was injured while at Borgata is not sufficient in and of itself to present this case to a jury. The trial court agreed. The fact that an injury was sustained while Plaintiff was at Borgata does not mean that Borgata was negligent. The trial court agreed. As correctly explained by the trial court, something more is needed to demonstrate negligence on the part of Borgata and to submit this case to a jury. Plaintiffs do not have any proof of negligence. They have no evidence that Borgata caused the leak from the toilet. Likewise, they have no evidence that Borgata knew about the leak from the toilet prior to the alleged unwitnessed fall. They do not know how long the toilet was leaking before the unwitnessed fall. There is not a single witness or document in this case that can provide any insight to the jury as to how long the alleged condition actually existed. Rather, the documents in the record below indicate that in the twenty-seven days in the month of December leading up to this accident, there was not a single other reported issue with the toilet as evidenced in Borgata's Maintenance Log (Pa59), and that the policy of Borgata is that when Housekeeping prepares the room prior to a guest checking in, they are to report any hazards or defects to Facilities to be repaired prior to a guest checking in. (Pa67; Pa72). There were no prior reported

issues with this toilet in the entire month of December, whether by a guest of Borgata or an employee of Borgata, until Plaintiff's alleged accident.

What have Plaintiffs submitted to rebut this evidence? Nothing. Plaintiffs want the opportunity to have jurors speculate about nearly every aspect of the incident, beyond the proofs that Defendants have provided. The trial court correctly determined that based on Plaintiffs' burden to prove that Defendants breached the standard of care required of them, a jury would need more than Plaintiffs' word. As stated by the trial court, a normal juror would be able to make the connection that a slippery floor might cause someone to fall (T27:1-4), but there is no way a layperson is familiar with the standards of care owed to a hotel guest. Specifically, as explained by the trial court, a jury would need information such as what the "responsibilities . . . protocols and inspection procedures were" and "how it breached the defendant's responsibilities to the defendant's guests." (T33:16-20). The trial court correctly determined that Plaintiffs had no evidentiary basis and could not explain, without an expert, "the standard of the industry" or "how you inspect when one guest leaves before the next guest comes in and frequency and so forth" to be able to ascertain "whether or not the Borgata has breached some standard." (T34:19-35:1).

Instead, Plaintiffs have included their own version of an acceptable standard that Defendants should adopt to prevent future incidents from occurring

in their hotel bathrooms based on their experience as a hotel guest, not as actual qualified experts. Plaintiffs have suggested in their brief, which they stated they "would argue to the jury," that Defendants "should have an employee enter a room that was vacant for more than a day to make sure there were no hazards present before the room is rented to its guests." (Pb8). And, even more bold, Defendants should require "[a] daily inspection of rooms to determine the existence of any patent hazards" which, according to Plaintiffs in all their wisdom "would be neither time-consuming nor expensive for [Defendants]." (Pb8). Borgata has over 700 hotel rooms. Still the fact remains, when the room was last occupied and inspected was not in the record below– which would force a jury to again speculate.

Defendants rely on the case law previously cited but also note that Plaintiffs' ridiculous, non-legal assertions truly underscore the crux of their case. Plaintiffs believe they are entitled to relief based on their own delusions of how a hotel should be run, not the duties and standards that are imposed by the laws in this State to which Defendants strictly adhere.

B. Terrey v. Sheridan Gardens, Inc., 163 N.J. Super. 404 (App. Div. 1978) was originally cited by Plaintiffs

Plaintiffs have asserted that Terrey is "inapposite" which begs the question: Why was it Plaintiffs that cited to it in their Motion for Summary

Judgment and reiterated its applicability in Plaintiffs' oral argument on summary judgment?

The Terrey case involved a landlord's failure to clear wet leaves from the stairs of a common area in its building. Id. at 409. The Appellate Division determined that a jury could reasonably find that "if defendant's duty to inspect and maintain had been performed, the defective condition, which was reasonably foreseeable, would readily have been observed." Id. at 410. Plaintiffs touted this opinion at oral argument to support waiving the notice provision and applying the Hotel and Multiple Dwellings Law. However, when questioned by the trial court at oral argument as to why an opinion concerning a common area would apply to the facts at hand, Plaintiffs explained that "that particular section would not be applicable." (T12:25-13:1).

The trial court did not "rely" on Terrey to render its decision. It relied on the twenty-five out of twenty-six accepted Statements of Material Fact, Defendants' proofs and outline of applicable case law, and Plaintiffs' lack of any substantial evidence to the contrary. To the extent that the trial court did rely on Terrey, if any, it was because the case was cited by Plaintiffs and re-argued to apply at oral argument on Plaintiffs' Cross-Motion for Summary Judgment.

C. The trial court correctly determined that the Hotel and Multiple Dwellings Law, N.J.S.A. 55:13A-1 et seq. does not apply.

Plaintiffs assert that Defendants are subject to the Hotel and Multiple Dwelling Act, N.J.S.A. 55:13A-1, et seq. (the "Act"), and that the duty Borgata owes to Plaintiffs arises out of that legislation. Plaintiffs contend that Borgata, under N.J.A.C. 5:10-21.1 is required to "provid[e] the occupants of a hotel room with a toilet that 'shall be maintained in good operating condition **at all times** . . .'" (Pb12). It is not in dispute that Borgata owes a duty to Plaintiffs as business invitees; however, Plaintiffs' assertion that the Act overcomes a plaintiff's obligation to prove notice, either actual or constructive, and that there was a deviation from a standard of care would essentially turn the well-established law of premises liability on its head and further hold a defendant strictly liable for any incident that occurred arising out of a defendant's duty under the Act. Toilets are allowed to break.

Plaintiffs argue they are "entitled to present to a jury [Defendants'] violation of the Act which constitutes evidence of negligence that was a proximate cause of [Plaintiffs'] injuries." (Pb14 (citing Trentacost v. Brussel, 82 N.J. 214, 230 (1979))). Again, Plaintiffs' citations (in addition their lack of evidence) prove to be their downfall.

In Trentacost, a tenant brought a claim against the landlord due to lacking security at a rental property that was subject to the Act. The Court stated that

despite the existence of the Act, the liability of a defendant subject to the Act is **posited upon negligence concepts** and that despite a duty existing under the Act, the duty is still one of "**reasonable care.**" Trentacost, 82 N.J. at 219-220 (emphasis added). Further, the Court clearly allowed evidence to be introduced by the plaintiff related to the issue of notice. Id. at 219 (stating the plaintiff introduced evidence that two months prior to being attacked by a third party, which was the basis of the litigation, she reported to her landlord that there was an attempted break in at the building and unauthorized persons in the hallway). The Court found that the statute does not create a "statutory cause of action." Id. at 233.

Not only do Plaintiffs' citations contradict their own positions, but Plaintiffs also provide zero legal citation or support of their argument that the existence of the Act somehow abolishes a plaintiff's burden in a premises liability negligence action to come forth with evidence of either actual or constructive notice.

Plaintiffs' dream of taking their case to a jury will not be fulfilled based on their reliance on the Act alone.

II. PLAINTIFFS ARE REQUIRED TO PROVE ACTUAL OR CONSTRUCTIVE NOTICE AND FAILED TO DO SO

Plaintiffs argue that Defendants are using the lack of notice prior to Plaintiffs' entry to Room 2807 as a "defense to liability." In doing so, they again

cite to Terrey after already saying that the trial court should not have relied upon it and that it was essentially irrelevant. (Pb10-11). Additionally, Plaintiffs provide another helpful suggestion as to how Borgata should run its hotel by having it "conduct an inspection" of every room left vacant for "more than one day". (Pb15). Aside from these distracting citations and ridiculously expensive and unnecessary suggestions, Plaintiffs continue to refute that they were required to prove notice.

Plaintiffs were required to prove that Defendants had notice of the dangerous condition. Smith v. First National Stores, 94 N.J. Super. 462 (App. Div. 1967). Plaintiffs have the obligation to come forward with some evidence sufficient to create an issue of fact to show that Defendants had actual or constructive notice of the condition and then failed to act reasonably to remove the condition. Parmenter v. Jarvis Drug Store, Inc., 48 N.J. Super. 507, 510 (App. Div. 1957). A plaintiff has the affirmative burden of proving that the dangerous condition had existed for a sufficient length of time prior to the alleged incident so that in the exercise of reasonable care, the defendant should have discovered its existence and prevented or corrected it. Tua v. Modern Homes, Inc., 64 N.J. Super. 211 (App. Div. 1960), aff'd 33 N.J. 476 (1960).

Here, Plaintiffs did not present any evidence to the trial court to create a factual issue showing that Borgata had any notice, actual or constructive, of an

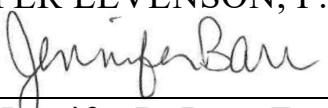
alleged dangerous condition. They accepted all of Defendants' facts as true and offered none related to notice or lack thereof. Without Plaintiffs' proof of notice, the question as to how long the purported leak existed is pure speculation and was correctly determined not to be an appropriate matter to present to a jury. Without specific factual support or expert opinion, Plaintiffs are unable to sustain their burden of proof.

CONCLUSION

Given the above, it is respectfully requested that the panel affirm the trial court's decision. Plaintiffs failed to make the required proofs in this matter and continued to assert mistaken points of law as to why they deserve to "get in front of a jury". Their strict-liability type arguments do not follow the case law in New Jersey and same does not afford them relief without the requisite proofs, evidence, or expert testimony.

Respectfully submitted,

COOPER LEVENSON, P.A.

By: 

Dated: November 10, 2025

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Casino & Spa

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SHERRY SINGH and SURINDER SINGH Plaintiffs-Appellants, vs. BORGATA HOTEL CASINO & SPA, MGM RESORTS INTERNATIONAL., MARINA DISTRICT DEVELOPMEMT COMPANY, LLC, JOHN DOES 1-10 (names being fictitious), JANE DOES 1-10 (names being fictitious), ABC CORPORATIONS 1-10 (names being fictitious), Defendants-Respondents.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002596-24 CIVIL ACTION ON APPEAL FROM: SUPERIOR COURT LAW DIVISION: ESSEX COUNTY DOCKET NO. ESX-L-2147-22 SAT BELOW: RUSSELL J. PASSAMANO, JSC

APPELLANTS' REPLY BRIEF

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Preliminary Statement

The trial court was mistaken in ruling that a jury in this slip and fall case could not, through the application of its common sense and community standards, determine whether the conduct of Marina District Development Company LLC d/b/a Borgata Hotel Casino & Spa ("Borgata") breached a duty of care to appellants Sherry and Ravinder Singh. Notice to Borgata of the existence of the leaking toilet in Room 2807 was not a prerequisite to Borgata's liability to appellants. The trial court's dismissal of appellants' case must be reversed.

Legal Argument

I. Expert testimony was not required to establish the standard of care in this slip and fall case inside a hotel bathroom.

The well-established law of premises liability applies to this slip and fall case. Borgata had a duty to perform reasonable inspections of the bathroom in Room 2807 to render its premises safe for appellants. *Handelman v Cox,* 39 N.J. 111 (1962). Borgata chose to rely upon the inspection of Room 2807 performed by the housekeeping staff when the room was made up after the prior guest in Room 2807 checked out. A jury is capable of deciding whether this policy of Borgata satisfied its duty of care to the appellants who checked into Room 2807 six days after the prior occupant vacated; or whether, as appellants contend, there should have been an inspection of this room left vacant for

multiple days on the day that appellants checked in to determine whether, as in this case, a hazardous condition developed in the room that made it unsafe for occupancy.

Borgata argues that "[t]here is not a single witness or document in this case that can provide any insight to the jury as to how long the alleged condition actually existed." Db at 12. This misses the point. The relevant fact is that the toilet was leaking causing the bathroom floor to be slippery when Borgata provided appellants with the room on December 26, 2020. Borgata's negligence was the failure to look at the room left vacant for six days prior to its rental to appellants. That inspection should have occurred for the block of rooms that had been unoccupied for more than a day that Borgata intended to offer to its guests who were checking in on December 26, 2020. This is the breach of duty that the jury, applying its common sense and community standards, should have been given the opportunity to rule upon.

The trial court supplanted Borgata's duty to make reasonable inspections with a nonexistent "standard of the industry" on the inspection of hotel rooms. The trial court made this ruling without finding that the duty to make inspections in this case was so esoteric that jurors of common judgment and experience could not form a valid judgment as to whether the conduct of defendant was reasonable. *See Butler v Acme Mkts*., 89 N.J. 270, 283 (1983).

Our New Jersey Supreme Court "has long held that '[t]hat the customs of an industry are not conclusive on the issue of the proper standard of care; they are at most evidential of this standard'. Such industry standards are not dispositive because 'to allow [an industry] to set the limits of its own standard of conduct is tantamount to allowing it to set the limits of its own legal liability, even though those limits are below a level of care readily obtainable.'" *Davis v Brickman Landscaping*, *Ltd.,* 219 N.J. 395, 411 (2014)(citations omitted).

Our courts have recognized that the types of cases that require a plaintiff to present expert testimony to establish an accepted standard of care include dental and medical malpractice actions, the responsibilities and function of a real estate broker with respect to open house tours, precautions necessary for the safe conduct of a funeral procession, appropriate conduct for those teaching karate, the proper application of sky diving guidelines and the proper repair and inspection of an automobile. *See Davis, Supra*, 219 N.J. at 407 (citations omitted). Appellants do not contend that this is an exhaustive list of the types of cases in which plaintiff must present expert testimony to establish the standard of care, but these cases are illustrative that a simple slip and fall like the matter *sub judice* does not require expert testimony on the issue of what constitutes a reasonable inspection of the premises.

Appellants do not seek to invoke the common knowledge exception applicable to malpractice actions. Borgata's argument is a red herring and the cases cited by Borgata are inapposite. The trial court was wrong in finding that this slip and fall case was somehow esoteric just because the property owner was a hotel and casino. The duty of Borgata to make reasonable inspections of its property is the same for Borgata as it is for any other property owner.

Respectfully, this is a simple case. The evidence will show that Room 2807 was vacant for six days prior to it being offered to appellants for occupancy. The toilet was leaking in Room 2807 on December 26, 2020, when Borgata rented the room to appellants. Borgata made no inspection of the room after the room was made up, presumably on December 20, 2020, and before December 26, 2020. When Borgata provided Room 2807 to appellants, the leaking toilet presented a dangerous and hazardous condition which proximately caused injury to appellant. Appellants contend that had Borgata inspected Room 2807 on December 26, prior to it being offered to appellants, the leaking toilet would have been discovered, and plaintiff would not have been injured. The dismissal of the Complaint by the trial court should be reversed and this matter should be remanded back for trial.

II. Borgata mischaracterizes appellants' reliance upon *Terrey v Sheridan Gardens*, 163 N.J. Super. 404 (App. Div. 1978).

Appellants cited *Terrey v. Sheridan Gardens*, 163 N.J. Super. 404 (App. Div. 1978) for the proposition that notice to the property owner was not a prerequisite to liability where the property owner retains control over the area where the accident occurs and therefore could have made reasonable inspections to discover the hazardous condition which caused the accident. The trial court relied upon *Terrey* to support its decision that appellant needed expert testimony to establish the standard of care for Borgata. The trial court noted that the court in *Terrey* relied upon the administrative regulations relating to the Hotel and Multiple Dwelling Law, *N.J.S.A*. 55:13A-1 et seq. (hereinafter the "Act") which required the defendant property owner to perform "regular daily care for all common areas including removal of garbage, litter or other accumulations." *Terrey, supra*, 163 N.J. Super. 404, 409. Because appellants could not cite to an administrative regulation that addressed the frequency of inspections required to be made by Borgata, the trial court found that expert testimony was required. It is the trial court's reliance upon *Terrey* in support of its ruling that expert testimony is required in this case is what appellants submit is inapposite.

III. Borgata's argument that the Hotel and Multiple Dwellings Law, *N.J.S.A.* 55:13A et seq. does not apply is not persuasive.

Borgata ignores the fact that a violation of the remedial legislation embodied by the Act constitutes evidence of negligence. The Act has no notice requirement for the hotel owner before a violation of the Act can be found. It was error for the trial court to deny appellants' motion for partial summary judgment because the leaking toilet in Room 2807 presented a hazard to the safety of its occupants in violation of *N.J.A.C.* 5:10-6.1.

Appellants cited *Trentacost v Brussel*, 82 N.J. 214, 230 (1979) for the proposition that "the violation of a statutory duty of care is not conclusive on the issue of negligence ** but is a circumstance which the trier of fact should consider in assessing liability." *Id., citing Baitman v Overlook Terrance Corp*., 68 N.J. 368, 385 (1975). The Act "establishes a standard of conduct for [hotels]." *Trentacost,* 82 N.J. at 230. Violations of the Act constitute evidence of negligence that can be submitted to the jury. *Id*. at 231.

Borgata stopped the Preventative Maintenance Program after the Covid-19 epidemic. The purpose of the Preventative Maintenance Program was room upkeep. (Pa89; 20.23-21.1). Room upkeep would include the bathroom in Room 2807. (Pa89; 19.11-21). The fact that the Preventative Maintenance Program was terminated and the hose under the toilet tank in Room 2807 failed and started to leak is evidence of negligence and the violation of the Act. This

is not strict liability. It is a negligent violation of the Act. It was error for the trial court to find that Borgata did not violate the Act. The violation of the act would constitute evidence of Borgata's negligence that could be submitted to a jury.

IV. Appellants were not required to prove actual or constructive notice.

In support of its argument that actual or constructive notice is a *prima facie* element of appellant's case, Borgata relies upon cases that were decided before the legislative enactment of the Act which is remedial legislation intended to protect the health and welfare of the public. The legislature directs the courts to liberally construe this statute to effectuate its purposes. *N.J.S.A.* 55:13A-2.

Even more significant, none of the cases cited by Borgata in support of its argument that notice is a prerequisite to liability involve a slip and fall in a residential setting. *Parmenter v Jarvis Drug Stores Inc.,* 48 N.J. Super. 507 (App. Div. 1957) involved a fall inside a drug store; *Tua v Modern Homes Inc.,* 64 N.J. Super. 211 (App. Div. 1960) involved a fall inside a furniture store; and *Smith v First Nat'l Stores, Inc.,* 94 N.J. Super. 462 (App. Div. 1967) involved a fall inside a supermarket.

The significance of the location of the fall is highlighted by the court's decision in *Terry v Sheridan Gardens, Inc.,* 166 N.J. Super. 404 (App. Div 1977).

In Sheridan, the trial court dismissed the plaintiff's case by directed verdict because there was no evidence presented that the landlord had actual or constructive notice of the wet flattened leaves on the steps leading into the apartment and the handrailing that was obstructed by an overgrown thorn bush. *Terrey*, 40 N.J. Super. at 410. In ruling upon plaintiff's appeal, the court noted that the "common law duty [of a premises owner] has been supplemented and broadened by the Tenement House Act (*N.J.S.A*. 55:1-1 et. seq.) now embodied in the Hotel and Multiple Dwelling Act (*N.J.S.A*. 55:13A-1 et. seq.)." *Id.* at 407. The court went on to hold that "[h]ere we are concerned with a patent condition which a jury could find that if defendant's **duty to inspect and maintain** had been performed, the defective condition, which was reasonably foreseeable, would readily have been observed. *Id.* at 410 (emphasis added).

The leaking toilet in Room 2807 would have been observable to anyone who inspected the bathroom and was patent like the leaf covered stairs in *Terry*. The absence of notice of the hazardous condition to the property owner was not, as Borgata argues, fatal to the plaintiff's claim in *Terry*. That is because the evolution of the law of premises liability recognizes an affirmative obligation for hotel owners to perform reasonable inspections and maintain their property in such a way that no hazards exist for innocent guests who accept the hotel owners' invitation to stay at their property. This duty to inspect and maintain is

not, as Borgata argues, contingent upon the receipt of notice of the hazardous condition.

Borgata contends that the inspection performed by its housekeeping staff was sufficient to satisfy its duty to appellant to inspect and maintain their premises. Appellants disagree. Appellants contend that Borgata should have reinstituted its Preventative Maintenance Program prior to December 26, 2020, and conduct an inspection of Room 2807 the morning that it was given to appellants to occupy to determine whether the room was free of hazards to the occupants of the premises. *N.J.A.C.* 5:10-6.1. It is for the jury to decide who is right.

V. Conclusion

For the foregoing reasons, and those arguments contained in appellants' Brief in Support of Appeal, appellants respectfully request that the dismissal of their Complaint be reversed and this matter be remanded back to the law division for trial.

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By: /s/Richard D. Picini
Richard D. Picini

Dated: November 20, 2025