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| DEYANIRE GRANADOS,<br>Plaintiff/Appellant,<br><br>vs.<br><br>LTI, INC.,<br>NEW JERSEY TRANSIT CORP.,<br>LANDSCAPE TECHNIQUES, INC.,<br>JOHN DOES I-X (said names being<br>fictitious, true names presently unknown),<br>ABC CORP. I-X (said names being<br>fictitious, true name presently unknown),<br><br>Defendants/Respondents. | : | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION<br>DOCKET NO.: A-002658-24<br><br>CIVIL ACTION<br><br>On Appeal from the Superior Court of New Jersey, Law Division, Essex County<br><br>Docket No. Below: ESX-L-2661-21<br><br>Sat Below: Hon. Richard T. Sules, J.S.C.<br><br>Orders dated:<br>March 28, 2025 |

# BRIEF OF PLAINTIFF/APPELLANT DEYANIRE GRANADOS

**EPSTEIN OSTROVE, LLC**
Attorneys for Plaintiff/Appellant
200 Metroplex Drive, Suite 304
Edison, NJ 08817
(732) 828-8600 (phone)
(732) 828-8601 (fax)
s.nascimento@epsteinostrove.com

On the brief:

Salomao Nascimento, Esq. - Attorney ID No.: 065192014

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## PRELIMINARY STATEMENT

This appeal stems from the trial court's grant of summary judgment in favor of Defendants, New Jersey Transit Corporation, LTI, Inc., and Landscape Techniques, Inc., dismissing Plaintiff Deyanire Granados's personal injury claims following a slip and fall on an icy sidewalk at the Delawanna Rail Station. The trial court erred in concluding as a matter of law that Defendants lacked actual or constructive notice of the pre-existing hazardous condition on the property that allowed ice to accumulate on the sidewalk. (MT [1] 47:14-48:7)

The patch of ice that formed at the base of the stairwell was neither transient nor solely attributable to active snowfall. Rather, it was a foreseeable and recurring hazard caused by the station's sloped terrain and inadequate drainage.

Although clear weather advisories and imminent storm warnings were issued, Defendants failed to pretreat the area, inspect the site, or take reasonable steps to abate the hazardous conditions, in contravention of their legal and contractual duties.

Plaintiff's expert, Dr. Wayne Nolte, documented how this site's configuration directed runoff to pedestrian walkways, leading to re-

[1] "MT" = Transcript of Motions for Summary Judgment dated March 28, 2025

freezing of precipitation in the precise area where Ms. Granados fell. His analysis, grounded in topographical surveys and safety standards, confirms that the dangerous condition was not dependent on active precipitation at the time Ms. Granados fell and, more importantly, could have been mitigated by reasonable pretreatment of the area.

Although this matter falls squarely within the well-recognized exceptions to the ongoing storm rule, the trial court improperly resolved the factual and legal disputes regarding notice, duty, and causation in favor of the defendants. (MT 47:14-48:7; 49:7-8; 50:8-14; 50:21-23)

Because genuine issues of material fact remain and the evidence, viewed in the light most favorable to the Plaintiff, supports a finding of liability, the judgment below must be reversed and the case remanded for trial.

## RELEVANT PROCEDURAL HISTORY

Plaintiff Deyanire Granados filed a Complaint in the Superior Court of New Jersey, Law Division, Essex County, on March 31, 2021. (Pa001) An Amended Complaint was filed on December 30, 2021, adding New Jersey Transit Corporation ("NJT") as a defendant. (Pa005) Plaintiff later filed a Second Amended Complaint on April 12, 2024. (Pa009)

Defendant NJT filed its Answer on March 31, 2022. (Pa013) Defendant LTI, Inc. filed its Answer on April 12, 2023. (Pa022) Defendant Landscape Techniques, Inc. filed its Answer on May 17, 2024. (Pa039)

Defendants thereafter each moved for summary judgment. NJ Transit filed its motion on December 18, 2024. LTI, Inc. filed its motion on December 19, 2024, and Landscape Techniques, Inc. filed its motion on December 20, 2024. Plaintiff filed opposition on February 4, 2025. NJ Transit and Landscape Techniques submitted reply briefs on February 10, 2025, and LTI filed its reply on March 5, 2025.

Oral argument on all three motions was heard on March 28, 2025, before the Honorable Richard T. Sules, J.S.C. On the same date, the trial court issued orders granting summary judgment in favor of all three Defendants and dismissing Plaintiff's Complaint in its entirety. (Pa256;

Pa257; Pa259) Plaintiff filed a Notice of Appeal on April 28, 2025. (Pa261)

## STATEMENT OF FACTS

At approximately 7:55 a.m. on February 18, 2021, Plaintiff Deyanire Granados slipped and fell on an icy sidewalk at the Delawanna Rail Station in Clifton, New Jersey. (Pa028) The property was owned by Defendant, New Jersey Transit Corporation. (Pa029; Pa033) The fall occurred at the base of a stairway adjacent to a lawn area with tiered retaining walls, where the grass slope inclined downward to the sidewalk. (Pa058) This created a topographical condition whereby melting snow and rain flowed from the platform and slopes directly toward the sidewalk, regularly pooling and freezing in cold weather. (Pa058-Pa059)

With no alternative route, Plaintiff carefully descended the 31 stairs from the platform to street level using the handrail. (Pa134; Granados Dep. Tr. at 13:14-22; 17:19) She wore ankle-high Timberland snow boots. (Pa135; Granados Dep. Tr. at 16:18-21) Her right foot stepped onto the sidewalk and immediately slipped on ice before she could move her left foot off the step. (Pa136; Granados Dep. Tr. at 18:11-17; 19:1-8)

Meteorological data exchanged during discovery confirmed that light snow began on February 18, 2021 between 6:50 and 7:00 a.m., with

temperatures in the upper 20s. (Pa169) A Winter Weather Advisory had been issued by the National Weather Service and remained in effect through 12:00 p.m. on February 18, covering the entire Northern New Jersey region, including Clifton. (Pa169) Precipitation was widespread across the area. (Pa169)

Despite these forecasts and warnings, no pre-treatment occurred at Delawanna Station, including the sidewalk where Ms. Granados fell. Defendants LTI and Landscape Techniques did not begin any snow or ice operations at Delawanna until between 8:10 and 8:30 a.m., after Plaintiff's fall. (Pa107; Pa160; Paradise Dep. Tr. at 51:10-22) There is no record or testimony indicating that any representative of NJ Transit or its contractors inspected the Delawanna premises prior to or during the early hours of the storm.

LTI's contract with NJ Transit required snow and ice removal and authorized pretreatment whenever conditions warranted and before the existence of any hazardous conditions:

> "Areas can be pre-salted at the Contractor's discretion. The Contractor will be liable for and indemnify NJ TRANSIT for any consequences of failing to pre-salt. After any clearing operation, areas will be salted to minimize accumulation following clearing."

(Pa034-Pa035)

Notably, the contract imposed liability for failure to pretreat where pre-existing hazards could be anticipated. The contract also prohibited subcontracting without NJ Transit's written consent. (Pa030) Yet, LTI's owner retained Landscape Techniques, a company run by his cousin, in direct violation of that clause. (Pa152; Paradise Dep. Tr. at 20:10-23)

Dr. Wayne Nolte, Plaintiff's expert civil engineer, conducted a site inspection, topographical survey, and photographic analysis. (Pa051) He found that the slope exceeded 10 degrees in places, and that the retaining wall configuration focused runoff to a landing zone used daily by commuters. (Pa055; Pa058-Pa059) Applying ASTM and ANSI standards, he concluded that the layout and design resulted in recurrent icing that posed a foreseeable and remediable danger, as water predictably collected and refroze in this zone even independent of storm activity. (Pa065) He also opined that the icy condition was consistent with re-frozen meltwater from prior snowfall on February 16, which had not been adequately removed or treated. (Pa064-Pa065)

It was also commonly known among NJT staff that the City of Clifton's snowplows routinely pushed snow from the street back onto the sidewalks after contractors had cleared them. (Pa246; Freire Dep. Tr. at 47:6-16) This, combined with untreated runoff and delayed response

times, created recurring hazardous conditions that were known or should have been known to all Defendants. (Pa064-Pa065)

## STANDARD OF REVIEW

On appeal from an order granting summary judgment, the Appellate Division reviews the trial court's decision *de novo.* Templo Fuente De Vida Corp. v. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016). The reviewing court applies the same standard as the trial court: summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995); R. 4:46-2(c).

The reviewing court must view the evidence in the light most favorable to the non-moving party, affording that party all reasonable inferences.

## LEGAL ARGUMENT

## POINT I

### THE COURT ERRED IN FINDING THAT DEFENDANTS LACKED CONSTRUCTIVE NOTICE OF THE HAZARDOUS CONDITION CREATED AND EXACERBATED BY THE PREMISES' TOPOGRAPHICAL DESIGN (MT 47:14-48:7)

The evidence, when viewed in the light most favorable to Plaintiff, supports a finding that the recurrent accumulation of ice at the base of the stairwell was a known and foreseeable danger arising from the inherent design of the site. This hazard was the natural consequence of a longstanding topographical configuration that directed runoff toward pedestrian walkways and caused water to collect and freeze during cold weather.

Under the Tort Claims Act, a public entity may be charged with constructive notice of a dangerous condition where the plaintiff demonstrates that the condition existed for such a period of time, and was so obvious in nature, that the entity, in the exercise of due care, should have discovered it. See N.J.S.A. 59:4-3(b). A "dangerous condition" is defined as one that creates a substantial risk of injury when the property is used with due care in a reasonably foreseeable manner. See N.J.S.A.

59:4-1(a). The analysis of whether the defect of public property creates a substantial risk of injury is focused not on the actual behavior of the parties but rather, it is properly directed to whether a reasonable person using the property with due care would face a substantial risk of injury. See Garrison v. Township of Middletown, 154 N.J. 282, 292 (1998).

Plaintiff presented substantial evidence satisfying this standard. Specifically, Plaintiff introduced expert opinions and photographic evidence demonstrating that the area where Ms. Granados fell featured a unique configuration, including tiered retaining walls that channeled runoff toward the base of the stairs and a measurable slope that caused water to accumulate and freeze in colder weather. These physical attributes were longstanding and easily observable.

Dr. Nolte's engineering analysis confirmed that the station's layout predictably funneled water to the precise location where Plaintiff slipped. This specific interaction between topography and precipitation converted a natural feature into an artificial hazard at the pedestrian landing. Furthermore, failure to pretreat or inspect the area despite known precipitation forecasts and weather advisories supports the conclusion that Defendants knew or should have known of the hazard.

A finding of constructive notice does not require any evidence of prior complaints. It can be inferred from a recurring, visible hazard which an entity, such as NJT, should have known of through reasonable inspection of its premises. A representative of NJ Transit acknowledged the agency's difficulty monitoring all stations. However, operational limitations do not relieve NJT of its duty to identify and address known hazards on its premises.

Moreover, the contract itself serves as an acknowledgment that recurring accumulation of ice posed a recognized hazard at the premises. By expressly requiring the contractor to "apply salt to minimize accumulation following clearing" and holding them liable for failing to do so, the Defendants effectively admitted that accumulation of ice was a foreseeable, recurring problem requiring active mitigation. Such a provision is not standard boilerplate for incidental snow events; it is a targeted response to a persistent condition of accumulation that Defendants were obliged to address. The inclusion of this language reflects an operational awareness of the inherent dangers posed by the site's configuration, confirming that Defendants were not only on notice of the hazard but had designed protocols specifically to guard against it.

Additionally, the safety of the general public, particularly daily transit commuters, was a paramount concern under both legal and contractual duties owed by NJ Transit and its contractors. Defendants LTI and Landscape Techniques, as entities engaged specifically to service NJ Transit rail stations, knew or should have known the train schedules and the predictable influx of pedestrian traffic at the Delawanna Rail Station during morning commuting hours. The timing of Plaintiff's fall coincided with peak morning commuter activity, a fact that would have been readily apparent to any contractor servicing a transit hub. Defendants had ample notice of the impending snowstorm through National Weather Service advisories and forecasts, which were issued well in advance and specifically highlighted hazardous conditions across Northern New Jersey.

Given these factors, Defendants were not confronted with an unforeseen or sudden emergency. Rather, they faced a foreseeable and recurring hazard: ice accumulation in high-traffic pedestrian zones during known operational hours. The reasonable likelihood that ice would form on walkway surfaces, compounded by the topographical vulnerabilities of the site, obligated Defendants to take proactive measures, such as pretreatment and timely inspection, to safeguard the public.

When viewed in context, Defendants' failure to pretreat or inspect the area before the morning of the storm, despite clear weather advisories and the known configuration of the site, supports a reasonable inference of constructive notice. The sidewalk did not become dangerous solely due to snowfall; it became hazardous because the property's design caused water to accumulate and freeze in a concentrated location known to pose risk to pedestrians.

A rational jury could reasonably find, based on the recurring nature of the condition, the foreseeability of ice formation, and the lack of preventive action, that the defendants either knew or should have known of the dangerous condition. The question of notice is inherently fact-sensitive and was not appropriate for resolution on summary judgment.

## POINT II

## THE COURT IMPROPERLY APPLIED THE ONGOING STORM RULE TO ABSOLVE DEFENDANTS OF THEIR DUTY TO REASONABLY REMOVE SNOW AND ICE (MT 48:22-50:11)

The trial court erred in applying the ongoing storm doctrine as a blanket defense without fully considering the factual record and the recognized exceptions set forth by the New Jersey Supreme Court in Pareja v. Princeton International Properties, 246 N.J. 546 (2021). In doing

so, the court overlooked compelling evidence that the hazardous condition at issue was not merely the product of an active storm, but the result of a recurring and foreseeable pattern of ice accumulation caused by the property's topography and the Defendants' failure to act.

Although a slope in isolation may not be inherently dangerous, liability arises when the topographic features of a site predictably create a dangerous condition.

Here, the layout of the Delawanna Station, including tiered retaining walls and sloped surfaces, caused runoff to channel directly toward the pedestrian walkway at the base of the stairwell. Dr. Nolte opined that this configuration led to recurrent pooling and re-freezing of water in the exact area where Plaintiff fell. His analysis, which relied on topographical surveys and established safety standards, concluded that the hazard was foreseeable and preventable even in the absence of active precipitation.

The Defendants' own conduct further supports the application of the Pareja exceptions. Despite clear weather advisories and imminent storm warnings, LTI and Landscape Techniques failed to pretreat the area, perform any inspections, or take reasonable measures to mitigate known risks. Dr. Nolte's analysis accurately reflected the conditions present at the site and directly aligned with the circumstances of Plaintiff's fall. The

Supreme Court in Pareja held that landowners and contractors may be liable during an ongoing storm where their conduct contributes to or increases the risk of harm. That principle applies squarely here.

Additionally, whether Defendants had actual or constructive notice of the condition is a disputed issue of material fact. The recurring nature of the ice formation, combined with the known configuration of the site and the existence of a snow removal contract requiring pretreatment, creates a strong basis from which a jury could infer notice. This is not a situation where ice appeared randomly or without warning. Rather, it was the predictable outcome of an unmanaged and inadequately designed pedestrian area.

By shielding Defendants under the ongoing storm doctrine without weighing these factual disputes, the trial court improperly took the matter out of the jury's hands. When the evidence is viewed in the light most favorable to Plaintiff, a reasonable jury could conclude that Defendants failed to take appropriate and reasonable steps to address a known hazard. Summary judgment was therefore improper, and the matter should be reversed and remanded for trial.

## POINT III

## GENUINE ISSUES OF MATERIAL FACT EXIST AS TO DEFENDANTS' KNOWLEDGE OF AND FAILURE TO ADDRESS PRE-EXISTING HAZARDOUS CONDITIONS

There is substantial evidence that the sidewalk where Plaintiff fell experienced repeated icing due to topography, runoff, and inadequate drainage. These were not transient or isolated conditions. The area's design caused water to accumulate and freeze in winter months. There were risks known to both NJ Transit and its contractors.

The contractual provisions gave LTI authority and duty to pretreat. Its failure to do so, especially given the forecast and known site vulnerabilities, supports a finding of negligence. Moreover, the unauthorized delegation of snow removal duties to Defendant Landscape Techniques, Inc. without any oversight further contributed to the hazard. These facts, combined with Dr. Nolte's report and the photographic documentation, establish genuine issues for trial.

The contractual requirement to apply salt to minimize accumulation following clearing is a tacit admission by NJ Transit and LTI that recurring accumulation of ice was an anticipated problem at the Delawanna Station premises. By codifying these duties, Defendants

acknowledged the foreseeability of hazardous icing conditions and their obligation to implement corrective measures. This contractual acknowledgment undermines any assertion that Defendants lacked notice or a duty to address the precise hazard that caused Plaintiff's injury. Defendants cannot simultaneously impose upon their contractors a duty to guard against a known risk while disclaiming responsibility for failing to execute those safeguards. The contract's language evidences a recognition of the premises' defect, further solidifying the argument that Defendants had actual and constructive notice of the hazardous condition.

Defendants' failure to inspect and pretreat the premises before the morning commute is further exacerbated by their knowledge of the station's operational demands. With full awareness that commuters would be using the station's sidewalks and parking lots during early hours, and with clear forecasts of freezing precipitation, the failure to deploy reasonable and timely precautions amounts to a breach of duty. Public safety, particularly in a mass transit setting, required heightened vigilance, which was wholly absent here.

These facts create genuine disputes of material fact that must be resolved by a jury. Summary judgment was therefore improper.

## CONCLUSION

The trial court erred in granting summary judgment by resolving disputed issues of notice, duty, and causation that should have been left to the jury. Plaintiff presented competent expert analysis, photographic evidence, and factual assertions showing that the hazardous condition at issue was not merely the product of an ongoing storm, but a foreseeable and recurring risk exacerbated by the premises' design.

When viewed in the light most favorable to Plaintiff, the record supports a finding that Defendants failed to take reasonable precautions to address a known danger. Because genuine issues of material fact remain, the judgment below must be reversed, and the matter remanded for trial.

Respectfully submitted,
Epstein Ostrove, LLC
Attorneys for Plaintiff/Appellant

*/s/ Salomao Nascimento*

By: SALOMAO NASCIMENTO, Esq.

Dated: August 26, 2025

# Superior Court of New Jersey

## Appellate Division

Docket No. A-002658-24

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| DEYANIRE GRANADOS,<br><br>*Plaintiff-Appellant,*<br><br>vs.<br><br>LTI, INC., NEW JERSEY TRANSIT CORP., LANDSCAPE TECHNIQUES, INC., JOHN DOES I-X (said names being fictitious, true names presently unknown) and ABC CORP. I-X (said names being fictitious, true name presently unknown),<br><br>*Defendants-Respondents.* | : | CIVIL ACTION<br><br>ON APPEAL FROM THE FINAL ORDER OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, ESSEX COUNTY<br><br>Docket No. ESX-L-2661-21<br><br>Sat Below:<br><br>HON. RICHARD T. SULES, J.S.C. |

# BRIEF FOR DEFENDANT-RESPONDENT LTI, INC.

*Of Counsel:*
DAVID T. PFUND
Attorney ID# 039431991

*On the Brief:*
MARY C. MCDONNELL
Attorney ID# 045271992
DAVID J. GUZIK
Attorney ID# 247632021

PFUND MCDONNELL, PC
*Attorneys for Defendant-Respondent LTI, Inc.*
139 Prospect Street
Ridgewood, New Jersey 07450
(201) 857-5040
dpfund@ pfundmcdonnell.com
mmcdonnell@pfundmcdonnell.com
dguzik@pfundmcdonnell.com

Date Submitted: October 6, 2025

CP COUNSEL PRESS (800) 4-APPEAL • (386072)

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## PRELIMINARY STATEMENT

This appeal is an effort by Plaintiff to repackage speculation and hindsight as genuine issues of material fact, in order to avoid the dispositive impact of the ongoing storm doctrine. The trial court correctly granted summary judgment in favor of Defendant LTI Inc. because Plaintiff's own testimony, corroborated by uncontroverted meteorological data, established that she slipped during active precipitation at approximately 7:55 a.m. on February 18, 2021. At that time, freezing rain had already transitioned into accumulating snowfall, with approximately 0.2 inches on the ground and precipitation actively falling.

By operation of law under the on-going storm doctrine of Pareja, LTI Inc. owed no duty to remediate snow or ice conditions until a reasonable time after the storm ceased, which did not occur until the late afternoon, hours after the fall. The trial court's ruling was not a mechanical application of the ongoing storm doctrine, but the result of a thoughtful review of the record, including Plaintiff's deposition testimony and the expert reports.

Judge Sules carefully questioned Plaintiff's counsel regarding the speculative conclusions of Dr. Nolte, and correctly found that Nolte's opinions were unsupported and net, devoid of a factual tether to the actual site conditions. Nolte's conclusions mirror the same expert theory rejected as impractical in Pareja itself—namely, that a duty to pre-treat or anticipate icy conditions exists

prior to or during a storm.

Plaintiff's reliance on speculative theories of "directed water," "pooling," or contractual pre-treatment obligations cannot circumvent the clearcut application of the ongoing storm doctrine. Plaintiff produced no competent evidence of a pre-existing hazard or exacerbation of risk by LTI Inc. Nor does the NJ Transit–LTI contract create a common-law duty to Plaintiff.

Two additional, independent grounds confirm affirmance. First, derivative immunity under the Tort Claims Act (TCA) applies. NJ Transit—a public entity—retained ultimate responsibility for winter operations at Delawanna and contracted with LTI to perform snow and ice services on portions of the premises NJ Transit otherwise would have handled itself, all subject to NJ Transit's specifications, SOPs, safety rules, and certification requirements. Where a contractor performs a public entity's function in accordance with the entity's directives, the contractor shares the entity's immunities and defenses. That is exactly the case here.

Second, under the TCA, there is no actual or constructive notice of the transient condition. Plaintiff admitted she slipped on "icy rain" while it was "actively snowing." The trial court properly found the "ice was spontaneous and naturally occurring," with no admissible evidence of prior complaints, recurring hazards, or a condition existing long enough to be discovered and addressed

before the fall. Plaintiff's effort to manufacture notice through Dr. Nolte's conjecture about topography fails for the same reason his opinions fail under Pareja and the net-opinion rule: they are not tethered to record facts demonstrating a pre-existing, persistent defect that caused Plaintiff to fall.

Policy considerations also strongly support affirmance. Overturning summary judgment here would effectively gut the ongoing storm rule by exposing property owners and contractors to litigation every time a plaintiff's expert speculates that pre-treatment "might" have prevented an accident. The Supreme Court in Pareja explicitly rejected that approach as impractical, inconsistent, and unfair, recognizing that snow and ice cannot reasonably be cleared while precipitation is ongoing. If Plaintiff's arguments were accepted, the bright-line rule established in Pareja would be replaced with uncertainty and hindsight-driven litigation, undermining the very purpose of the doctrine.

Plaintiff admitted that she fell on "icy rain" during active precipitation. No expert speculation, no contract language, and no appeal to fairness can change that dispositive fact. The trial court faithfully applied Pareja, properly rejected Plaintiff's reliance on net opinion, and correctly dismissed her claims.

Because the trial court's decision was fully supported by the factual record and applicable law, this Court should affirm the dismissal of Plaintiff's claims in their entirety.

## PROCEDURAL HISTORY

On April 12, 2024, Plaintiff filed her Second Amended Complaint against NJ Transit, Landscape Techniques, and LTI Inc., alleging negligence in snow and ice removal at the Delawanna Station. (Pa09). Defendant LTI Inc. filed its' Answer and Affirmative Defenses on April 12, 2023. (Pa22).

After discovery, Defendants moved for summary judgment in December of 2024. (Pa269-301). LTI Inc. argued that the ongoing storm doctrine barred liability, that Plaintiff admitted she slipped on "icy rain" during active precipitation, and that no competent and admissible evidence supported either exception to Pareja.

On March 28, 2025, following an extensive oral argument, Judge Sules granted summary judgment to all Defendants (Pa256-259), finding that under Pareja, no duty existed to remediate snow or ice until a reasonable time after the storm ceased. (T48:22 to T50:20).

On April 28, 2025, Plaintiff filed a Notice of Appeal, (Pa261), contending that the trial court misapplied Pareja, failed to recognize alleged factual disputes, and overlooked contractual pre-treatment obligations. See Pb1-17.

Defendant LTI Inc. now submits this opposition brief requesting that the Appellate Division affirm the trial court's grant of summary judgment.

## STATEMENT OF FACTS MATERIAL TO APPELLATE ISSUES

On February 18, 2021, at approximately 7:55 a.m., Plaintiff Deyanire Granados allegedly slipped and fell on "icy rain" at the NJ Transit Delawanna train station in Clifton, New Jersey. (Pa135 at T15:8-25; Pa136 at T18:18-19). According to Plaintiff, the weather on February 18, 2021, was "icy rain. And then immediately turned into snow, and it snowed quite a bit by eight a.m." (Pa135 at 16:1-5). It was "actively snowing" when Plaintiff exited the train and the train platform had "a lot of ice." (Pa135 at 16:6-14). Plaintiff described the steps as "icy" and "even the handrail had chunks of snow." (Pa135 at 17:6-8). Plaintiff walked down the steps carefully but slipped when she was on the last step. (Pa135 at 17:8-12). Plaintiff recalled that she slipped on "icy rain." (Pa136 at 18:18-19).

Plaintiff testified that it was snowing at the time of her fall (7:55 a.m.) and that she observed snow and ice on the stairs and sidewalk. (Pa136 at 18:20-25) ("it was on everything. It was everywhere.").

Plaintiff specifically recalled that the weather consisted of "icy rain [a]nd then immediately, turned into snow, and it snowed quite a bit by eight a.m." (Pa135 at 16:1-5).

According to the expert report of Thomas Else, an AMS Certified Consulting Meteorologist and SIMA Advanced Snow Manager at

WeatherWorks, LLC, a winter storm affected the area on February 18, 2021, bringing snow that began at approximately 7:00 a.m. and continued at the time of Plaintiff's alleged fall. (Pa169) At the time of Plaintiff's incident, snow was actively falling, and approximately 0.1 to 0.2 inches of new snow had accumulated. (Pa169). The temperature at the time of the incident was approximately 25°F. (Pa169). The National Weather Service had a Winter Weather Advisory in effect for a storm beginning at 4:00 A.M. and remain in effect through Midnight. (Pa169).

Weather Works expert meteorological data confirmed that snowfall was active at the time of Plaintiff's fall and that the conditions observed were consistent with an ongoing winter weather event. (Pa169-170). LTI Inc. contracted with New Jersey Transit to provide snow removal services at the Dellawanna Train Station. (Pa29-38).

Plaintiff's expert, Dr. Nolte, speculated that topography could channel "runoff" to the landing, but he provided no factual basis showing it caused the ice where Plaintiff fell. The trial court properly found his opinion to be unsupported conjecture and net opinion. (T49:20–25; T50:1–7) ("Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential

lingering hazard from directed water.").

Under the ongoing storm doctrine, property owners and contractors have no duty to remove snow or ice during active precipitation until a *reasonable time after the storm ceases*. Pareja v. Princeton International Properties, 246 N.J. 546 (2021).

The snowstorm was active and ongoing at the time of Plaintiff's fall, as corroborated by meteorological data and Plaintiff's own testimony. Therefore, the trial court properly found that Defendant LTI Inc. was entitled to summary judgment under the on-going storm doctrine of Pareja, supra.

## LEGAL ARGUMENT

### I. THE TRIAL COURT CORRECTLY APPLIED THE ON-GOING STORM DOCTRINE OF PAREJA HOLDING NO DUTY TO PLAINTIFF EXISTED BECAUSE SHE FELL DURING AND DUE TO AN ON-GOING STORM

It is axiomatic that a negligence claim is comprised of four essential elements: (1) duty of care; (2) breach of that duty; (3) proximate cause; and (4) damages. The existence and scope of the duty are generally questions of law. Clohesy v. Food Circus Supermarkets, Inc., 149 N.J. 496, 502 (1997). Whether a defendant owes a duty of care is a threshold legal determination. Carvalho v. Toll Bros. & Developers, 143 N.J. 565, 572 (1996). Where the plaintiff is unable to put forth at the summary judgment stage any evidence that the defendant proximately caused the plaintiffs alleged injuries, summary judgment is appropriate. Said another way, summary judgment is appropriate where "no reasonable jury could find that the plaintiffs injuries [have been] proximately caused by the" defendant's conduct. Vega v. Piedilato, 154 NJ. 496, 509 (1998).

*a. On-Going Storm Rule Bars Plaintiff's Claim*

The New Jersey Supreme Court's decision in Pareja v. Princeton Int'l Props., 246 N.J. 546 (2021), controls this case. Pareja adopted a bright-line rule: commercial landowners and contractors owe no duty to remove snow or ice until a reasonable time after precipitation ceases. Id. at 548.

The Supreme Court in Pareja specifically noted: "While we trust juries to uphold their duties to evaluate reasonableness, we do not wish to submit every commercial landowner to litigation when it is not feasible to provide uniform, clear guidance as to what would be reasonable. We decline to impose a duty that cannot be adhered to by all commercial landowners." Id. at 558.

Instead, the Supreme Court adopted and applied the ongoing storm doctrine, which recognizes "it is categorically inexpedient and impractical to remove or reduce hazards from snow and ice while the precipitation is ongoing." Id. at 558. The Supreme Court acknowledged the unreasonableness of such efforts, and ruled the "duty to remove snow and ice hazards arises not during the storm, but rather within a reasonable time after the storm." Id.

Here, the trial court properly found that Plaintiff's incident occurred during an active snowstorm, confirmed by Weather Works expert meteorological data and Plaintiff's own testimony. T48:22 to T49:3; (Pa135-136, Pa169-170).

The trial court recognized that "[a]ccording to the Ongoing Storm Rule, a commercial landowner does not have the absolute duty to keep sidewalks on its property free from ice or snow during an ongoing storm. The duty arises within a reasonable time after the storm concludes. The storm did not conclude until 3:00 p.m., which is approximately seven hours later." T48:22 to T49:3.

*b. Plaintiff's Admissions Establish No Duty Existed*

Plaintiff herself admitted the storm was in progress, testifying that the weather was "icy rain" that "immediately turned into snow" and that "it snowed quite a bit by eight a.m." (Pa135 at 16:1–5).

Critically, Plaintiff admitted the following dispositive material facts in response to Defendant LTI Inc's Motion for Summary Judgment:

3. Plaintiff commuted to work by New Jersey Transit, and exited her train at the Dellawanna Station at 7:55 a.m.

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiffs testimony.

4. At the time of the accident, Plaintiff had been commuting to the Dellawana Station five-days per week since 2017.

   Plaintiff's Response: Admitted.

5. As part of her routine, Plaintiff would get off the train, go down the steps, and walk two blocks to work.

   Plaintiff's Response: Admitted.

6. According to Plaintiff, the weather on February 18, 2021, was "icy rain. And then immediately turned into snow, and it snowed quite a bit by eight a.m."

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiffs testimony.

7. On February 18, 2021, Plaintiff exited "the train at about 7:55 in the morning at the Delawanna Station."

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiffs testimony.

8. When Plaintiff exited the train at the Delawanna Station, it was actively snowing.

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiffs testimony.

9. The train platform had "a lot of ice."

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiffs testimony.

10. The steps were "icy" and "even the handrail had chunks of snow."

    Plaintiff's Response: Admitted.

    See Pa274 to Pa275, Pa299 to Pa300.

These admissions foreclose Plaintiff's claim. Considering the above, the trial court recognized that "Plaintiff in her deposition stated that the weather was icy rain, which turned into snow and that it was actively snowing at the time of the accident." T49:4-6. Thus, the trial court properly found that "[t]here's no disputed fact here that the plaintiff's slip and fall accident occurred during an ongoing storm." T49:7-8.

The trial court later reiterated that "Defendant LTI's motion for summary judgment is likewise granted because there is no disputed material fact that the plaintiff fell during the ongoing storm pursuant to plaintiff's own testimony. And LTI did not increase or exacerbate the risk of plaintiff's fall. They had no duty to remove the snow until a reasonable time after the storm had concluded." T50:8-14.

Consistent with Pareja, any attempt to address or remediate the "icy rain" condition that formed as a result of the ongoing winter storm on February 18, 2021, would be "inexpedient and impractical" and, therefore, Defendant LTI Inc.'s duty to do so did not arise until after the precipitation ceased on February 18, 2021. Since Defendant LTI Inc. did not owe a duty to Plaintiff for the condition which existed at the time of her alleged incident, Plaintiff's claim against LTI Inc. **was properly dismissed** under Pareja.

## II. THE TRIAL COURT PROPERLY FOUND THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT NEITHER THE UNUSUAL EXACERBATING CIRCUMSTANCES NOR THE PRE-EXISTING RISK EXCEPTIONS TO PAREJA'S ON-GOING STORM RULE APPLY

In establishing the bright-line rule of Pareja, the Supreme Court did so while "considering our caselaw and balancing the concerns of commercial landowners with the need to provide redress for injured plaintiffs . . ." Id. at 558. Thus, "under the ongoing storm rule, commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion of the storm, [however] unusual circumstances may give rise to a duty before then." Id. Regarding exceptions to the ongoing storm rule, the Supreme Court cited two examples: (1) unusual circumstances where the Defendants conduct exacerbates and increases the risk of injury to the Plaintiff and (2) a pre-existing risk on the premises before the storm. Id. at 559.

*a. No Unusual Circumstances Exist*

The record is devoid of any evidence that LTI Inc. engaged in conduct that increased or exacerbated the risk of Plaintiff's fall. Regarding unusual exacerbating circumstances, the Supreme Court in Pareja cited with approval the holding of Terry v. Cent. Auto Radiators, Inc., 732 A.2d 713, 717-18 (R.I. 1999) where "[t]he Supreme Court of Rhode Island held that 'unusual

circumstances' existed where a defendant 'actively increas[ed] . . . [the] risk [of injury] by placing [the plaintiff's] vehicle so far distant and then directing her to make the longer walk over the treacherous icy terrain.'". In Terry, "'[t]he defendant, by having removed the vehicle to the rear of its business premises and by having directed the plaintiff to retrieve it from there, had exacerbated and increased the risk of the plaintiff's falling when it required her to walk some one hundred additional feet over snow and ice that had been accumulating on unknown and difficult terrain. She was left with no choice but to do as directed if she wished to retrieve her vehicle.'" Pareja at 559 (citing Terry at 717-18).

Nothing remotely comparable exists here. Plaintiff was following her normal commute routine, walking from the train platform down the steps toward her place of employment, as she had done daily for years. LTI Inc. did not direct her movement, alter her path, or require her to encounter conditions different from those facing every other commuter during the storm. She simply encountered the very same conditions caused by the natural transition from freezing rain to snow that were present "everywhere," in Plaintiff's own words. (Pa135 at 16:6–8).

Moreover, Plaintiff's theory that LTI Inc. "failed to pre-treat" the sidewalk cannot establish unusual circumstances. T50:15-16. As the trial court recognized, Pareja squarely rejected the notion that property owners or

contractors have a duty to pre-treat in anticipation of or during a storm. (T50:17–20). Indeed, the Supreme Court cautioned that salting during ongoing precipitation may not only be ineffective but may actually worsen conditions by creating slush that quickly re-freezes. Pareja, 246 N.J. at 557 n.1. To hold otherwise would transform every storm forecast into an automatic basis for litigation, a result the Supreme Court deliberately avoided by adopting a bright-line rule.

Nor is there any evidence that LTI Inc. affirmatively created or worsened the hazard. She slipped on a natural accumulation of "icy rain" that had only just fallen. The trial court was correct in concluding that LTI "did not increase or exacerbate the risk of plaintiff's fall." (T50:11–12).

In sum, Plaintiff's reliance on the "unusual circumstances" exception is misplaced. Plaintiff cannot transform ordinary storm conditions into "unusual circumstances." Unlike Terry, where the defendant affirmatively created new risks and compelled the plaintiff to traverse a more hazardous path, nothing about LTI's conduct altered or heightened the natural risks posed by the storm itself. Plaintiff slipped on freshly fallen "icy rain" while it was still snowing—a condition squarely contemplated by Pareja's ongoing storm rule. To hold otherwise would collapse the exception into the rule, making every winter storm actionable whenever a plaintiff speculates that "more could have been done."

That is precisely the hindsight-driven liability the Supreme Court has already rejected.

*b. No Pre-Existing Condition Exists*

Under the "second [exception], a commercial landowner may be liable where there was a pre-existing risk on the premises before the storm. For example, if a commercial landowner failed to remove or reduce a pre-existing risk on the property, including the duty to remove snow from a previous storm that has since concluded, he may be liable for an injury during a later ongoing storm." Id. The rationale is straightforward: if an earlier storm has concluded and left behind lingering ice, the landowner cannot ignore it and then rely on the onset of a new storm as a shield. That narrow exception does not apply here.

Plaintiff never identified any admissible evidence that the condition on which she slipped was a remnant of an earlier storm or pre-existing condition. To the contrary, both her testimony and the undisputed meteorological data show that the hazard formed contemporaneously with active freezing rain and snow on February 18, 2021. (Pa135–136; Pa169–170). The trial court expressly found that "[t]he ice was spontaneous and naturally occurring and there is no evidence that the ice existed for any period of time that would make its existence obvious." (T48:5–7).

Plaintiff attempts to salvage her claim by invoking station "topography" as a supposed recurring hazard, but that argument collapses under scrutiny. Plaintiff argues, like he argued below, that the station's topography created a recurring hazard. Pb13. The trial court carefully reviewed Dr. Nolte's report and rejected this argument: "Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water." (T49:20–25). The court found Nolte's opinions to be "unsupported conclusions" that "will not defeat a motion for summary judgment." (T50:1–7, citing Puder v. Buechel, 183 N.J. 428, 440–41 (2005)). Unsupported conjecture about design or drainage cannot substitute for proof of an actual pre-existing hazard.

In short, Plaintiff has produced no competent evidence of a pre-existing condition. Her own testimony confirms the hazard developed during the very storm in which she fell. Allowing plaintiffs to invoke vague notions of "topography" or "pooling" as a stand-in for proof of a lingering hazard would improperly expand Pareja's second exception and subject landowners and contractors to liability for conditions that arise instantaneously with each storm.

The Supreme Court rejected precisely that hindsight-driven approach in adopting the ongoing storm rule, and this Court should reject it here as well.

*c. The Trial Court's Findings Are Unassailable*

The trial court explicitly found that "LTI did not increase or exacerbate the risk of plaintiff's fall." (T50:11–12). It correctly held that Plaintiff fell during an ongoing storm, when no duty existed. These factual and legal findings are fully supported by Plaintiff's own admissions, meteorological records, and settled law under Pareja.

Plaintiff seeks to blur the bright-line rule of Pareja by dressing up speculation about "pooling water" and "topography" as fact. But the Supreme Court cautioned against precisely this type of hindsight litigation. Imposing liability on LTI here would not only contradict Pareja but effectively eviscerate the rule, subjecting every snow removal contractor and landowner to liability whenever an expert speculates that "more could have been done" during active precipitation.

## III. DR. NOLTE'S OPINIONS MIRROR THE SAME EXPERT THEORY REJECTED BY THE SUPREME COURT IN PAREJA AND THE TRIAL COURT PROPERLY DISCREDITED THEM AS NET

Plaintiff argues that Dr. Nolte's expert report creates a genuine issue of material fact. Pb14-15. That argument is meritless. The trial court correctly recognized that Dr. Nolte's opinions were unsupported conclusions, not grounded in factual evidence, and therefore could not defeat summary judgment. (T49:20–25; T50:1–7). This Court should similarly reject Plaintiff's reliance on Dr. Nolte for the same reasons.

### *a. Nolte's Opinions Are Net Opinion*

Plaintiff is trying to dress-up the unfounded and speculative opinions of his expert and pass them off as facts in an attempt to manufacture genuine issues of material fact. The trial court properly saw through this tactic.

The record shows that the trial court carefully considered and questioned Plaintiff's counsel at length about Dr. Nolte's opinions. (T22:21–23; T23:9–14; T35:9–15; T41:7–15). After this extensive inquiry, the trial court carefully evaluated Dr. Nolte's report and made explicit findings:

> Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or

> testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water. (T49:20–25).

The trial court further concluded:

> [Dr. Nolte's] unsupported conclusions as to how the ice formed without explanatory or supporting facts will not defeat a motion for summary judgment. (citing Puder v. Buechel, 183 N.J. 428, 440–41 (2005)). Puder found that conclusory and self-serving assertions and certifications without explanatory supporting facts will not defeat a motion for summary judgment. (T50:1-7).

These findings are firmly supported by law. Courts consistently hold that expert testimony cannot rest on speculation or conjecture. Buckelew v. Grossbard, 87 N.J. 512, 524 (1981). Dr. Nolte's failure to tie his topography and runoff theories to the actual location of Plaintiff's fall renders his opinion a classic net opinion.

*b. Nolte's Opinions Mirror the Expert Theory Rejected in Pareja.*

More fundamentally, Plaintiff's reliance on Dr. Nolte's opinion is precisely the same logical fallacy the Supreme Court rejected in Pareja. In that case, the plaintiff's expert opined that the defendant "could have successfully

reduced the hazardous icy condition by pre-treating the sidewalk with standard anti-icing and de-icing materials" and that the defendant "knew or should have known" about the winter weather advisory issued over twenty-four hours before the accident occurred. Pareja, 246 N.J. at 550.

Pareja firmly rejected that argument holding that it "did not wish to submit every commercial landowner to litigation when it is not feasible to provide uniform, clear guidance as to what would be reasonable." Id. at 557.

Pareja also specifically rejected the notion that a landlord could always avoid liability by spreading salt, reasoning that this "ignores the diversity of storms a landlord may confront" and that salting "in a heavy snowstorm or ice storm can be ineffective or even enhance the danger." Id. at 557 n.1.

Dr. Nolte's opinion here—that topography, runoff, or failure to pre-treat could have prevented the condition—is the same theory rejected in Pareja. Just as in Pareja, Plaintiff here attempts to convert every forecasted storm into a duty to pre-treat and every accident into a question for a jury. The Supreme Court declined to impose such an "untenable duty of care." Id. at 557.

Here, as in Pareja, Plaintiff's expert advances the same flawed premise: that pre-treatment or design modifications could have prevented the ice. That is not competent evidence of liability; it is precisely the kind of hindsight reasoning Pareja disallowed.

*c. Nolte's Opinions Cannot Override Plaintiff's Own Testimony.*

Plaintiff testified unequivocally that she slipped on "icy rain" while it was actively snowing. (Pa135 at 16:1–8). No amount of expert speculation can change this dispositive fact: Plaintiff's fall occurred during an ongoing storm, squarely within the rule of Pareja.

*d. The Appellate Division Has Already Rejected Plaintiff's Theories in Sarro and McGrath*

The Appellate Division's decision in Sarro v. Vonage Holdings Corp., No. A-1392-21, 2023 N.J. Super. Unpub. LEXIS 408 (App. Div. Mar. 20, 2023), while unpublished, is directly on point. There, plaintiffs' expert similarly opined that the contractor failed to take "ice watch" measures, delayed deicing, and thereby caused the accident. Id. at *5–7. The Appellate Division rejected those arguments because the fall occurred during an ongoing storm, emphasizing that Pareja applies equally to private parking lots as to public sidewalks. Id. at *9-11.

The court also rejected plaintiffs' reliance on the first Pareja exception, holding there was "nothing" in the expert's report to support a conclusion that "unusual circumstances" existed or that the defendant exacerbated the risk. Id. at *7, *11. Likewise, the court rejected the second exception, finding no

evidence of lingering hazards from a prior storm. Id. at *11-13. The plaintiffs' reliance on expert speculation did not create a triable issue. Id. at *13.

So too here. Plaintiff's reliance on Dr. Nolte's speculation about "pooling water," "directed runoff," or the absence of pre-treatment is indistinguishable from the theories rejected in Sarro. Just as in that case, there is no competent evidence that LTI's conduct exacerbated the risk or that a pre-existing hazard caused Plaintiff's fall.

In McGrath v. Vezzosi, No. A-0133-23, 2024 N.J. Super. Unpub. LEXIS 1675 (App. Div. June 15, 2024), the Appellate Division also addressed nearly identical arguments. There, the plaintiff argued: (1) Pareja was unconstitutional and should be overturned; (2) even if valid, Pareja should be limited in scope; and (3) her case fell within the exceptions to the ongoing storm rule. The Appellate Division rejected each contention.

The court applied the two Pareja exceptions and held they did not apply because plaintiff presented no competent evidence that defendants exacerbated the risk or that a pre-existing condition caused the fall. Id. at *12-16. Importantly, the plaintiff's expert's opinion in McGrath was rejected under the net opinion doctrine because it was not tethered to record facts. Id.

The parallels to this case are undeniable. Here, Plaintiff likewise argues that Pareja should not apply, or should be limited, or that her case falls within

an exception. But just as in McGrath, Plaintiff presents no competent evidence of exacerbation or pre-existing risk, and relies instead on Dr. Nolte's speculative opinions. Like the expert in McGrath, Dr. Nolte's report is not tethered to the facts elicited in Plaintiff's own deposition testimony and cannot create a genuine issue of material fact.

The lesson of McGrath is clear: dissatisfied litigants cannot avoid Pareja by questioning its constitutionality, asking courts to narrow it, or leaning on speculative expert opinions. The ongoing storm rule is controlling, its exceptions are narrow, and unsupported expert assertions do not defeat summary judgment.

Thus, just as the Appellate Division affirmed summary judgment in Sarro and McGrath, it should do so here. Please note the undersigned has not located any New Jersey case law that is contrary to Sarro or McGrath; both decisions apply Pareja faithfully and reflect the settled direction of appellate authority in this realm.

## IV. PLAINTIFF'S CONTRACT BASED ARGUMENTS FAIL AS A MATTER OF LAW

Plaintiff's principal effort to avoid Pareja is her contention that LTI owed her a duty to "pre-treat" based on the terms of its contract with NJ Transit. This argument was expressly raised below, carefully considered by the trial court, and properly rejected. The court made a clear finding:

> "There is not a duty of landowners or contractors to engage in preventative measures before a storm under Pareja. A duty to remove snow occurs within a reasonable time after the snow has concluded." (T50:17–20).

That finding is entirely consistent with New Jersey law. The Supreme Court in Pareja rejected the identical theory. In Pareja, plaintiff's expert argued that the defendant could have eliminated icy conditions by pre-treating sidewalks with salt in anticipation of a winter storm. 246 N.J. at 550. The Court rejected that argument, explaining that such a duty would effectively convert every forecast into an obligation to act, subject every property owner to litigation, and impose an "untenable duty of care" given the diversity of storms and the impracticality (or even danger) of applying salt during ongoing precipitation. Id. at 557 & n.1.

Plaintiff here seeks to transform an alleged contractual provision into a tort duty enforceable by third parties. That is not the law. See Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 316 (2002) ("Under New Jersey law, a tort remedy does not arise from a contractual relationship unless the breaching party owes an independent duty imposed by law."). A private contract may establish obligations as between contracting parties, but it does not expand common law duties owed to strangers to the contract. Id. In Saltiel, the Supreme Court declined to impose tort liability for alleged breaches of contractual obligations absent a duty independent of the contract. Id. at 316. ("In this transaction, we are unable to discern any duty owed to the plaintiff that is independent of the duties that arose under the contract.").

Plaintiff's position, if accepted, would fundamentally erode the ongoing storm doctrine. Every time a snow removal contract referenced "pre-treatment," plaintiffs could argue that a tort duty was triggered even before a storm began. That outcome would directly contradict the bright-line rule of Pareja, which held unequivocally that "[t]he duty to remove snow and ice hazards arises not during the storm, but rather within a reasonable time after the storm." 246 N.J. at 558. Pursuant to Pareja, Plaintiff in this matter cannot identify any duty independent of the NJT–LTI contract.

Finally, Plaintiff's argument also collapses under her own admissions. She testified that she fell on "icy rain" during active precipitation. No amount of contract language can change the dispositive fact that her accident occurred during an ongoing storm.

For these reasons, Plaintiff's contract-based arguments fail as a matter of law

## V. LTI INC. IS ALSO ENTITLED TO DERIVATIVE IMMUNITY UNDER THE TORT CLAIMS ACT

LTI Inc. is entitled to the immunities and defenses provided under the New Jersey Tort Claims Act ("TCA"), N.J.S.A. 59:1-1, et seq. Immunity is the general rule, and liability is the exception. Fluehr v. City of Cape May, 159 N.J. 532, 539 (1999).

To recover under the TCA, a plaintiff must prove that (1) a dangerous condition existed on the public entity's property at the time of the injury; (2) the dangerous condition proximately caused the injury; (3) the dangerous condition created a foreseeable risk of the kind of injury that occurred; and either (4) a negligent or wrongful act or omission of a public employee within the scope of his or her employment created the dangerous condition; or (5) the public entity had actual or constructive notice of the dangerous condition in sufficient time

prior to the injury to have protected against the condition. N.J.S.A. 59:4-2; see Posey ex rel. Posey v. Bordentown Sewerage Auth., 171 N.J. 172, 182 (2002).

Under N.J.S.A. 59:2-1, a public entity is not liable for injury absent an express statutory waiver, and derivative immunity extends to private contractors performing public functions on behalf of public entities. Gomes v. County of Monmouth, 444 N.J. Super. 479, 491 (App. Div. 2016); Cobb v. Waddington, 154 N.J. Super. 11, 18 (App. Div. 1977), certif. denied, 76 N.J. 235 (1978).

As the property owner, NJ Transit—a "public entity" under N.J.S.A. 59:1-3—retained ultimate responsibility for snow and ice removal at the Delawanna Station. It contracted with LTI Inc. to perform snow removal services for portions of the property that NJ Transit would otherwise have been obligated to maintain itself. (Pa29-38). In such circumstances, derivative immunity applies because the contractor is stepping into the shoes of the public entity. Rodriguez v. N.J. Sports & Exposition Auth., 193 N.J. Super. 39, 44–46 (App. Div. 1983), certif. denied, 96 N.J. 291 (1984).

Moreover, NJ Transit retained tight control over snow removal operations. The contract required LTI's personnel to follow NJ Transit's safety rules, standard operating procedures, and roadway worker certifications. (Pa34-35). Contractors could not deviate from those directives without risking removal from the site. Id. Under well-established law, when a contractor performs

pursuant to public entity specifications, it shares the entity's immunity. Cobb, 154 N.J. Super. at 18. Holding otherwise would render statutory immunity meaningless by subjecting contractors to liability for work performed exactly as required by the public entity.

Because LTI Inc. performed NJ Transit's governmental snow removal function in accordance with NJ Transit's own directives and specifications, it is entitled to the same protections, immunities, and defenses afforded to NJ Transit under the TCA.

## VI. THE TRIAL COURT CORRECTLY FOUND THAT DEFENDANTS LACKED NOTICE OF A SPONTANEOUS ICE CONDITION

Even apart from Pareja, summary judgment was appropriate because no evidence establishes that Defendants had actual or constructive notice of the precise condition on which Plaintiff fell. To impose liability under the TCA, a plaintiff must show that the public entity (or its contractor) had actual knowledge of the dangerous condition, or that the condition existed for such a length of time and was so obvious that it should have been discovered. N.J.S.A. 59:4-3.

Actual and constructive notice are defined by N.J.S.A. 59:4-3 as follows:

> a. A public entity shall be deemed to have actual notice of a dangerous condition . . . if it had actual knowledge of the existence of the condition and

> knew or should have known of its dangerous character.
>
> b. A public entity shall be deemed to have constructive notice of a dangerous condition . . . only if the plaintiff establishes that the condition existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character.

Here, Plaintiff unequivocally testified that she slipped on "icy rain" while it was "actively snowing." (Pa136 at 18:18-19; Pa135 at 16:6-8). Meteorological records confirmed that the storm began around 7:00 a.m. and that snow was still falling at the time of her 7:55 a.m. fall. (Pa169-170). This testimony and objective data demonstrate that the condition developed spontaneously as precipitation transitioned from freezing rain to snow. Under such circumstances, the trial court properly found that no reasonable factfinder could conclude that Defendants had actual or constructive notice. (T47:14-21). ("There has been no evidence submitted by plaintiff to show that ice accumulation was the product of a negligent or wrongful act of the New Jersey Transit or its employees. Plaintiff also does not have any specific evidence that shows that Transit was put on actual or constructive notice. Plaintiff does not reference any other falls or complaints about the ice accumulation on the sidewalk in the station.").

Plaintiff's reliance on Dr. Nolte's speculative "topography" theory cannot cure this defect. The trial court carefully rejected that argument, finding "Dr.

Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze [and] [t]here is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water." (T49:20-25).

The trial court properly recognized that "[t]he ice was spontaneous and naturally occurring and there is no evidence that the ice existed for any period of time that would make its existence obvious." (T48:5-7). Absent proof of a recurring defect, Plaintiff cannot avoid the controlling principle that landowners and contractors are not insurers against hazards that arise instantaneously during a storm.

Accordingly, the trial court correctly concluded that no genuine issue of material fact exists with respect to notice. Because Plaintiff slipped on a condition that developed contemporaneously with the ongoing storm, Defendants could not, as a matter of law, have had adequate notice to remediate it.

## VII. STANDARD OF REVIEW

### *a. The Trial Court Properly Applied the Summary Judgment Standard in Dismissing Plaintiff's Complaint with Prejudice*

The Appellate Division reviews a grant for summary judgment de novo, using the same standard as the trial court. Driscoll Const. Co., In. v. State Dept. of Transportation, 371 N.J. Super 304, 313 (App. Div. 2004). Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The trial court's "function is not . . . to weigh the evidence and determine the truth . . . but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986)). The trial judge must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id.

When the facts present "a single, unavoidable resolution" and the evidence "is so one-sided that one party must prevail as a matter of law," then a trial court should grant summary judgment. Id. Further, the court is to guard "against groundless claims and frivolous defenses," thus saving the resources of

the parties and the court. Brill, 142 N.J. at 541-42. If the non-moving party "points only to disputed issues of fact that are of an insubstantial nature, the proper disposition is summary judgment. Id. at 529. And "[b]are conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." U.S. Pipe & Foundry Co. v. Am. Arbitration Association, 67 N.J. Super. 384, 399-400 (App. Div. 1961) (citing Gherardi v. Trenton Board of Education, 53 N.J. Super. 349, 358 (App. Div. 1958).

"By the same token, bare conclusory assertions in an answering affidavit are insufficient to defeat a meritorious application for summary judgment." Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999).

"Because the dispute here involves the application of the TCA to the facts of this case, we review the determination de novo." Lee v. Brown, 232 N.J. 114, 126-27 (2018) (referencing State v. Nantambu, 221 N.J. 390, 404 (2015)). "That is, we give 'deference to the supported factual findings of the trial court, but' not to its 'application of legal principles to such factual findings.'" Id.

Here the trial court properly applied the standard stating:

> The standard for summary judgment is set forth in Rule 4:46-2 and has been clarified by Brill versus Guardian Life Insurance Company of America, 142 N.J. 520, 1995. Summary judgment shall be rendered if the pleadings show there is no genuine issue as to any

> material fact challenging that the moving party's entitled to judgment as a matter of law.
>
> Whether there exists a genuine issue of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented when viewed in the light most favorable to the nonmoving party are sufficient to permit a rational fact finder to resolve the alleged dispute in favor of the nonmoving party. T43:8-21.

In the case at bar, the undisputed facts establish that the Defendants did not owe a duty and trial court properly applied the well-established summary judgment standard and correctly dismissed Plaintiff's claims under the on-going storm doctrine of Pareja.

Moreover, even apart from Pareja, summary judgment was independently warranted because Plaintiff failed to adduce any evidence that Defendants had actual or constructive notice of the transient condition. As Judge Sules properly recognized, "there has been no evidence submitted by plaintiff to show that ice accumulation was the product of a negligent or wrongful act . . . [or] that Transit was put on actual or constructive notice." (T47:14–21).

## CONCLUSION

This appeal presents no basis to disturb Judge Sules' careful and well-reasoned decision. Plaintiff's own testimony and the uncontroverted meteorological records establish that her accident occurred during an ongoing storm. Under Pareja, that fact alone is dispositive: absent unusual exacerbating circumstances or a pre-existing hazard—neither of which exists here—Defendants owed no duty to remediate snow or ice until a reasonable time after the storm concluded.

Plaintiff's effort to evade this bright-line rule rests on speculative theories and unsupported expert conjecture. The trial court correctly rejected Dr. Nolte's opinions as net opinion, indistinguishable from the same pre-treatment and design theories the Supreme Court expressly disallowed in Pareja. Both the Appellate Division in Sarro v. Vonage Holdings Corp. and McGrath v. Vezzosi have since confirmed that such speculation cannot create a triable issue of fact.

Nor can Plaintiff salvage her case by pointing to the contract between NJ Transit and LTI Inc. New Jersey law is clear that a private contract cannot manufacture a tort duty enforceable by third parties. Saltiel v. GSI Consultants, Inc., supra, at 316 (2002). Plaintiff's contract-based theory would eviscerate the ongoing

storm doctrine by transforming every reference to "pre-treatment" into a tort duty—a result flatly contrary to Pareja.

In addition, LTI Inc. is entitled to derivative immunity under the Tort Claims Act because it was performing NJ Transit's governmental function pursuant to NJ Transit's own specifications. Plaintiff has not come close to showing that LTI's conduct was palpably unreasonable, as required under Title 59. Nor is there any evidence that Defendants had actual or constructive notice of the transient, spontaneously developing icy condition that arose contemporaneously with the storm.

The law, the record, and sound public policy all point to the same conclusion: Defendants cannot be held liable for Plaintiff's unfortunate fall. To hold otherwise would upend Pareja's bright-line rule, expose public entities and their contractors to limitless litigation whenever winter weather occurs, and impose an untenable duty of care that New Jersey's highest court has already rejected.

For all of these reasons, and substantially for those set forth by Judge Sules, the order granting summary judgment to Defendant LTI Inc. should be affirmed in its entirety.

Respectfully submitted,
**PFUND MCDONNELL, PC**
*Attorneys for Defendants*

By: */s/ David J. Guzik*
_____
DAVID J. GUZIK, ESQ.

Dated: October 6, 2025

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|---|---|
| DEYANIRE GRANADOS,<br><br>Plaintiff-Appellant,<br><br>vs.<br><br>LTI, INC.,<br>NEW JERSEY TRANSIT CORP.,<br>LANDSCAPE TECHNIQUES, INC.,<br>JOHN DOES I-X (said names being fictitious, true names presently unknown),<br>ABC CORP. I-X (said names being fictitious, true name presently unknown),<br><br>Defendants-Respondents. | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION<br><br>DOCKET NO.: A-002658-24<br><br>CIVIL ACTION<br><br>ON APPEAL FROM<br>SUPERIOR COURT, LAW DIVISION<br>ESSEX COUNTY<br><br>Docket No. Below: ESX-L-002661-21<br><br>Sat Below: Hon. Richard T. Sules, J.S.C.<br><br>Order dated: March 28, 2025 |

# BRIEF FOR DEFENDANT-RESPONDENT LANDSCAPE TECHNIQUES, INC.

TYSON & MENDES, LLP
Attorneys for Defendant-Respondent, Landscape Techniques, Inc.
101 Hudson Street – 21st Floor
Jersey City, New Jersey 07302
T: (551) 325-2505
F: (551) 345-9430
E: KBostwick@tysonmendes.com

Keith T. Bostwick, Esq. – Attorney ID No.: 168852016
*On the Brief*

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**Rules**

## PRELIMINARY STATEMENT

This appeal arises from the trial court's grant of summary judgment in favor of Defendant-Appellant, Landscape Techniques, Inc., related to an alleged slip-and-fall incident occurring on February 18, 2021, upon a train station property known as the Delawanna Station in Clifton, New Jersey during an ongoing snowstorm. Plaintiff-Appellant, Deyanire Granados, alleges that, at approximately 7:55 AM, she was descending the platform stairs when she slipped due to the icy rain that was actively falling from the storm.

The trial court correctly granted summary judgment in favor of Landscape Techniques because Plaintiff-Appellant's premises liability negligence claim is barred under the ongoing storm doctrine. It is undisputed that Plaintiff-Appellant's claimed incident occurred during and because of an ongoing storm. By her own admission, it was actively precipitating at the time of her fall. This is corroborated by uncontroverted meteorological data establishing that the storm began at approximately 7:00 AM, that approximately 0.2 inches of snow had already fallen since the storm began, that precipitation was actively falling at the time of the incident, and that the storm did not conclude until approximately seven hours later. Plaintiff-Appellant further concedes that she was caused to fall due to the "icy rain" of the ongoing storm.

The trial court properly held that, by operation of law under Pareja v. Princeton Int'l Props., 246 N.J. 546 (2021), Landscape Techniques owed no duty to remediate any snow or ice conditions until a reasonable time *after* the cessation of the storm. The trial court further properly found there is no genuine issue of material fact that neither the unusual exacerbating circumstances nor the pre-existing risk exceptions to the ongoing storm rule apply. Plaintiff-Appellant's fall occurred during and because of an ongoing storm, and Landscape Techniques did nothing to increase or exacerbate the risk of her fall.

The trial court also correctly granted summary judgment in favor of Landscape Techniques because Plaintiff-Appellant's claim is barred under the New Jersey Tort Claims Act (TCA). NJ Transit—a public entity—owned the property and retained ultimate responsibility for winter operations at the train station. NJ Transit hired contractors to perform snow removal services to certain portions of the property, specifically the sidewalks and parking lot. NJ Transit retained responsibility for snow removal of the remaining portions of the property, including the platforms and stairs, which were maintained by NJ Transit employees. Specifically, Plaintiff-Appellant alleges that she had on foot on the last step of the stairs, and one foot on the landing area below the stairs, when she slipped.

The trial court correctly held that, notwithstanding the ongoing storm immunity, Landscape Techniques is also entitled to derivative immunity under the

TCA. Landscape Techniques was performing a function that NJ Transit otherwise would have had to perform itself and was subject to the same specifications, standard operating procedures (SOPs), safety rules, and certification requirements that NJ Transit's employees were required to follow. The trial court also properly found that there was nothing pled by Plaintiff-Appellant that would give rise to the level of palpable unreasonableness, nor did Landscape Techniques have either actual or constructive notice of the transient and spontaneous weather condition.

Plaintiff-Appellant admitted that she fell due to "icy rain" from the active precipitation of an ongoing storm. The trial court faithfully applied Pareja, properly rejected Plaintiff-Appellant's reliance on speculation of a pre-existing risk, and correctly dismissed her claims. The trial court's decision was fully supported by the factual record and applicable law. Accordingly, Landscape Techniques respectfully submits that this Honorable Court should affirm the dismissal of Plaintiff-Appellant's claims in their entirety.

## PROCEDURAL HISTORY

Plaintiff-Appellant filed a Second Amended Complaint against NJ Transit, Landscape Techniques, and LTI, Inc. on April 12, 2024, asserting negligence causes of action. (Pa009). Landscape Techniques filed an Answer and Separate Defenses on May 17, 2024. (Pa039). Following the close of discovery, each defendant filed a motion for summary judgment in December 2024. (Pa269-301). On March 28, 2025, following extensive oral argument, the Honorable Richard T. Sules, J.S.C. issued orders granting summary judgment in favor of all three defendants and dismissing Plaintiff-Appellant's Complaint against each defendant, with prejudice. (Pa256-259). Plaintiff-Appellant then filed a Notice of Appeal on April 28, 2025. (Pa261).

## STATEMENT OF FACTS

Plaintiff-Appellant Deyanire Granados alleges that on February 18, 2021, she was upon property located at the intersection of Delawanna Avenue and Oak Street in Clifton, New Jersey when she sustained injuries. (Pa009). The subject property where the alleged injury occurred is a NJ Transit train station known as the Delawanna Station. (Pa237 at 13:9-12). The property encompasses two train platforms, stairs, a sidewalk area, and parking lot. (Pa238 at 15:8-19).

NJ Transit contracts with private contractors to perform various maintenance services for NJ Transit at its train stations. (Pa237 at 12:10-13:1). NJ Transit has employees who maintain certain portions of the Delawanna Station. (Pa239 at 18:15-

17). NJ Transit hired contractors to maintain certain other portions of the station property. (Pa029). Per the contract, NJ Transit maintained the platforms and stairs at the station. (Pa239 at 18:15-19:4). LTI/Landscape Techniques maintained the sidewalk and the parking lot areas. (Pa239 at 20:15-21). There is also a landing area at the bottom of the subject stairs between the stairs and the sidewalk. (Pa241 at 29:5-30:2). This landing area is sometimes shoveled/salted by NJ Transit employees and sometimes by the contractors. (Pa242 at 30:16-31:12; Pa243 at 34:7-35:3). Per the contract, the contractors were required to maintain the assigned areas subject to NJ Transit's specifications. (Pa029). This includes following NJ Transit's standard operating procedures for snow and ice maintenance, safety rules, and certification requirements, which are the same standards that NJ Transit's in-house maintenance workers were required to follow. (Pa029).

Plaintiff-Appellant was commuting to work when her alleged incident occurred. (Pa134 at 11:1-4). She got off the train at Delawanna Station at about 7:55 AM. (Pa135 at 15:23-25). She described the weather on the date of the incident, which she described as "icy rain. And then immediately, turned into snow, and it snowed quite a bit by eight a.m." (Pa135 at 16:1-5). She testified that it was actively snowing when she got off the train at Delawanna Station. (Pa135 at 16:6-8).

Plaintiff-Appellant described the condition of the train platform when she got off the train, which she described as "[a] lot of ice." (Pa135 at 16:9-14). After exiting

the train, she walked along the "icy" platform and down a set of stairs leading to the street level. (Pa135 at 16:22-17:12). She described the condition of the stairs, describing that the steps were "icy." (Pa135 at 16:22-17:12). As she was on the last step of the stairs, she slipped and fell. (Pa135 at 16:22-17:12). Importantly she testified that she had one foot on the last step of the stairs and one foot on the landing area when she slipped. (Pa136 at 18:2-17). Specifically, she described the condition that caused her to slip as the "icy rain." (Pa136 at 8:18-19). She testified that it was actively snowing at the time of her incident and that she observed snow and ice on the stairs and the sidewalk. (Pa136 at 18:20-25) ("it was on everything. It was everywhere.").

According to Thomas Else, an AMS Certified Consulting Meteorologist and SIMA Advanced Snow Manager at WeatherWorks, LLC, the National Weather Service had a Winter Weather Advisory in place beginning at 4:00 AM on the date of the incident. (Pa169). A snowstorm overspread Clifton, New Jersey starting around 7:00 AM. (Pa169). The total snow and sleet accumulation for this storm was between 3.5 and 4.0 inches. (Pa169). At the time of the alleged fall incident—7:55 AM—it was approximately 25°F and snow and sleet was actively falling. (Pa169). Since the storm began around 7:00 AM, approximately 0.2 inches of snow and sleet had already accumulated. (Pa169). The storm ended around 3:00 PM and the Winter Weather Advisory remained in effect through midnight. (Pa169).

Plaintiff-Appellant retained an engineer, Dr. Wayne Nolte, as a purported liability expert. (Pa050; Pa128). Dr. Nolte agrees that it was actively snowing when the incident occurred. (Pa050; Pa128). Nevertheless, Plaintiff-Appellant speculates that the topography of the property could channel runoff to the landing area below the stairs. (Pa050; Pa128). However, the trial court found that Dr. Nolte did not come to this conclusion, that Dr. Nolte provided no factual basis showing that the topography caused ice to form where Plaintiff-Appellant fell or that any of the defendants knew or should have known of such a hazard, and found Dr. Nolte's opinion to be unsupported conjecture and net opinion. (T49:20–25; T50:1–7) ("Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water.").

## LEGAL ARGUMENT

### I. THE TRIAL COURT CORRECTLY APPLIED THE ONGOING STORM DOCTRINE IN HOLDING NO DUTY TO PLAINTIFF-APPELLANT EXISTED BECAUSE SHE FELL DURING AN ONGOING STORM

#### a. Negligence Standard

To sustain a cause of action for negligence, a plaintiff must establish four elements: (1) a duty of care; (2) a breach of that duty; (3) proximate cause; and (4) actual damages. Townsend v. Pierre, 221 N.J. 36, 51 (2015) (quoting Polzo v. Cnty.

of Essex, 196 N.J. 569, 584 (2008). A "plaintiff bears the burden of establishing those elements 'by some competent proof.'" Townsend, 221 N.J. at 51 (quoting Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014)). "Negligence is a fact which must be shown and which will not be presumed." Long v. Landy, 35 N.J. 44, 54 (1961); see also Buckelew v. Grossbard, 87 N.J. 512, 524 (1981). The mere fact that the plaintiff suffered an accident does not provide proof that the plaintiff's injuries were the result of negligence. Buckelew 87 N.J. at 525. In a premise liability action, "the mere showing of an accident causing the injuries sued upon is not alone sufficient to authorize an inference of negligence." Vander Groef v. Great Atl. & Pac. Tea Co., 32 N.J. Super. 365, 370 (App. Div. 1954).

A negligence claim requires that the plaintiff prove that a defendant breached their duty of reasonable care toward the plaintiff and that the defendant's alleged breach was the proximate cause of the plaintiff's injuries. Brown v. Racquet Club of Bricktown, 95 N.J. 280, 288 (1984); Buckelew, 87 N.J. at 524. "The burden of proving the charge of negligence is upon the plaintiff and must be sustained by proof of circumstances from which the defendants want of due care is a legitimate inference. It is a substantial right of the defendant that the plaintiff be required to bear this burden." Hansen v. Eagle-Pitcher Lead Co., 8 N.J. 133, 139-140 (1950); see also Vander Groef, 32 N.J. Super. at 370. "An inference can be drawn only from proved facts and cannot be based upon the foundation of conjecture, speculation,

surmise, or guess." Long, 35 N.J. at 50 (citing Rivera v. Columbus Cadet Corps. of Am., 59 N.J. Super. 445, 449 (App. Div. 1960)).

As a prerequisite to a recovery on a theory of negligence, a plaintiff must demonstrate a "breach of duty, by action or inaction, on the part of the defendant to plaintiff, observance of which duty would have averted or avoided the injury." Brody v. Albert Lifson & Sons, 17 N.J. 383, 389 (1955). There can be no recovery in a negligence action if there was no breach of the duty. Krauth v. Geller, 54 N.J. Super. 442, 453 (App. Div. 1959), aff'd, 31 N.J. 270 (1960). While "duty signifies conformance to a reasonable standard of legal conduct in light of the apparent risk . . . failure in that duty must be proved as a fact." McKinley v. Slenderall Systems of Camden, N.J., Inc., 63 N.J. Super. 571, 581 (App. Div. 1960) (citing Mergel v. Colgate-Palmolive-Peet Co., 41 N.J. Super. 372, 379 (App. Div. 1956), cert. denied, 22 N.J. 453 (1956)).

A plaintiff in a personal injury action for a premise liability claim, in addition to proving what the defendant's duty of care is, "must also establish the defendant had actual or constructive knowledge of the dangerous condition which caused the accident." Prioleau v. Kentucky Fried Chicken, Inc., 434 N.J. Super. 558, 569 (App. Div. 2014). If a "dangerous condition" existed, that fact alone is not enough to show that the defendant had actual or constructive notice. Ibid. A defendant faces liability only when the plaintiff proves that the alleged defect was not only known to the

defendant, but also that they had an opportunity to fix it. Ibid. A defendant will face liability caused by a defect in the property only "if . . . the dangerous condition . . . existed for such a length of time that he should have known of its existence." Ibid. (quoting Bozza v. Vornado, Inc., 42 N.J. 355, 357–58 (1964)).

**b. Ongoing Storm Rule Bars Plaintiff-Appellant's Claim**

The New Jersey Supreme Court's decision in Pareja v. Princeton Int'l Props., 246 N.J. 546 (2021), controls this case. Pareja adopted a bright-line rule: commercial landowners and contractors owe no duty to remove snow or ice until a reasonable time *after* the precipitation ceases. Id. at 548. The Supreme Court in Pareja specifically noted: "While we trust juries to uphold their duties to evaluate reasonableness, we do not wish to submit every commercial landowner to litigation when it is not feasible to provide uniform, clear guidance as to what would be reasonable. We decline to impose a duty that cannot be adhered to by all commercial landowners." Id. at 558.

Instead, the Supreme Court adopted and applied the ongoing storm doctrine, which recognizes "it is categorically inexpedient and impractical to remove or reduce hazards from snow and ice while the precipitation is ongoing." Id. at 558. The Supreme Court acknowledged the unreasonableness of such efforts and held that the "duty to remove snow and ice hazards arises not during the storm, but rather within a reasonable time after the storm." Id.

Here, the trial court properly found that Plaintiff-Appellant's incident occurred during an active snowstorm, confirmed by Weather Works expert meteorological data and Plaintiff-Appellant's own testimony. (T48:22 to T49:3; Pa135-136; Pa169-170). The trial court recognized that "[a]ccording to the Ongoing Storm Rule, a commercial landowner does not have the absolute duty to keep sidewalks on its property free from ice or snow during an ongoing storm. The duty arises within a reasonable time after the storm concludes. The storm did not conclude until 3:00 p.m., which is approximately seven hours later." (T48:22 to T49:3).

**c. Plaintiff-Appellant's Admissions Establish No Duty Existed**

Plaintiff-Appellant herself admitted the storm was in progress, testifying that the weather was "icy rain" that "immediately turned into snow" and that "it snowed quite a bit by eight a.m." (Pa135 at 16:1–5). Critically, Plaintiff-Appellant admitted the following dispositive material facts:

> 3. Plaintiff commuted to work by New Jersey Transit, and exited her train at the Delawanna Station at 7:55 a.m.
>
> Plaintiff's Response: Admitted that this is a correct recitation of the plaintiff's testimony.
>
> 4. At the time of the accident, Plaintiff had been commuting to the Delawanna Station five-days per week since 2017.
>
> Plaintiff's Response: Admitted.
>
> 5. As part of her routine, Plaintiff would get off the train, go down the steps, and walk two blocks to work.

Plaintiff's Response: Admitted.

6. According to Plaintiff, the weather on February 18, 2021, was "icy rain. And then immediately turned into snow, and it snowed quite a bit by eight a.m."

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiff's testimony.

7. On February 18, 2021, Plaintiff exited "the train at about 7:55 in the morning at the Delawanna Station."

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiff's testimony.

8. When Plaintiff exited the train at the Delawanna Station, it was actively snowing.

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiff's testimony.

9. The train platform had "a lot of ice."

   Plaintiff's Response: Admitted that this is a correct recitation of the plaintiff's testimony.

10. The steps were "icy" and "even the handrail had chunks of snow."

    Plaintiff's Response: Admitted.

(Pa274 to Pa275; Pa299 to Pa300).

These admissions foreclose Plaintiff-Appellant's claim. Considering the above, the trial court recognized that "Plaintiff in her deposition stated that the weather was icy rain, which turned into snow and that it was actively snowing at the time of the accident." (T49:4-6). Thus, the trial court properly found that "[t]here's

no disputed fact here that the plaintiff's slip and fall accident occurred during an ongoing storm." (T49:7-8). The trial court explained that "Defendant LTI's motion for summary judgment is . . . granted because there is no disputed material fact that the plaintiff fell during the ongoing storm pursuant to plaintiff's own testimony. And LTI did not increase or exacerbate the risk of plaintiff's fall. They had no duty to remove the snow until a reasonable time after the storm had concluded." (T50:8-14). The trial court later clarified that "[f]or substantially the same reasons" that LTI's motion was granted, "defendant Landscape Techniques' summary judgment motion is also granted." (T50:21-23).

Consistent with Pareja, any attempt to address or remediate the "icy rain" condition that formed as a result of the ongoing winter storm on February 18, 2021, would be "inexpedient and impractical" and, therefore, Landscape Techniques' duty to do so did not arise until after the precipitation ceased on February 18, 2021. Since Landscape Techniques did not owe a duty to Plaintiff-Appellant for the condition which existed at the time of her alleged incident, her claim was properly dismissed under Pareja.

## II. THE TRIAL COURT PROPERLY FOUND THERE IS NO GENUINE ISSUE OF MATERIAL FACT THAT NEITHER THE UNUSUAL EXACERBATING CIRCUMSTANCES NOR THE PRE-EXISTING RISK EXCEPTIONS TO ONGOING STORM RULE APPLY

In establishing the bright-line rule of Pareja, the Supreme Court did so while

"considering our caselaw and balancing the concerns of commercial landowners with the need to provide redress for injured plaintiffs . . ." Id. at 558. Thus, "under the ongoing storm rule, commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion of the storm, [however] unusual circumstances may give rise to a duty before then." Id. Regarding exceptions to the ongoing storm rule, the Supreme Court cited two examples: (1) unusual circumstances where the defendant's conduct exacerbates and increases the risk of injury to the plaintiff; and (2) a pre-existing risk on the premises before the storm. Id. at 559.

**a. No Unusual Circumstances Exist**

Regarding unusual exacerbating circumstances, the Supreme Court in Pareja cited with approval the holding of Terry v. Cent. Auto Radiators, Inc., 732 A.2d 713, 717-18 (R.I. 1999) where "[t]he Supreme Court of Rhode Island held that 'unusual circumstances' existed where a defendant 'actively increas[ed] . . . [the] risk [of injury] by placing [the plaintiff's] vehicle so far distant and then directing her to make the longer walk over the treacherous icy terrain.'" In Terry, "'[t]he defendant, by having removed the vehicle to the rear of its business premises and by having directed the plaintiff to retrieve it from there, had exacerbated and increased the risk of the plaintiff's falling when it required her to walk some one hundred additional feet over snow and ice that had been accumulating on unknown and difficult terrain.

She was left with no choice but to do as directed if she wished to retrieve her vehicle.'" Pareja, 246 N.J. at 559 (citing Terry, 732 A.2d at 717-18).

Plaintiff-Appellant argued below, as she does now, that the defendants' "failure to pretreat the sidewalk creates liability." (T50:15-16). Considering that argument, the trial court properly found "there is not a duty of landowners or contractors to engage in preventative measures before a storm under Pareja. A duty to remove snow occurs within a reasonable time after the snow has concluded." (T50:17-20).

**b. No Pre-Existing Condition Exists**

Under the "second [exception], a commercial landowner may be liable where there was a pre-existing risk on the premises before the storm. For example, if a commercial landowner failed to remove or reduce a pre-existing risk on the property, including the duty to remove snow from a previous storm that has since concluded, he may be liable for an injury during a later ongoing storm." Pareja, 246 N.J. at 559.

Here, Plaintiff-Appellant argues, as she did below, that the station's topography created a recurring hazard, but the court rejected this argument: "Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water." (T49:20–25). Accordingly, the trial court

found Dr. Nolte's opinions to be "unsupported conclusions" that "will not defeat a motion for summary judgment." (T50:1–7) (citing Puder v. Buechel, 183 N.J. 428, 440–41 (2005)).

**c. The Trial Court's Findings are Unassailable**

The trial court explicitly found that the contractors "did not increase or exacerbate the risk of plaintiff's fall." (T50:11–12). It correctly held that Plaintiff-Appellant fell during an ongoing storm, when no duty existed. These factual and legal findings are fully supported by Plaintiff-Appellant's own admissions, meteorological records, and settled law under Pareja.

Plaintiff-Appellant seeks to blur the bright-line rule of Pareja by dressing up speculation about "pooling water" and "topography" as fact. But the Supreme Court cautioned against precisely this type of hindsight litigation. Imposing liability on Landscape Techniques here would not only contradict Pareja but effectively eviscerate the rule, subjecting every snow removal contractor and landowner to liability whenever an expert speculates that "more could have been done" during active precipitation.

## III. DR. NOLTE'S OPINIONS MIRROR THE SAME EXPERT THEORY REJECTED BY THE SUPREME COURT IN PAREJA AND THE TRIAL COURT PROPERLY DISCREDITED THEM AS NET

Plaintiff-Appellant argues that Dr. Nolte's expert report creates a genuine issue of material fact. However, the trial court correctly recognized that Dr. Nolte's

opinions were unsupported conclusions, not grounded in factual evidence, and therefore could not defeat summary judgment. (T49:20–25; T50:1–7). This Honorable Court should similarly reject Plaintiff-Appellant's reliance on Dr. Nolte for the same reasons.

**a. Dr. Nolte's Opinions Are Net Opinion**

Plaintiff-Appellant is trying to dress up the unfounded and speculative opinions of her expert and pass them off as facts in an attempt to manufacture genuine issues of material fact. The trial court properly saw through this tactic.

The record shows that the trial court carefully considered and questioned Plaintiff-Appellant's counsel at length about Dr. Nolte's opinions. (T22:21–23; T23:9–14; T35:9–15; T41:7–15). After this extensive inquiry, the trial court carefully evaluated Dr. Nolte's report and made explicit findings:

> Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water.

(T49:20–25). The trial court concluded further:

> [Dr. Nolte's] unsupported conclusions as to how the ice formed without explanatory or supporting facts will not defeat a motion for summary judgment. [citing Puder v. Buechel, 183 N.J. 428, 440–41 (2005)]. Puder found that conclusory and self-serving assertions and certifications without explanatory supporting facts will not defeat a motion for summary judgment.

(T50:1-7).

These findings are firmly supported by law. It is well-settled that expert testimony cannot rest on speculation or conjecture. E.g. Buckelew, 87 N.J. at 524. Dr. Nolte's failure to tie his topography and runoff theories to the actual location of Plaintiff-Appellant's fall renders his opinion a classic net opinion.

**b. Dr. Nolte's Opinions Mirror the Expert Theory Rejected in *Pareja***

More fundamentally, Plaintiff-Appellant's reliance on Dr. Nolte's opinion is precisely the same logical fallacy the Supreme Court rejected in Pareja. In that case, the plaintiff's expert opined that the defendant "could have successfully reduced the hazardous icy condition by pre-treating the sidewalk with standard anti-icing and de-icing materials" and that the defendant "knew or should have known" about the winter weather advisory issued over twenty-four hours before the accident occurred. Pareja, 246 N.J. at 550. The Supreme Court firmly rejected that argument holding that it "did not wish to submit every commercial landowner to litigation when it is not feasible to provide uniform, clear guidance as to what would be reasonable." Id. at 557. Pareja also specifically rejected the notion that a landlord could always avoid liability by spreading salt, reasoning that this "ignores the diversity of storms a landlord may confront" and that salting "in a heavy snowstorm or ice storm can be ineffective or even enhance the danger." Id. at 557 n.1.

Plaintiff-Appellant's argument here—that topography, runoff, or failure to pre-treat could have prevented the condition—is the same theory rejected in Pareja.

Just as in Pareja, Plaintiff-Appellant here attempts to convert every forecasted storm into a duty to pre-treat and every accident into a question for a jury. The Supreme Court declined to impose such an "untenable duty of care." Id. at 557.

**c. Dr. Nolte's Opinions Cannot Override Plaintiff-Appellant's Own Testimony**

Plaintiff-Appellant testified unequivocally that she slipped on "icy rain" while it was actively snowing. (Pa135 at 16:1–8). No amount of expert speculation can change this dispositive fact: her fall occurred during an ongoing storm, squarely within the rule of Pareja. Here, as in Pareja, Plaintiff-Appellant's expert advances the same flawed premise: that pre-treatment or design modifications could have prevented the ice. That is not competent evidence of liability; it is precisely the kind of hindsight reasoning Pareja disallowed.

**d. The Appellate Division Has Already Rejected This Theory in *Sarro* and *McGrath***

The Appellate Division's decision in Sarro v. Vonage Holdings Corp., No. A-1392-21, 2023 N.J. Super. Unpub. LEXIS 408 (App. Div. Mar. 20, 2023), while unpublished, is directly on point. There, the plaintiff's expert similarly opined that the contractor failed to take "ice watch" measures, delayed deicing, and thereby caused the accident. Id. at *5–7. The Appellate Division rejected those arguments because the fall occurred during an ongoing storm, emphasizing that Pareja applies equally to private parking lots as to public sidewalks. Id. at *9-11.

The Appellate Division rejected the plaintiff's reliance on the first Pareja exception, holding there was "nothing" in the expert's report to support a conclusion that "unusual circumstances" existed or that the defendant exacerbated the risk. Id. at *7, *11. Likewise, the Appellate Division rejected the second exception, finding no evidence of lingering hazards from a prior storm. Id. at *11-13. The plaintiff's reliance on expert speculation did not create a triable issue. Id. at *13.

Plaintiff-Appellant's reliance on Dr. Nolte's speculation about "pooling water," "directed runoff," or the absence of pre-treatment is indistinguishable from the theories rejected in Sarro. Just as in that case, there is no competent evidence that Landscape Techniques' conduct exacerbated the risk or that a pre-existing hazard caused Plaintiff-Appellant's fall.

In McGrath v. Vezzosi, No. A-0133-23, 2024 N.J. Super. Unpub. LEXIS 1675 (App. Div. June 15, 2024), the Appellate Division addressed nearly identical arguments. There, the plaintiff argued: (1) Pareja was unconstitutional and should be overturned; (2) even if valid, Pareja should be limited in scope; and (3) her case fell within the exceptions to the ongoing storm rule. The Appellate Division rejected each contention.

The Appellate Division applied the two Pareja exceptions and held they did not apply because the plaintiff presented no competent evidence that the defendants exacerbated the risk or that a pre-existing condition caused the fall. Id. at *12-16.

Importantly, the plaintiff's expert's opinion in McGrath was rejected under the net opinion doctrine because it was not tethered to record facts. Ibid.

The parallels to this case are undeniable. Here, Plaintiff-Appellant likewise argues that Pareja should not apply, or should be limited, or that her case falls within an exception. But just as in McGrath, Plaintiff-Appellant presents no competent evidence of exacerbation or pre-existing risk and relies instead on Dr. Nolte's speculative opinions. Like the expert in McGrath, Dr. Nolte's report is not tethered to the facts elicited in Plaintiff-Appellant's own deposition testimony and cannot create a genuine issue of material fact.

The lesson of McGrath is clear: dissatisfied litigants cannot avoid Pareja by questioning its constitutionality, asking courts to narrow it, or leaning on speculative expert opinions. The ongoing storm rule is controlling, its exceptions are narrow, and unsupported expert assertions do not defeat summary judgment. Landscape Techniques respectfully submits that, just as the Appellate Division affirmed summary judgment in Sarro and McGrath, it should do so here.

## IV. PLAINTIFF-APPELLANT'S CONTRACT-BASED ARGUMENTS FAIL AS A MATTER OF LAW

Plaintiff-Appellant attempts to avoid Pareja by contending that the defendants owed her a duty to "pre-treat" based on the terms of the NJ Transit contract. This argument was expressly raised below, carefully considered by the trial court, and properly rejected. The trial court made a clear finding: "There is not a duty of

landowners or contractors to engage in preventative measures before a storm under Pareja. A duty to remove snow occurs within a reasonable time after the snow has concluded." (T50:17–20).

That finding is entirely consistent with New Jersey law. The Supreme Court in Pareja rejected the identical theory. In Pareja, the plaintiff's expert argued that the defendant could have eliminated icy conditions by pre-treating sidewalks with salt in anticipation of a winter storm. 246 N.J. at 550. The Supreme Court rejected that argument, explaining that such a duty would effectively convert every forecast into an obligation to act, subject every property owner to litigation, and impose an "untenable duty of care" given the diversity of storms and the impracticality (or even danger) of applying salt during ongoing precipitation. Id. at 557 & n.1.

Plaintiff-Appellant here seeks to transform an alleged contractual provision into a tort duty enforceable by third parties. That is not the law. See Saltiel v. GSI Consultants, Inc., 170 N.J. 297, 316 (2002) ("Under New Jersey law, a tort remedy does not arise from a contractual relationship unless the breaching party owes an independent duty imposed by law."). A private contract may establish obligations as between contracting parties, but it does not expand common law duties owed to strangers to the contract. Ibid. In Saltiel, the Supreme Court declined to impose tort liability for alleged breaches of contractual obligations absent a duty independent of

the contract. Id. at 316. ("In this transaction, we are unable to discern any duty owed to the plaintiff that is independent of the duties that arose under the contract.").

Plaintiff-Appellant's position, if accepted, would fundamentally erode the ongoing storm doctrine. Every time a snow removal contract referenced "pre-treatment," plaintiffs could argue that a tort duty was triggered even before a storm began. That outcome would directly contradict the bright-line rule of Pareja, which held unequivocally that "[t]he duty to remove snow and ice hazards arises not during the storm, but rather within a reasonable time after the storm." 246 N.J. at 558. Here, Plaintiff-Appellant cannot identify any duty independent of the NJ Transit contract.

Plaintiff-Appellant's argument also collapses under her own admissions. She testified that she fell on "icy rain" during active precipitation. No amount of contract language can change the dispositive fact that her accident occurred during an ongoing storm. For these reasons, Plaintiff-Appellant's contract-based arguments fail as a matter of law.

## V. LANDSCAPE TECHNIQUES IS ENTITLED TO DERIVATIVE IMMUNITY UNDER THE TORT CLAIMS ACT

Landscape Techniques is entitled to the immunities and defenses provided under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. In New Jersey, public entities are generally immune from liability for injuries under the TCA. Ibid. Indeed, immunity is the rule and liability is the exception. See N.J.S.A. 59:2-1 ("Except as

otherwise provided by the act, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or public employee or any other person."); see also Fluehr v. City of Cape May, 159 N.J. 532, 539 (1999).

To recover under the TCA, a plaintiff must prove that: (1) a dangerous condition existed on the public entity's property at the time of the injury; (2) the dangerous condition proximately caused the injury; (3) the dangerous condition created a foreseeable risk of the kind of injury that occurred; and either (4) a negligent or wrongful act or omission of a public employee within the scope of his or her employment created the dangerous condition; or (5) the public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have protected against the condition. N.J.S.A. 59:4-2; see Posey ex rel. Posey v. Bordentown Sewerage Auth., 171 N.J. 172, 182 (2002). A public entity shall not be liable "for a dangerous condition of its property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable." Ibid.

N.J.S.A. 59:4-1 defines "dangerous condition" as "a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." Due care is an objective standard that refers to the "reasonable use by the public generally." Vincitore ex rel. Vincitore v. New Jersey Sports and Exposition Authority, 169 N.J.

119, 125 (2001). Actual and constructive notice are defined by N.J.S.A. 59:4-3 as follows:

> a. A public entity shall be deemed to have actual notice of a dangerous condition . . . if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.
>
> b. A public entity shall be deemed to have constructive notice of a dangerous condition . . . only if the plaintiff establishes that the condition existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character.

Palpable unreasonableness is an elevated negligence standard, requiring "behavior that is patently unacceptable under any circumstance" and that is so "manifest and obvious that no prudent person would approve of [the public entity's] course of action or inaction." Holloway v. State, 125 N.J. 386, 403-04 (1991) (quoting Kolitch v. Lindedahl, 100 N.J. 485, 493 (1985)).

While private contractors that contract with the government are not expressly entitled to the protections of the TCA, it is well-settled that private contractors are afforded the same protections under certain circumstances. E.g. Cobb v. Waddington, 154 N.J. Super. 11, 18 (App. Div. 1977), certif. denied, 76 N.J. 235 (1978); Gomes v. County of Monmouth, 444 N.J. 479, 491 (App. Div. 2016) ("We recognize that, in appropriate circumstances, private contractors retained by the State and local governments to perform some of their functions may be protected by the TCA's immunities and special defenses under the concept of 'derivative

immunity.'"). The reasoning is that "[i]f contractors never shared government immunity, their costs of doing business would be higher and higher and those higher costs would be passed on to the government entities hiring the contractors." Ibid.

Private contractors are entitled to derivate immunity where the contractor "performs certain functions that the [public entity] otherwise would have had to perform itself." Gomes, 444 N.J. at 491; see also Rodriguez v. N.J. Sports & Exposition Auth., 193 N.J. Super. 39, 44-46 (App. Div. 1983), certif. denied, 96 N.J. 291 (1984) (extending public immunity to private security company that provided security and guards for a public entity). In determining whether a private contractor is entitled to derivative immunity, courts consider whether "the effect would be nearly the same as if the public entity were liable itself." Vanchieri v. New Jersey Sports and Exposition Authority, 104 N.J. 80, 86 (1986).

It is well-settled that the protections of the TCA extend to the private contractor when the public entity provided plans or specifications to the contractor. E.g. Cobb, 154 N.J. Super. at 18. Under this scenario, the contractor will not be held liable for work performed in accordance with those plans and specifications. Ibid. Indeed, "[t]he statutory immunity would be meaningless if a public entity which follows government specifications were held to the liability from which the public entity is shielded." Ibid. (extending public immunity to private construction contractor that placed barricades in a public roadway pursuant to the specifications

of the government contract); Sanner v. Ford Motor Co., 144 N.J. Super. 1, 9 (Law Div. 1976), aff'd, 154 N.J. Super. 407 (App. Div. 1977), certif. denied, 75 N.J. 616 (1978) (extending public immunity to private contractor that installed restraints in government vehicles pursuant to specifications of the contract).

Here, NJ Transit is a public entity within the meaning of the TCA. See N.J.S.A. 59:1-3 ("Public entity includes the State, and any county, municipality, district, public authority, public agency, and any other political subdivision or public body in the State."). NJ Transit owned the property and retained ultimate responsibility for winter operations at the train station. NJ Transit contracted with LTI/Landscape Techniques to perform snow removal services to certain portions of the property, specifically the sidewalks and parking lot. NJ Transit retained responsibility for snow removal of the remaining portions of the property, including the platforms and stairs, which were maintained by NJ Transit employees. Therefore, Landscape Techniques is entitled to derivative immunity because it was performing a function that NJ Transit "otherwise would have had to perform itself." See Gomes, 444 N.J. at 491.

Under the circumstances of this case, a finding of any liability against Landscape Techniques is the same as if NJ Transit were liable itself. See Vanchieri, 104 N.J. at 86. The contractors were essentially acting as employees of NJ Transit. See Cobb, 154 N.J. Super. at 18 (when a public entity provides the plans or

specifications the contractor is required to follow, the contractor will not be held liable for work performed in accordance with those plans and specifications). NJ Transit controlled basically every aspect of Landscape Techniques' work. See ibid. This includes following NJ Transit's SOPs for snow and ice maintenance, safety rules, and certification requirements, which are the same standards that NJ Transit's employee maintenance workers were required to follow. See ibid.

Importantly, Plaintiff-Appellant alleges that she had one foot on the last step of the stairs, and one foot on the landing area, when she slipped. Again, NJ Transit's own employees maintained the stairs, and the landing area was sometimes shoveled/salted by NJ Transit employees and sometimes by the contractors. The statutory immunity would be meaningless if Landscape Techniques were not held to the same liability standard as NJ Transit under these circumstances. See Cobb, 154 N.J. Super. at 18.

The trail court correctly held that, notwithstanding the ongoing storm doctrine, immunity still prevailed for NJ Transit under the TCA because there was nothing pled by Plaintiff-Appellant that would give rise to the level of palpable unreasonableness. The trial court further correctly held that Landscape Techniques was entitled to derivative immunity under the TCA and there was no evidence that it acted palpably unreasonable. (T50:21-23) ("For substantially the same reasons"

that NJ Transit's motion is granted, "defendant Landscape Techniques' summary judgment is also granted."

## VI. THE TRIAL COURT CORRECTLY FOUND THAT DEFENDANTS LACKED NOTICE OF A SPONTANEOUS ICE CONDITION

Even apart from Pareja, summary judgment was appropriate because no evidence establishes that any of the defendants had actual or constructive notice of the precise condition on which Plaintiff-Appellant fell. To impose liability under the TCA, a plaintiff must show that the public entity (or its contractor) had actual knowledge of the dangerous condition, or that the condition existed for such a length of time and was so obvious that it should have been discovered. N.J.S.A. 59:4-3.

Actual and constructive notice are defined by N.J.S.A. 59:4-3 as follows:

> a. A public entity shall be deemed to have actual notice of a dangerous condition . . . if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.
>
> b. A public entity shall be deemed to have constructive notice of a dangerous condition . . . only if the plaintiff establishes that the condition existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character.

Here, Plaintiff-Appellant unequivocally testified that she slipped on "icy rain" while it was "actively snowing." (Pa136 at 18:18-19; Pa135 at 16:6-8). Meteorological records confirmed that the storm began around 7:00 AM and that snow was still falling at the time of her 7:55 AM fall. (Pa169-170). This testimony

and objective data demonstrate that the condition developed spontaneously as precipitation transitioned from freezing rain to snow. Under such circumstances, the trial court properly found that no reasonable factfinder could conclude that the defendants had actual or constructive notice. (T47:14-21). ("There has been no evidence submitted by plaintiff to show that ice accumulation was the product of a negligent or wrongful act of the New Jersey Transit or its employees. Plaintiff also does not have any specific evidence that shows that Transit was put on actual or constructive notice. Plaintiff does not reference any other falls or complaints about the ice accumulation on the sidewalk in the station.").

Plaintiff-Appellant's reliance on her expert's speculative "topography" theory cannot cure this defect. The trial court carefully rejected that argument, finding "Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze [and] [t]here is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water." (T49:20-25). In any event, Landscape Techniques, as a contractor, did not own or otherwise have any responsibility for or ability to address the topography of the property and therefore cannot be held liable for such a condition.

The trial court properly recognized that "[t]he ice was spontaneous and naturally occurring and there is no evidence that the ice existed for any period of

time that would make its existence obvious." (T48:5-7). Absent proof of a recurring defect, Plaintiff-Appellant cannot avoid the controlling principle that landowners and contractors are not insurers against hazards that arise instantaneously during a storm.

Accordingly, the trial court correctly concluded that no genuine issue of material fact exists with respect to notice. Because Plaintiff-Appellant slipped on a condition that developed contemporaneously with the ongoing storm, the defendants could not, as a matter of law, have had adequate notice to remediate it.

## VII. STANDARD OF REVIEW

### a. The Trial Court Properly Applied the Summary Judgment Standard in Dismissing Plaintiff-Appellant's Complaint with Prejudice

When reviewing a grant of summary judgment, the Appellate Division 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." Pareja, 246 N.J. at 554 (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). Summary judgment must be granted if "the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). In

questions of law, be it common law or a statute, the Appellate Division's review is *de novo*. Pareja, 246 N.J. at 554 (citing Maison v. N.J. Transit Corp., 245 N.J. 270, 286 (2021)). However, deference is given to the supported factual findings of the trial court. Lee v. Brown, 232 N.J. 114, 126-27 (2018).

Summary judgment is intended as a prompt and complete means to dispose of cases in which the pleadings and discovery reveal no genuine issues of material fact which require disposition at a trial. Judson v. Peoples Bank & Trust Co. of Westfield, 17 N.J. 67, 73-75 (1954). When the evidence is "so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment." Brill, 142 N.J. at 540. "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R. 4:46-2(c).

"[W]here the party opposing summary judgment points only to disputed issues of fact that are 'of an insubstantial nature,' the proper disposition is summary judgment." Brill, 142 N.J. at 529. And "[b]are conclusions in the pleadings, without factual support in tendered affidavits, will not defeat a meritorious application for summary judgment." U.S. Pipe & Foundry Co. v. Am. Arbitration Association, 67 N.J. Super. 384, 399-400 (App. Div. 1961) (citing Gherardi v. Trenton Board of Education, 53 N.J. Super. 349, 358 (App. Div. 1958). "By the same token, bare

conclusory assertions in an answering affidavit are insufficient to defeat a meritorious application for summary judgment." Brae Asset Fund, L.P. v. Newman, 327 N.J. Super. 129, 134 (App. Div. 1999).

Here, the trial court properly applied the standard stating:

> The standard for summary judgment is set forth in Rule 4:46-2 and has been clarified by Brill versus Guardian Life Insurance Company of America, 142 N.J. 520, 1995. Summary judgment shall be rendered if the pleadings show there is no genuine issue as to any material fact challenging that the moving party's entitled to judgment as a matter of law.
>
> Whether there exists a genuine issue of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented when viewed in the light most favorable to the nonmoving party are sufficient to permit a rational fact finder to resolve the alleged dispute in favor of the nonmoving party.

(T43:8-21).

In the matter at bar, the undisputed facts establish that Landscape Techniques did not owe a duty to Plaintiff-Appellant and the trial court properly applied the well-established summary judgment standard and correctly dismissed Plaintiff-Appellant's claims.

## CONCLUSION

This appeal presents no basis to disturb Judge Sules' careful and well-reasoned decision. Plaintiff-Appellant's own testimony and the uncontroverted meteorological records establish that her accident occurred during and because of an ongoing storm. Under Pareja v. Princeton Int'l Props., 246 N.J. 546 (2021), that fact

alone is dispositive: absent unusual exacerbating circumstances or a pre-existing hazard—neither of which exists here—the defendants owed no duty to remediate snow or ice until a reasonable time *after* the storm concluded.

Plaintiff-Appellant's effort to evade this bright-line rule rests on speculative theories and unsupported expert conjecture. The trial court correctly rejected Dr. Nolte's opinions as net opinion, indistinguishable from the same pre-treatment and design theories the Supreme Court expressly disallowed in Pareja. Both the Appellate Division in Sarro v. Vonage Holdings Corp. and McGrath v. Vezzosi have since confirmed that such speculation cannot create a triable issue of fact.

Nor can Plaintiff-Appellant establish liability by pointing to the NJ Transit contract. New Jersey law is clear that a private contract cannot manufacture a tort duty enforceable by third parties. Plaintiff-Appellant's contract-based theory would eviscerate the ongoing storm doctrine by transforming every reference to "pre-treatment" into a tort duty—a result flatly contrary to Pareja.

In addition, Landscape Techniques is entitled to derivative immunity under the Tort Claims Act because Landscape Techniques was performing NJ Transit's governmental function pursuant to NJ Transit's own specifications. Plaintiff-Appellant has not come close to showing that Landscape Techniques' conduct was palpably unreasonable, as required under the TCA. Nor is there any evidence that Landscape Techniques had actual or constructive notice of the transient,

spontaneously developing icy condition that arose contemporaneously with the storm.

The law, the record, and sound public policy all point to the same conclusion: Landscape Techniques cannot be held liable for Plaintiff-Appellant's claimed incident. To hold otherwise would upend Pareja's bright-line rule, expose public entities and their contractors to limitless litigation whenever winter weather occurs, and impose an untenable duty of care that New Jersey's highest court has already rejected.

For all of these reasons, and substantially for those set forth by Judge Sules, Landscape Techniques respectfully submits that the order granting summary judgment to Landscape Techniques should be affirmed in its entirety.

Respectfully submitted,

TYSON & MENDES, LLP
Attorneys for Defendant-Respondent,
Landscape Techniques, Inc.

Keith T. Bostwick, Esq.

Dated: October 6, 2025

***FLORIO PERRUCCI STEINHARDT***
***CAPPELLI & TIPTON LLC***
Kody K. Hines, Esq. (Atty ID # 416502022)
91 Larry Holmes Drive, Ste. 200
Easton, PA 18042
Phone: 610-691-7900
Email: khines@floriolaw.com
*Attorneys for Respondent, New Jersey Transit Corp.*

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| DEYANIRE GRANADOS,<br>Plaintiff/Appellant,<br>v.<br>LTI, INC., NEW JERSEY TRANSIT CORP., LANDSCAPE TECHNIQUES, INC., JOHN DOES I-X, and ABC CORPORATIONS I-X,<br>Defendants/Respondents. | SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION<br>DOCKET NO. A-002658-24<br>CIVIL ACTION<br>On Appeal from the Superior Court of New Jersey, Law Division, Essex County<br>Dock. No. Below: ESX-L-002661-21<br>Sat Below: Hon. Richard T. Sules, J.S.C.<br>Order dated: March 28, 2025 |

# BRIEF OF THE DEFENDANT/RESPONDENT NEW JERSEY TRANSIT CORP.

**On the Brief:**

Kody K. Hines, Esquire

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## PRELIMINARY STATEMENT

This is an appeal of an Order granting Summary Judgment in favor of Defendant/Respondent, New Jersey Transit Corp. ("NJ Transit") related to an alleged slip and fall accident that occurred on February 18, 2021, near the Delawanna Train Station, in Clifton, New Jersey ("Delawanna Station" or the "Station") during an active snowstorm. At approximately 7:55 a.m., the Plaintiff/Appellant, Deyanire Granados ("Plaintiff" or "Ms. Granados"), allegedly deboarded the train at Delawanna Station, descended the platform stairs, and slipped on the abutting sidewalk near the intersection of Delawanna Avenue and Oak Street. As a result of the fall, Plaintiff allegedly injured her left ankle, left lower extremity, and lower back. Immediately after the fall, Ms. Granados got herself up off the ground and walked approximately two blocks to her place of employment.

Regarding snow removal and deicing at Delawanna Station, NJ Transit—a public entity—contracted with Co-Defendant/Respondent, LTI, Inc. ("LTI"). Pursuant to the terms of the snow removal contract, LTI is responsible for providing all necessary equipment, materials, tools, supplies, labor, transportation, and supervision needed for snow removal and deicing services at Delawanna Station, including the parking lots, lot aisles, roadways, and sidewalks. LTI, as the contractor, was required to return as necessary during storm events to ensure that all areas remained clear. As testified to at the depositions of NJ Transit Senior Manager,

Carlos Freire, and LTI President, Frederick Paradise, LTI would pre-treat Delawanna Station prior to a winter event and service the Station as needed during and after the winter event. LTI would report to and service Delawanna Station as a matter of course in the event of inclement weather. NJ Transit would not have to call LTI to service the Station. LTI's snow removal responsibilities included the sidewalk area where Plaintiff allegedly fell during an active snowstorm.

On December 18, 2024, NJ Transit filed its Motion for Summary Judgment, seeking dismissal of Ms. Granados's claims with prejudice, on the basis that NJ Transit is immune from liability pursuant to statutory immunity for public entities, the common law snow and ice removal immunity, and immunity pursuant to the ongoing storm rule. Co-Defendants LTI and Landscape Techniques, Inc. ("Landscape") also filed Motions for Summary Judgment. On March 28, 2025, after oral argument on the Motions for Summary Judgment, the trial court granted summary judgment in favor of NJ Transit and dismissed Ms. Granados's Complaint against NJ Transit and any and all cross claims against NJ Transit with prejudice.

For the reasons set forth in detail below, NJ Transit requests that this Honorable Court affirm the Order of the trial court, dismissing all claims against NJ Transit with prejudice.

## PROCEDURAL HISTORY

On March 31, 2021, Plaintiff filed her initial Complaint in the Superior Court of Essex County, naming LTI, John Does, and ABC Corps. as Defendants, bringing claims of negligence against the Defendants, and seeking recovery for bodily injuries allegedly sustained as a result of the February 18, 2021 accident. See Pl. App. at Pa001. Plaintiff filed an Amended Complaint on December 12, 2021, naming NJ Transit as an additional Defendant. See Pl. App. at Pa005. With leave of court, Plaintiff then filed a Second Amended Complaint on or about April 12, 2024, naming Landscape as an additional Defendant. See Pl. App. at Pa009. NJ Transit filed its Answer on March 31, 2022. See Pl. App. at Pa013.

Discovery in this matter closed on November 5, 2024. Arbitration was held on November 12, 2024. LTI filed the de novo appeal of the arbitration award on December 9, 2024. On December 18, 2024, NJ Transit filed its Motion for Summary Judgment. NJ Transit's Motion for Summary Judgment raised three individual immunity defenses, including statutory immunity under the New Jersey Tort Claims Act as a public entity, immunity under the common law snow and ice removal immunity, and immunity pursuant to the ongoing storm rule.

After oral argument, the trial court granted NJ Transit's Motion for Summary Judgment in its entirety on March 28, 2025. See Pl. App. at 257. In doing so, the trial court correctly stated the following:

> According to the Ongoing Storm Rule, a commercial landowner does not have the absolute duty to keep sidewalks on its property free from ice or snow during an ongoing storm. The duty arises within a reasonable time after the storm concludes. The storm did not conclude until 3:00 p.m., which is approximately seven hours later.
>
> Plaintiff in her deposition stated that the weather was icy rain, which turned into snow and that it was actively snowing at the time of the accident." There's no disputed fact here that the plaintiff's slip and fall accident occurred during an ongoing storm.

Transcript of Motions for Summary Judgment dated March 28, 2025 ("MT") at 48:22-49:8.

Regarding exceptions to the ongoing storm rule, the trial court stated:

> If a plaintiff falls during an ongoing storm, a plaintiff can recover if an exception to the storm rule applies. However, there's no evidence in the record that New Jersey Transit's conduct exacerbated or increased the risk to plaintiff's accident. There's nothing that Transit did to cause the ice or snow to form under the sidewalk.
>
> ****
> [Plaintiff's expert] report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water.

MT at 49:9-15, 49:20-25.

The trial court ultimately granted all three Defendants' Motions for Summary Judgment in their entirety. Plaintiff filed her Notice of Appeal on April 28, 2025.

See Pl. App. at Pa261.

## STATEMENT OF FACTS

The material facts of this matter are undisputed. On February 18, 2021, Ms. Granados slipped on the sidewalk abutting Delawanna Station near the intersection of Delawanna Avenue and Oak Street, in Clifton, New Jersey. See Pl. App. at Pa010, ¶ 7. Plaintiff alleges that Defendants/Respondents owned, operated, controlled, and/or maintained the subject sidewalk. Id. It was actively snowing at the time of Plaintiff's fall, and the National Weather Service had a Winter Weather Advisory in place beginning at 4:00 a.m. on the date of the incident. See the WeatherWorks Report attached to Pl. App. at Pa166-Pa176. The storm began at approximately 7:00 a.m. and by the time of Plaintiff's fall at approximately 7:55 a.m., it had snowed about 0.1 to 0.2 inches, and at the conclusion of the winter event, the accumulation of snow and sleet was between 3.5 and 4.0 inches. Id. The storm concluded around 3:00 p.m., and the Winter Weather Advisory remained in effect until midnight. Id.

By her own admission, Ms. Granados stated that it was actively snowing at the time of her fall. See Deposition Transcript of Plaintiff, Deyanire Granados, attached to Pl. App. at Pa131 ("Q. Do you remember what the weather was like that day? A. Yes. It was icy rain. And then immediately, turned into snow, and it snowed quite a bit by eight a.m." "Q. Was it actively snowing when you got off the train at Delawanna Ave? A. Yes."). Id. at 16:1-8. Regarding the location of her fall,

Plaintiff unequivocally testified that she slipped on the sidewalk area. ("I slipped on the edge of the sidewalk"). Id. at 20:9-16.

NJ Transit is a state-owned public transportation system that serves the State of New Jersey. NJ Transit contracted with LTI for snow removal and deicing services at Delawanna Station. See generally the Snow Removal Contract (the "Contract") attached to Pl. App. at Pa029-Pa038. Per the Contract, LTI is responsible for all snow removal and deicing of the public sidewalk where Plaintiff allegedly fell. Id. at Pa034 ("The Contractor will provide all equipment, materials and labor to remove all snow, ice, sleet or other frozen precipitation from all parking lots, lot aisles, roadways and sidewalks and spread salt mix on same.").

Regarding reporting to the Station, LTI would report automatically to service the lot and abutting sidewalks. NJ Transit would not have to call out LTI to service the Station for pretreatment or for snow removal or deicing. See Pl. App. at Pa247, Freire Dep. Tr. at 53:9-15. Regarding pretreatment of the Station, LTI is responsible for pre-salting prior to hazardous conditions existing. See Pl. App. at Pa037. Further, "[LTI] must return as necessary during storm events as defined by the National Oceanic and Atmospheric Administration (NOAA) to ensure all areas remain clear, at no additional cost to NJ TRANSIT, including any such frozen areas resulting from runoff or blowing and/or falling snow due to those events." Pl. App. at Pa034.

Per the Snow Removal Contract, LTI is responsible for snow removal and deicing of the sidewalk where Plaintiff fell. See Pl. App. at Pa029; see also Deposition Transcript of LTI President, Fred Paradise attached to Pl. App. at Pa147 ("Q. And, again, per this contract, LTI was responsible for all snow removal and deicing of the sidewalks that abut the parking lot along Delawanna Avenue. Is that correct? A. Yes. Just the sidewalks."). Id. at 61:2-6. On the date of the accident, Landscape, at the direction of LTI, reported to Delawanna Station at approximately 8:10 a.m., applying deicer to the walkways. See Liability Report of Scott Moore attached to Pl. App. at 177. The contractor was responsible for plowing the parking lots and pedestrian areas such as the sidewalks and perimeter of the site. See Deposition Transcript of NJ Transit Senior Manager Carlos Freire attached to Pl. App. at Pa234, 20:15-21. Shortly after the conclusion of the storm, Landscape again reported to Delawanna Station at approximately 4:15 p.m. to shovel the walkways. See Liability Report of Scott Moore attached to Pl. App. at 188.

## LEGAL ARGUMENT

### I. SUMMARY JUDGMENT STANDARD

Rule 4:46-2 provides that summary judgment shall be granted where the evidence demonstrates the following:

> There is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at

> trial, the evidence submitted by the parties on the motion, together with all legitimate interferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact.

R. 4:46-2(c). The purpose of the summary judgment procedure is to provide a prompt, businesslike and inexpensive means of disposing of a cause. Judson v. People's Bank & Trust Co. of Westfield, 17 N.J. 67, 75 (1954); Rothman v. Silber, 90 N.J. Super. 22, 33 (App. Div. 1966).

In 1995, the New Jersey Supreme Court refined the summary judgment standard to converge with the standard employed by the Federal courts and the majority of State courts since 1986. The standard has been enunciated in Brill v. Guardian Life Ins. Co., 142 N.J. 520 (1995):

> [u]nder this new standard, a determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider 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.

Consequently, a motion for summary judgment cannot be defeated merely by pointing to any fact in dispute. Rather, a party opposing summary judgment must raise substantial issues of fact to defeat a motion. Therefore, the non-moving party must raise questions of fact which are capable of leading a rational fact finder to decide in the non-moving party's favor if a trial were held. Thus, summary judgment

is warranted "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Id. at 533 (citations omitted). On appeal, the Appellate Division in New Jersey conducts a de novo review of an order granting summary judgment, applying the same standard employed by the trial court. C.H. by Cummings v. Rahway Board of Education, 459 N.J. Super. 236, 242 (App. Div. 2018).

As demonstrated herein, when viewing all the facts in the light most favorable to the non-moving parties there exist no genuine issues as to any material fact. NJ Transit acted reasonably and timely in its maintenance of Delawanna Station. The sidewalk area where Plaintiff fell is contractually the sole responsibility of LTI for snow removal and deicing purposes. NJ Transit lacked notice of the alleged dangerous condition, i.e., the icy sidewalk. Further, Plaintiff fell during an active snowstorm. As such, the New Jersey Tort Claims Act, common law snow and ice removal immunity and the ongoing storm rule bar Plaintiff's claims. Therefore, as a matter of law, the trial court appropriately granted summary judgment in favor of NJ Transit, and dismissing Plaintiff's Complaint and any and all crossclaims against NJ Transit. Accordingly, this Honorable Court should affirm the Order of the trial court.

## II. PLAINTIFF'S CLAIMS ARE BARRED PURSUANT TO THE ONGOING STORM RULE BECAUSE HER FALL OCCURRED DURING AN ACTIVE SNOWSTORM AND NO EXCEPTIONS APPLY.

Plaintiff's claims are barred under the ongoing storm rule. In Pareja v. Princeton Int'l Properties, 246 N.J. 546 (2021), the pedestrian plaintiff sued a commercial landowner for personal injuries sustained on a sidewalk during an ongoing snowstorm. The landowner moved for summary judgment relying on the ongoing storm rule. "The premise of the rule is that it is categorically inexpedient and impractical to remove or reduce hazards from snow and ice while the precipitation is ongoing." Id. at 558. The trial court granted the landowner's motion and the Superior Court, Appellate Division reversed. Id. at 548. Ultimately, the Supreme Court of New Jersey overturned the appellate court's ruling.

Under the ongoing storm rule, a commercial landowner does not have the absolute duty to keep sidewalks on its property free from snow or ice during an ongoing storm. Id. at 557. In its analysis, the Pareja Court stated the following:

> Considering our caselaw and balancing the concerns of commercial landowners with the need to provide redress for injured plaintiffs, we state today that, under the ongoing storm rule, commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion of the storm . . . .

Id. at 558. The Pareja Court held that "a commercial landowner's duty to remove snow and ice hazards arises not during the storm, but rather within a reasonable time

after the storm." Id. Further, the Court stated that "[g]iven the unreasonableness of removing the accumulation of snow and ice while a storm is ongoing, adopting the ongoing storm rule today is consistent with our case law on sidewalk liability and snow removal." Id.

Here, like Pareja, Plaintiff fell during an ongoing storm. On the date of the accident, the National Weather Service had a Winter Weather Advisory in place beginning at 4:00 a.m. See the WeatherWorks Report attached to Pl. App. at Pa166-Pa176. The storm began at approximately 7:00 a.m. and by the time of Plaintiff's fall at approximately 7:55 a.m., it had snowed about 0.1 to 0.2 inches. Id. At the conclusion of the winter event, the accumulation of snow and sleet was between 3.5 and 4.0 inches. Id. The storm concluded around 3:00 p.m., and the Winter Weather Advisory remained in effect until midnight. Id.

The fact that Ms. Granados fell during an ongoing storm is evidenced not only by the weather report for the date and time of the accident, but also by Plaintiff's own testimony. During her deposition, Ms. Granados stated that the weather at the time of her fall was "icy rain," and then "immediately, turned into snow, and it snowed quite a bit by eight a.m." See Deposition Transcript of Plaintiff, Deyanire Granados attached to Pl. App. at Pa131. When asked whether it was actively snowing when she deboarded the train at Delawanna Station, Plaintiff unequivocally

answered "yes." Id. Accordingly, as the trial court correctly held, Plaintiff's claims for personal injury should be barred pursuant to the ongoing storm rule.

On appeal, Plaintiff re-argues that the topography of Delawanna Station created a pre-existing hazardous condition, causing ice to accumulate on the sidewalk, and constituting an exception to the Pareja rule. This contention is not grounded in fact. Throughout Plaintiff's Brief, Ms. Granados relies on the report of Dr. Nolte to support her pre-existing risk argument. However, and fatally for Plaintiff, Dr. Nolte does not reach this conclusion in his initial report or his supplemental report. See generally Pl. App. at Pa050, Pa128. As the trial court correctly determined following an in depth review of the Nolte reports and oral argument on the issue, the court stated:

> Dr. Nolte's report does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water.
>
> Plaintiff's unsupported conclusions as to how the ice formed without explanatory or supporting facts will not defeat a motion for summary judgment. Puder versus Buechel, 183 New Jersey, 428, 2005. Puder found that conclusory and self-serving assertions and certifications without explanatory supporting facts will not defeat a motion for summary judgment.

See MT 49:20-25, 50:1-7.

Further, and tellingly, Plaintiff cites no case law supporting her argument that the facts of this matter fit an exception to the Pareja rule. Conversely, there is abundant case law providing instances of similar matters upheld on appeal. For example, in Niu-Wang v. Hillside Estates, the Appellate Division affirmed the trial court order granting summary judgment in favor of the defendant property owner where the plaintiff slipped on black ice and fell during an active snowstorm. Niu-Wang v. Hillside Estates, No. A-0368-23, 2024 WL 3282428, at *1 (N.J. Super. Ct. App. Div. July 3, 2024), cert. denied, 258 N.J. 547, 323 A.3d 529 (2024) ("[T]he Supreme Court specifically rejected a duty to pre-treat when it adopted the on-going storm rule in Pareja."); see also Devaney v. Chemours Co. FC, LLC, No. A-2450-22, 2024 WL 1922298, (N.J. Super. Ct. App. Div. May 2, 2024), cert. denied, 259 N.J. 376, 326 A.3d 790 (2024) (affirming order granting summary judgment in favor of defendant commercial landowner under ongoing storm rule); see also Smith v. Costco Wholesale Corp., No. A-2592-21, 2023 WL 4307729, (N.J. Super. Ct. App. Div. July 3, 2023), cert. denied, 255 N.J. 512, 304 A.3d 303 (2023) (applying the ongoing storm rule and affirming order granting summary judgment in favor of defendant commercial landowner); Sarro v. Vonage Holdings Corp., No. A-1392-21, 2023 WL 2566062, (N.J. Super. Ct. App. Div. Mar. 20, 2023), cert. denied, 255 N.J. 518, 304 A.3d 308 (2023).

Here, the trial court correctly applied the ongoing storm rule and granted NJ Transit's Motion for Summary Judgment. The facts are clear. Ms. Granados fell during an active snowstorm. NJ Transit did not exacerbate or increase the risk of Plaintiff's accident. See MT at 49:9-15. Further, as stated by the trial court, Dr. Nolte's report "does not conclude that the topography of the station caused the patch of ice at issue to form and freeze. There is no evidence or testimony in the record that shows the topography caused the ice to form or that there was a potential lingering hazard from directed water." See MT 49:20-25. Accordingly, no exceptions to the Pareja rule apply. Therefore, the Appellate Division should affirm the trial court's Order granting summary judgment in favor of NJ Transit.

## III. NJ TRANSIT IS STATUTORILY IMMUNE FROM LIABILITY AND ENTITLED TO SUMMARY JUDGMENT UNDER THE NEW JERSEY TORT CLAIMS ACT AS A PUBLIC ENTITY.

Notwithstanding the ongoing storm rule, the New Jersey Tort Claims Act bars Plaintiff's personal injury claim against NJ Transit. New Jersey enacted the Tort Claims Act, N.J.S.A. 59:1-1, et seq., over fifty (50) years ago to replace and reestablish the common law rule immunizing public entities from liability for personal injury. Beauchamp v. New Jersey Transit Corp., 164 N.J. 111, 115 (2000); Fleuhr v. City of Cape May, 159 N.J. 532, 539 (1999). The Tort Claims Act establishes immunity as the dominant consideration in the Court's analysis. Rochinsky v. State of New Jersey, 110 N.J. 399, 408 (1988). When liability and

immunity exist, immunity must prevail. Tice v. Cramer, 133 N.J. 347, 371 (1993). The Tort Claims Act permits liability on the part of public entities only under limited circumstances. Immunity is the rule and liability is the exception. N.J.S.A. 59:2-1; Fleuhr, 159 N.J. at 539. In pertinent part, the New Jersey Tort Claims Act states the following:

> The Legislature recognizes that while a private entrepreneur may readily be held liable for negligence within the chosen ambit of his activity, the area within which government has the power to act for the public good is almost without limit and therefore government should not have the duty to do everything that might be done. Consequently, it is hereby declared to be the public policy of this State that public entities shall only be liable for their negligence within the limitations of this act and in accordance with the fair and uniform principles established herein. All of the provisions of this act should be construed with a view to carry out the above legislative declaration.

N.J.S.A. 59:1-2.

Accordingly, consistent with the legislative declaration, N.J.S.A. 59:2-1 unambiguously states that public entities are generally immune from liability. N.J.S.A. 59:2-1(a) ("Except as otherwise provided by this act, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person.").

In the context of alleged dangerous conditions of public property, N.J.S.A. 59:4-2 establishes requirements for when a public entity is liable for injuries caused by a condition of its property as follows:

> A public entity is liable for injury caused by a condition of its own property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created a dangerous condition; or
>
> A public entity had actual or constrictive notice of the dangerous condition under 59:4-3 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.
>
> Nothing in this section will be construed to impose liability upon a public entity for a dangerous condition of its public property of the action the entity took to protect against the condition or failure to take such action as not palpably unreasonable.

N.J.S.A. 59:4-2.

Further, actual and constructive notice are defined by N.J.S.A. 59:4-3, which states:

> a. A public entity shall be deemed to have actual notice of a dangerous condition . . . if it had actual knowledge of the existence of the condition and knew or should have known of its dangerous character.

> b. A public entity shall be deemed to have constructive notice of a dangerous condition . . . only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and its dangerous character.

In sum, to recover under the Tort Claims Act under Section 59:4-2, the general requirements are that (1) a dangerous condition existed on the property at the time of the injury; (2) the dangerous condition proximately caused the injury; (3) the dangerous condition created a foreseeable risk of the kind of injury occurred; (4) either (a) a negligent or wrongful act or omission of a public employee within the scope of his employment created a dangerous condition, or (b) that a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have protected against the condition; and (5) the action or inaction of the public entity in respect to its effort to protect against the condition was palpably unreasonable. Posey ex rel. Posey v. Bordentown Sewerage Authority, 171 N.J. 172 (2002). Palpable unreasonableness is an elevated negligence standard and requires "behavior that is patently unacceptable under any circumstance" and must be so "manifest and obvious that no prudent person would approve of [the public entity's] course of action or inaction." Holloway v. State, 125 N.J. 386, 403–04 (1991) (quoting Kolitch v. Lindedahl, 100 N.J. 485, 493 (1985))." Palpable unreasonableness is a question of fact. Vincitore v. N.J. Sports & Exposition Auth., 169 N.J. 119, 130 (2001).

Here, Ms. Granados fell on a public sidewalk which abuts Delawanna Station. Plaintiff testified that, after she deboarded the train and descended the platform stairs, she "slipped on the edge of the sidewalk." See Pl. App. at Pa136, Granados Dep. Tr. at 20:9-16. Plaintiff testified that it was actively snowing and that "it snowed quite a bit" at the time of her fall, and she further testified that once her right foot contacted the sidewalk, she slipped on ice. Id. at 19:1-13. She then fell on the sidewalk "towards the edge of the street." Id. at 21:3-4. At her deposition, Plaintiff identified the location of her fall as the sidewalk. See Pl. App. at Pa144, Granados Dep. Tr. at 53:9-13.

Pursuant to the Contract and the testimony of NJ Transit Senior Manager, Carlos Freire, LTI President, Fred Paradise and Landscape President, Brian Koribanick, LTI was responsible for snow/ice maintenance on the sidewalk where Ms. Granados fell. See Pl. App. at Pa038; Id. at Pa247, Freire Dep. Tr. at 20:15-21; Id. at Pa147, Paradise Dep. Tr. at 61:2-6. At the deposition of Mr. Paradise, he testified that the specific sidewalk area where Plaintiff fell is the responsibility of LTI for purposes of snow removal and deicing per the Contract. See Pl. App. at Pa038.

Regarding snow removal and deicing, in relevant part, the Contract states the following:

> [LTI] will provide all equipment, materials and labor to remove all snow, ice, sleet or other frozen precipitation

> from all parking lots, lot aisles, roadways and sidewalks and spread salt mix on same.
>
> [LTI] must return as necessary during storm events as defined by the National Oceanic and Atmospheric Administration (NOAA) to ensure all areas remain clear, at no additional cost to NJ TRANSIT, including any such frozen areas resulting from runoff or blowing and/or falling snow due to those events.
>
> All shoveled or plowed snow must be pushed to ends of the lot so as not to block sidewalks or walking areas and to avoid piles in marked parking spots. Snow is not to be pushed onto railroad tracks. The placement of the removed snow should be to a location that if wind swept or melting occurs, it will not present any subsequent icy or hazardous conditions on our platforms, roadways and pedestrian walkways. Failure to address said conditions shall result in the [LTI]'s return to the station for additional snow removal and/or salting, at no additional cost to NJ Transit.

See Pl. App. at 034.

Here, Plaintiff alleges that a dangerous condition existed at the Station, specifically ice on the abutting sidewalk—an area that LTI is contractually obligated to perform snow and ice removal services. See generally Pl. App. at Pa009; Id. at Pa247, Freire Dep. Tr. at 20:15-21; Id. at Pa147, Paradise Dep. Tr. at 61:2-6. N.J.S.A. 59:4-1 defines a "dangerous condition" as "a condition of property that creates a substantial risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." Due care is an objective standard that refers to the "reasonable use by the public generally." Vincitore ex rel. Vincitore v. New Jersey Sports and Exposition Authority, 169 N.J.

119, 125 (2001). However, and crucially, Plaintiff cannot prove that the alleged ice existed due to the negligent or wrongful act or omission of an employee of NJ Transit within the scope of his or her employment. See N.J.S.A. 59:4-2. Nothing in the record would suggest that NJ Transit or its employees caused the ice to be present on the sidewalk or that the negligence of NJ Transit employees created same. To the contrary, NJ Transit acted reasonably and prudently in its maintenance of the Delawanna Station.

Furthermore, NJ Transit lacked notice of the alleged dangerous condition. Weather, and snowstorms or icy conditions in general, are inherently transient in nature. See Miehl v. Darpino, 53 N.J. 49 (1968) ("to completely remove all snow and ice-to in effect 'broom sweep' all the traveled portion of the streets, driveways and sidewalks . . . would impose upon the municipalities of this state a duty not only impractical but also wellnigh impossible of fulfillment." Id. at 53-54. There is no evidence or testimony in the record that the particular patch of ice that Plaintiff allegedly slipped on was discovered by or reported to any NJ Transit employee. See N.J.S.A. 59:4-3. Rather, the icy condition was spontaneous and naturally occurring. Moreover, there is no evidence or testimony in the record that the ice had existed for such a period of time and was of such an obvious nature. Id. Accordingly, NJ Transit lacked actual and constructive notice.

Nor can Plaintiff prove that NJ Transit acted palpably unreasonable in its maintenance of the Station when she fell during an active snow event, and NJ Transit contracted with LTI to service the sidewalk before, during, and immediately after the storm as necessary. See generally Pl. App. at Pa029. Liability cannot be imposed "upon a public entity for a dangerous condition of its public property if the action the entity took to protect against the condition or the failure to take such action was not palpably unreasonable." N.J.S.A. 59:4-2.

As is made clear in the reports of Moore Engineering Services, the property was maintained in a timely and reasonable manner in accordance with local ordinances. See generally Pl. App. at Pa177. Regarding the standard of care for snow and ice removal, the city of Clifton Administrative Code provides the following:

> The owner or tenant in possession of any lands abutting or bordering upon the sidewalks and gutters of any public streets of the City shall remove or cause to be removed all snow and/or ice therefrom, within 24 hours after the same shall fall or be formed thereon.

See Pl. App. at Pa194-Pa194, City of Clifton Administrative Code 383-1 *Responsibility of Owner or Tenant*.

Here, Plaintiff's fall occurred during an active snowstorm. Snowfall began that morning at approximately 7:00 a.m. and by the time of Plaintiff's fall at approximately 7:55 a.m., it had snowed about 0.1 to 0.2 inches. The storm

concluded at approximately 3:00 p.m. Pursuant to the Contract, LTI was required to service the Station "as necessary during storm events as defined by the National Oceanic and Atmospheric Administration (NOAA) to ensure all areas remain clear, at no additional cost to [NJ Transit], including any such frozen areas resulting from runoff or blowing and/or falling snow due to those events." Landscape, at the direction of LTI, reported to Delawanna Station for pretreatment and shoveling on February 18, 2021 at approximately 8:10 a.m., and the LTI time sheets indicate that the start time was 7:50 a.m. Following the conclusion of the winter event, employees for Landscape returned to complete snow removal and deicing services at the Station at approximately 4:15 p.m.

The evidence and testimony in the record shows that throughout the course of the day, Delawanna Station was serviced in a timely and reasonable manner during the ongoing snowstorm in accord with the City of Clifton Administrative Code, which requires property owners or tenants to clean the abutting sidewalks within twenty-four (24) hours *after* the snowfall. Certainly, the record here shows that the Station was attended to during the storm and was promptly maintained within an hour of the storm concluding. NJ Transit acted reasonably and promptly in maintaining the premises. Ultimately, Plaintiff cannot prove that NJ Transit acted in a palpably unreasonable manner.

Furthermore, per N.J.S.A. 59:4-1, a dangerous condition can only exist if Ms. Granados exercised due care in her use of the property. "If a public entity's property is dangerous only when used without due care, the property is not in a 'dangerous condition'." Garrison v. Twp. of Middletown, 154 N.J. 282, 287 (1998). Undoubtedly, per her own testimony, Ms. Granados was aware of the snowy conditions at the time of her fall. See Pl. App. at Pa144, Granados Dep. Tr. at 16:1-8. Plaintiff must exercise due care in traversing the property during the active snowstorm. Ultimately, to her own fault, Ms. Granados failed to do so. Plaintiff was or should have been aware of the risks involved in commuting during the winter event. She failed to appreciate the risk and her failure to exercise due care resulted in her fall. Therefore, the property cannot be found to be in a dangerous condition.

Ultimately, NJ Transit is entitled to statutory immunity under the New Jersey Tort Claims Act. Plaintiff cannot establish that any action or inaction on behalf of NJ Transit by its employees caused the ice to exist on the sidewalk surface. Nor can Plaintiff establish that any alleged action or omission by NJ Transit is tantamount to palpable unreasonableness. Further, NJ Transit did not have actual notice of the icy condition, and Plaintiff cannot show that the transient and spontaneous weather condition existed for such a time that NJ Transit had constructive notice of same. There are no genuine issues of material fact, and NJ Transit is entitled to judgment as a matter of law pursuant to the statutory immunity of public entities established

per the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq. Therefore, the Appellate Division should affirm the Order of the trial court granting summary judgment in favor of NJ Transit.

## IV. PLAINTIFF'S CLAIMS SHOULD BE DISMISSED WITH PREJUDICE BECAUSE NJ TRANSIT IS IMMUNE FROM LIABILITY PURSUANT TO THE COMMON LAW SNOW AND ICE REMOVAL IMMUNITY.

NJ Transit is entitled to common law weather immunity. The New Jersey Tort Claims Act preserves the immunities available to public entities under common law. N.J.S.A. 59:2-1(b) ("Any liability of a public entity established by this act is subject to any immunity of the public entity and is subject to any defenses that would be available to the public entity if it were a private person."). Immunity is the dominant consideration in the court's analysis. Rochinsky v. State of New Jersey, 110 N.J. 399, 408 (1988). When liability and immunity exist, immunity must prevail. Tice v. Cramer, 133 N.J. 347, 371 (1993).

General immunity from snow removal was established in Miehl v. Darpino, 53 N.J. 49 (1968). In Miehl, the court recognized that "snow is a common enemy interfering with normal pedestrian and vehicular traffic and on occasion results in a complete paralysis thereof." Id. at 53-54. Moreover, snow removal "acts or omissions of government, no matter how they are categorized . . . should not give rise to tort liability." Id. at 54. Additionally, "traveling conditions following a snowfall are obvious to the public. Individuals can and should proceed to ambulate

on a restricted basis, and if travel is necessary, accept the risks inherent at such time." Id. The Court in Miehl unambiguously stated to "to require a municipality to completely remove all snow and ice-to in effect 'broom sweep' all the traveled portion of the streets, driveways and sidewalks . . . would impose upon the municipalities of this state a duty not only impractical but also wellnigh impossible of fulfillment." Id. at 53-54.

Miehl was decided prior to the enactment of the Tort Claims Act. The issue of whether the Tort Claims Act preserved the immunities available to public entities at common law was addressed in Rochinsky v. State of New Jersey, 110 N.J. 399 (1988). In Rochinsky, the Court held that there is "no clear evidence of the Legislature's intent to abrogate immunity established in Miehl." Rochinsky, 110 N.J. at 412. Additionally, in its analysis, the Court stated that "we believe the practical effect of Miehls's continued applicability is consistent with the underlying goals and purposes of the [Tort Claims] Act." Id. Importantly, the Court noted, "[w]e can conceive of no other governmental function that would expose public entities to more litigation if this immunity were to be abrogated." Id. at 413. The Court in Rochinsky recognized snow removal and deicing activities cause "dangerous conditions . . . no matter how effective an entity's snow removal activities may be, a multitude of claims could be filed after every snowstorm." Id.

Hence, immunity was extended beyond municipalities to include public entities in matters post Rochinsky.

Generally, a plaintiff is barred from suing public entities stemming from injuries caused by icy conditions on the surface of a walkway. See Rossi v. Borough of Haddonfield, 297 N.J. Super. 494, 500 (App. Div. 1997), aff'd, 152 N.J. 43 (1997). In Rossi, the plaintiff was a paid parking permit holder who slipped and fell on ice while unlocking their vehicle in the parking lot. The subject parking lot was owned by the Borough. Id. at 497. The plaintiff contended the Borough's failure to warn of the icy conditions gave rise to liability. Id. at 500. Because "the condition was caused solely by the weather and there are no allegations that the parking lot was improperly constructed or had improper drainage mechanisms," the Court held that the common law snow removal immunity protections expressed in Miehl barred plaintiff's claim because any claim of failure to warn of an icy condition is related to a snow removal activity and a separate action could not be maintained. Id.

Furthermore, the common law snow and ice removal immunity barring liability against a public entity for claims of improper snow or ice removal was illustrated in Luchejko v. City of Hoboken, 414 N.J. Super. 302 (App. Div. 2010), aff'd, 207 N.J. 191 (2011). In Luchejko, the plaintiff's fall was caused by the presence of black ice on a sidewalk. On appeal, the Court held that the common law immunity barred plaintiff's claim against a public entity. Id. at 317. Additionally,

the Court held that "[the New Jersey Supreme Court] recognized that 'the common law immunity for snow removal activities of public entities [is] among the most significant immunities recognized by judicial decision prior to the adoption of the [Tort Claims Act].'" Id. at 316. (quoting Rochinsky, supra, at 414).

Allegations of failing to adequately salt or sand parking lots does not abrogate the common law snow and ice removal immunity protections afforded to public entities. In Farias v. Township of Westfield, 297 N.J. Super. 395 (App. Div. 1997), while walking under a train trestle, the plaintiff slipped and fell on accumulated ice that was concealed by recent snowfall. Plaintiff contended the dangerous condition was created in part by the Township's failure to warn of a hazardous condition and failure to maintain the premises in a safe manner. Id. at 398. The Court granted the Township's motion for summary judgment and held that the doctrine of common law snow removal immunity protected the township even though the plaintiff alleged the township failed to adequately salt or sand the sidewalk where the plaintiff fell. In sum, the Court held that salting and sanding fall under the umbrella of snow removal activities. Id. at 402.

Similarly, in Sykes v. Rutgers, 308 N.J. Super. 265, 266 (App. Div. 1998), a student sustained injuries after a slip and fall incident caused by "accumulated ice" within a Rutgers parking lot. The Court held that Rutgers is "clearly entitled to the

common law immunity established in Miehl . . . [and] that immunity was not invalidated by the Tort Claims Act." Id. at 268.

Here, notwithstanding statutory immunity per the Tort Claims Act, NJ Transit is immune from liability under the general common law immunity for snow removal. Plaintiff fell as a result of the weather and not due to any alleged defect of the premises itself. In other words, the snow/ice was not created by conditions unrelated to weather or snow removal activities. Plaintiff's personal injury claims resulting from a slip and fall incident caused by the snowy/icy conditions on the sidewalk are similar to those in Rossi, supra. Like the Borough in Rossi, NJ Transit is a public entity and must be afforded the common law snow and ice removal immunity protections. To hold otherwise would effectively "destroy the common law immunity which has protected public entities against liability for their snow-removal activities for over a quarter of a century." Sykes v. Rutgers, State Univ. of New Jersey, 308 N.J. Super. 265, 269 (App. Div. 1998).

Ultimately, the allegations set forth in Plaintiff's Second Amended Complaint fall within the common law snow and ice removal immunity protections established by controlling New Jersey case law. Therefore, the Appellate Division should affirm the Order of the trial court because NJ Transit is entitled to summary judgment as a matter of law pursuant to Rule 4:46-2.

## CONCLUSION

For all the forgoing reasons, Defendant/Respondent NJ Transit requests that this Honorable Court affirm the trial court's Order granting summary judgment as a matter of law in favor of NJ Transit and dismissing Plaintiff's Second Amended Complaint and any and all claims and crossclaims against NJ Transit, with prejudice.

Respectfully submitted,

***FLORIO PERRUCCI STEINHARDT CAPPELLI & TIPTON LLC***

*/s/ Kody K. Hines*
**Kody K. Hines, Esquire**
*Attorney for Defendant/Respondent, New Jersey Transit*

Dated: October 16, 2025

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| DEYANIRE GRANADOS,<br><br>Plaintiff/Appellant,<br><br>vs.<br><br>LTI, INC.,<br>NEW JERSEY TRANSIT CORP.,<br>LANDSCAPE TECHNIQUES, INC.,<br>JOHN DOES I-X (said names being<br>fictitious, true names presently unknown),<br>ABC CORP. I-X (said names being<br>fictitious, true name presently unknown),<br><br>Defendants/Respondents. | : | SUPERIOR COURT OF NEW JERSEY<br>APPELLATE DIVISION<br>DOCKET NO.: A-002658-24<br><br>CIVIL ACTION<br><br>On Appeal from the Superior Court of New Jersey, Law Division, Essex County<br><br>Docket No. Below: ESX-L-2661-21<br><br>Sat Below: Hon. Richard T. Sules, J.S.C.<br><br>Orders dated:<br>March 28, 2025 |

# AMENDED REPLY BRIEF OF PLAINTIFF/APPELLANT DEYANIRE GRANADOS

**EPSTEIN OSTROVE, LLC**
Attorneys for Plaintiff/Appellant
200 Metroplex Drive, Suite 304
Edison, NJ 08817
(732) 828-8600 (phone)
(732) 828-8601 (fax)
s.nascimento@epsteinostrove.com

On the brief:

Salomao Nascimento, Esq. - Attorney ID No.: 065192014

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## PRELIMINARY STATEMENT

LTI's opposition brief treats disputed facts and competing inferences as resolved in its own favor, rather than applying the summary judgment standard requiring all reasonable inferences to be drawn for Plaintiff. In doing so, it asks this Court to disregard reasonable inferences supported by the record, and to treat Pareja v. Princeton International Properties, 246 N.J. 546 (2021) as a blanket immunity, contrary to its holding.

On summary judgment, courts must view the evidence in the light most favorable to the non-moving party and must afford that party all reasonable inferences. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Applying that standard here, Plaintiff presented evidence from which a reasonable jury could find that a hazardous icy condition existed at the location of her fall, that the condition was reasonably attributable to runoff, pooling, and refreezing caused by the site's topography, and that the characteristics of the condition support an inference of constructive notice.

Defendants' attempts to reframe these inferences as speculation misstate both the law and the record. Viewed in the light most favorable to Plaintiff, the record supports reasonable inferences, grounded in

physical evidence, expert analysis, and site configuration, that the icy condition resulted from site-specific runoff and refreezing and that Defendants had constructive notice. This reply addresses overlapping arguments raised by multiple defendants, including NJ Transit's reliance on Title 59 immunity.

## I. LTI MISCONSTRUES PAREJA BY TREATING THE ICY CONDITION AS PURELY STORM-RELATED

LTI's argument rests on the assertion that Plaintiff slipped on a purely storm-generated condition caused solely by an active weather event. That assertion is not an undisputed fact, but rather LTI's preferred interpretation of the evidence. The trial court erred by treating the presence of active precipitation as dispositive, because accepting LTI's interpretation at the summary-judgment stage requires resolving competing inferences in LTI's favor, contrary to the governing standard.

Landscape Techniques advances the same argument, characterizing Plaintiff's testimony regarding active precipitation as dispositive proof that the ice was purely generated by the snow event that morning. However, Plaintiff's testimony establishes that precipitation was occurring, not that the hazardous ice condition resulted solely from falling snow or sleet. Whether the ice formed exclusively from active

precipitation or from runoff and refreezing at a known accumulation point is a factual issue that cannot be resolved on summary judgment.

Pareja does not confer automatic immunity whenever precipitation is falling. Nor does Pareja immunize a public entity, such as New Jersey Transit, where permanent site conditions exacerbate the risk of harm during winter weather, or where a dangerous condition existed independent of active precipitation. Indeed, the Supreme Court expressly recognized that liability may arise where a defendant fails to address a pre-existing hazardous condition or where the condition of the premises exacerbates the risk of harm. Pareja, supra. at 559. The relevant inquiry under Pareja is not whether precipitation was occurring, but whether the dangerous condition resulted solely from the storm itself, as opposed to permanent site features that concentrated and magnified the risk.

LTI's reliance on Terry v. Central Auto Radiators, Inc., 732 A.2d 713 (R.I. 1999) does not compel a different result. Terry illustrates one example of exacerbating conduct, but it does not define the outer limits of liability under the ongoing storm doctrine. The principle articulated in Terry, and acknowledged in Pareja, is that liability may arise where Defendants' conduct or the condition of the premises increases the risk of harm beyond that posed by the storm itself.

Here, Defendants' failure to address a known runoff and refreezing hazard at a confined pedestrian landing similarly increased the risk to commuters who were required to traverse that location. Pareja did not limit liability to the precise factual scenario presented in Terry, nor did it foreclose liability where premises conditions concentrate and magnify the risk of injury during weather events.

Plaintiff presented evidence that the ice formed at the base of a stairway where sloped terrain, tiered retaining walls, and sidewalk pitch directed water to a concentrated pedestrian landing. From this evidence, a rational jury could infer that runoff and meltwater pooled and refroze at that location. That inference is supported by Dr. Nolte's expert analysis grounded in a site inspection, evaluation of the station's topography and drainage patterns, application of recognized engineering and safety standards, and photographic and testimonial evidence identifying the location and nature of the icy condition. It is not conjecture.

Whether the ice was caused by runoff and refreezing, active precipitation, or a combination of both is a factual issue. At the summary judgment stage, Plaintiff was not required to conclusively establish causation, but only to present evidence sufficient to permit a reasonable jury to draw a favorable inference. The record satisfies that standard.

## II. DR. NOLTE'S OPINIONS ARE FACT-BASED AND CREATE TRIABLE ISSUES OF FACT

LTI repeatedly characterizes Plaintiff's runoff and refreezing theory as speculation. That label is not accurate. An expert opinion is not a net opinion merely because it is disputed. A net opinion is one that lacks a factual foundation or explanatory methodology. Buckelew v. Grossbard, 87 N.J. 512, 524 (1981).

Dr. Wayne Nolte conducted a site inspection, evaluated slope and drainage, analyzed the physical configuration of the stairway and adjacent terrain, and applied accepted ASTM and ANSI standards. He correlated those conditions to the location of Plaintiff's fall and explained how the topography predictably directed water to that area, creating a foreseeable refreezing hazard.

At the summary judgment stage, the trial court's role was not to decide whether Dr. Nolte was correct, but whether his opinions created a genuine issue of material fact. By rejecting his conclusions outright, the trial court improperly weighed credibility and resolved a classic battle of competing inferences, one grounded in site-specific engineering analysis, in defendants' favor.

Defendants' reliance on Pareja to discredit Dr. Nolte's opinions conflates two distinct theories. The expert rejected in Pareja merely opined that additional salting or pretreatment could have reduced icy conditions during an ongoing storm.

Here, Dr. Nolte identified a site-specific physical condition consisting of permanent topography and drainage that directed water to a confined pedestrian landing and existed independent of the storm itself. That distinction is dispositive and places this case outside the expert theory rejected in Pareja.

LTI's reliance on unpublished Appellate Division decisions such as Sarro v. Vonage Holdings Corp., No. A-1392-21, 2023 N.J. Super. Unpub. LEXIS 408 (App. Div. Mar. 20, 2023) and McGrath v. Vezzosi, No. A-0133-23, 2024 N.J. Super. Unpub. LEXIS 1675 (App. Div. June 15, 2024) is misplaced. Those cases are factually and procedurally distinguishable and do not support affirming the entry of summary judgment in this matter.

In Sarro, the plaintiff slipped in a parking lot during an active storm and failed to present any competent evidence of a site-specific defect or recurring hazardous condition that contributed to ice formation. The expert opinions in that case were rejected because they were untethered to

any physical characteristics of the property and rested solely on generalized assertions that additional snow removal could have been undertaken during the storm. There was no evidence of a drainage pattern, topographical feature, or concentrated accumulation point at the location of the fall, unlike here.

By contrast, Plaintiff here presented evidence of a permanent and observable site condition. The configuration of the Delawanna Station stairway, adjacent retaining walls, and sloped terrain directed runoff and meltwater to a confined pedestrian landing at the base of the stairs. Dr. Nolte identified a physical mechanism tied directly to the location of the fall and explained how that mechanism foreseeably resulted in pooling and refreezing. This is not the type of abstract or speculative opinion rejected in Sarro, but a site-specific analysis grounded in physical evidence.

Similarly, McGrath is factually distinguishable. There, the plaintiff failed to demonstrate that the ice was anything other than a transient condition formed during an ongoing storm. The record contained no evidence of a pre-existing hazardous condition, no proof of a recurring defect, and no expert analysis linking the condition to the design or configuration of the premises.

Here, by contrast, Plaintiff established evidence from which a jury could reasonably infer that the ice was concentrated at a predictable runoff collection point created by the property's topography. Unlike McGrath, this case does not rest on speculation about when the ice formed, but on physical characteristics of the site that existed independent of the storm itself. Because unpublished decisions are not precedential and because the factual records in Sarro and McGrath bear no meaningful resemblance to the conditions at Delawanna Station, LTI's reliance on those cases is unavailing. In each of those cases, the absence of any identifiable physical mechanism explaining ice formation was fatal – precisely the gap Plaintiff filled here through site-specific evidence.

Landscape Techniques' reliance on those unpublished decisions underscores the absence of controlling authority supporting summary judgment where, as here, the plaintiff presents site-specific physical evidence explaining why ice repeatedly formed at a particular location.

## III. PLAINTIFF PRESENTED EVIDENCE FROM WHICH A JURY COULD FIND THE EXISTENCE OF A DANGEROUS CONDITION

Plaintiff testified that she slipped immediately upon stepping from the bottom stair onto the sidewalk. She was wearing appropriate winter footwear, holding the handrail, and proceeding cautiously. The presence

of ice where pedestrians exiting the stairway were required to step directly onto the sidewalk without any alternative route, created a substantial risk of injury even when the property was used with due care. The risk was heightened by the required transition from the final stair onto the sidewalk surface and the corresponding transfer of body weight, a movement that made loss of traction particularly dangerous.

Under these circumstances, the icy condition was not a trivial or incidental hazard, but one that posed a substantial risk of injury to foreseeable users of the property, as the stairway served daily commuters accessing public transportation and made the risk posed by an untreated icy condition not only foreseeable but recurrent. This satisfies the definition of a dangerous condition. NJ Transit's contention that no dangerous condition existed as a matter of law ignores both the statutory standard and the summary-judgment posture. A dangerous condition under the Tort Claims Act exists where public property poses a substantial risk of injury when used with due care in a reasonably foreseeable manner. N.J.S.A. 59:4-1(a). As shown above, the presence of ice at a mandatory pedestrian transition point, created by permanent site features and encountered by commuters exercising due care, is sufficient to permit a reasonable jury to find that definition satisfied. The remaining disputes

concern the cause of that condition and whether Defendants had notice of it, not whether the hazardous condition existed at the location of the fall. Those issues are fact-intensive and reserved for the jury.

## IV. THE CHARACTERISTICS OF THE DANGEROUS CONDITION SUPPORT AN INFERENCE OF CONSTRUCTIVE NOTICE

Defendants' arguments misapprehend the nature of constructive notice under New Jersey law. Constructive notice does not require proof that Defendants were aware of the patch of ice at the exact moment Plaintiff fell. Rather, it requires notice of the dangerous condition of the property, meaning the defect or condition that creates a substantial risk of injury when the property is used with due care in a reasonably foreseeable manner. N.J.S.A. 59:4-1(a); N.J.S.A. 59:4-3(b). Notably, Plaintiff's claim is predicated on notice of the defective condition that caused recurrent ice formation at the location, not notice of the transient ice itself.

Defendants' focus on the transient nature of ice misstates the constructive-notice inquiry under Title 59. Defendants' argument improperly collapses constructive notice into actual notice of the precise ice patch, contrary to the Tort Claims Act's focus on notice of the dangerous condition of the property itself. Constructive notice does not turn on awareness of the accumulation of ice at the moment of a fall, but

on whether the public entity knew or should have known of a dangerous condition of the property, including permanent site characteristics that predictably caused ice to form at a specific location. Where, as here, observable topographical features repeatedly directed water to a confined pedestrian landing during freezing conditions, a jury could reasonably find that NJ Transit had constructive notice of the resulting hazardous condition, even though the precise manifestation occurred during winter weather.

Here, the characteristics of the dangerous condition support a reasonable inference of constructive notice. The ice formed at a confined pedestrian landing at the base of the stairway where sloped terrain, tiered retaining walls, and sidewalk pitch predictably directed runoff and meltwater to a single location. Those topographical features were permanent, observable, and existed independent of any particular storm. From those facts, a rational jury could conclude that Defendants knew or should have known that water would repeatedly collect and refreeze at that location during freezing conditions, creating a recurring hazard to commuters. The inquiry under the Tort Claims Act is not whether Defendants could have discovered the specific accumulation of ice in the minutes before Plaintiff's fall, but whether the dangerous condition of the

property existed for such a period of time and was of such an obvious nature that Defendants, in the exercise of due care, should have discovered its dangerous character. N.J.S.A. 59:4-3(b). When the evidence is viewed in the light most favorable to Plaintiff, reasonable minds could differ as to whether Defendants had constructive notice of the dangerous condition created by the site's topography and drainage characteristics, rendering summary judgment improper. The present case, as developed in the summary-judgment record, therefore differs from those in which plaintiffs failed to identify any physical condition suggesting that ice formation was recurring or foreseeable at a specific location.

Because the record supports competing inferences regarding the existence of the dangerous condition and Defendants' notice of it, the issue of palpable unreasonableness likewise cannot be resolved as a matter of law and is ordinarily reserved for the jury.

## V. LTI'S CONTRACT AND IMMUNITY ARGUMENTS DO NOT WARRANT SUMMARY JUDGMENT

LTI's reliance on Saltiel v. GSI Consultants, Inc., 170 N.J. 297 (2002) is misplaced. Plaintiff does not contend that the snow removal contract independently created a tort duty owed to her. Rather, Plaintiff alleges that LTI owed a duty, independent of the contract, to exercise

reasonable care in performing the snow removal and ice mitigation services it undertook at a heavily trafficked commuter location, so as not to create or allow a dangerous condition to persist. The contract is relevant evidence of foreseeability, notice, and the scope of responsibility assumed by LTI, reflecting that LTI anticipated ice accumulation at pedestrian walkways and undertook responsibility for monitoring, pretreating, and addressing such conditions. Saltiel does not prohibit consideration of contractual obligations for these purposes, nor does it insulate a contractor from liability where, as here, the contractor relies on the contract to avoid responsibility for snow removal services it failed to perform.

Nor has LTI established entitlement to derivative immunity. The burden of establishing such immunity rests squarely with the contractor seeking its protection. Derivative immunity is plan-based, not contract-based, and requires proof of compliance with a specific governmental directive – not merely the existence of a service agreement. To invoke derivative immunity, a contractor must demonstrate that it acted pursuant to a public entity's plan and that it followed that plan. It is not sufficient that a public entity possessed the authority to create a plan or that a contract existed in the abstract. Rather, the contractor must show compliance with specific governmental directives alleged to confer

immunity. Vanchieri v. New Jersey Sports and Exposition Authority, 104 N.J. 80, 87 (1986).

LTI failed to meet that burden. It did not plead derivative immunity as an affirmative defense in its Answer, raising the issue for the first time in motion practice. More fundamentally, LTI offered no evidence identifying any specific New Jersey Transit plan, directive, or protocol governing pretreatment, inspection, or storm response that it claims to have followed. LTI did not explain how such directives were communicated, what actions they required, or how LTI's conduct at the Delawanna Station complied with them. On the contrary, the record reflects that LTI did not pretreat the sidewalk before the morning commute, despite weather advisories and known site conditions.

Landscape Techniques' derivative-immunity argument fails for the same reason. Derivative immunity requires proof that the contractor acted pursuant to a specific public entity plan and in compliance with that plan. Defendants identify no Transit-issued directive governing pretreatment, inspection timing, or storm response at the Delawanna Station, and no evidence that such directives were followed. Absent proof of compliance with a specific governmental plan, derivative immunity cannot be resolved as a matter of law.

Under these circumstances, LTI cannot invoke governmental immunity based on a contract it failed to perform in accordance with any identifiable public entity plan. At a minimum, whether LTI acted pursuant to a specific New Jersey Transit plan and whether it complied with that plan present factual issues that cannot be resolved as a matter of law on summary judgment.

## CONCLUSION

When the evidence is viewed under the proper standard, genuine issues of material fact remain concerning the existence, cause, and notice of the dangerous icy condition that caused Plaintiff's fall. The trial court improperly resolved those disputes and misapplied Pareja. Where, as here, liability turns on site-specific physical conditions and competing inferences, summary judgment is disfavored and reversal is warranted. The judgment should be reversed and the matter remanded for trial.

Respectfully submitted,

Epstein Ostrove, LLC
Attorneys for Plaintiff/Appellant,
Deyanire Granados

By: /s/ Salomao Nascimento
SALOMAO NASCIMENTO, Esq.

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