SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1392-21

LISA SARRO and
MICHAEL SARRO,
per quod,

Plaintiffs-Appellants,

v.

VONAGE HOLDINGS CORP.,
ARCTIC MANAGEMENT, LLC,[1]
and ABM ONSITE SERVICES,
INC.,

Defendants-Respondents.

———————————————————

Argued February 1, 2023 – Decided March 20, 2023

Before Judges Vernoia and Firko.

On appeal from the Superior Court of New Jersey, Law Division, Middlesex County, Docket No. L-7877-19.

Andrew R. Bronsnick argued the cause for appellants (Mandelbaum Barrett PC, attorneys; Andrew R. Bronsnick, of counsel and on the briefs.)

---

[1] Sued herein as Artic Management, LLC.

Samuel M. Goffinet argued the cause for respondents (Ahmuty, Demers & McManus, attorneys; Samuel M. Goffinet, of counsel and on the brief).

PER CURIAM

In this personal injury slip and fall matter, plaintiffs Lisa Sarro (plaintiff), and her husband Michael Sarro (collectively plaintiffs), appeal from an order granting summary judgment to defendant Arctic Management, LLC (Arctic). The motion court determined the undisputed facts established plaintiff fell in the subject parking lot during an ongoing snowstorm and Arctic, a snow and ice removal subcontractor, was not liable under the ongoing storm rule enunciated by our Supreme Court in Pareja v. Princeton International Properties, 246 N.J. 546 (2021). We affirm.

I.

We summarize plaintiffs' claim and the pertinent facts supported by the parties' Rule 4:46-2 statements, giving every reasonable inference to plaintiffs as the non-moving parties. Templo Fuente De Vida Corp. v. Nat. Union Fire Ins. Co. of Pittsburgh, 224 N.J. 189, 199 (2016). The amended complaint[2]

[2] Mack-Cali Holmdel, LLC (Mack-Cali) was initially named as a defendant in the original complaint. Mack-Cali filed a motion for summary judgment asserting indemnification pursuant to its lease agreement with Vonage Holdings, Corp. (Vonage), the anchor tenant for the property. The motion was unopposed

alleges that on March 13, 2018, plaintiff slipped, fell, and suffered injuries on an ice and snow-covered privately owned parking lot while walking towards the building in Holmdel where she worked. There was an ongoing snow event at the time. According to plaintiff, she slipped and fell due to snow or ice at approximately 8:45 a.m. Plaintiff claims she "felt" ice under the snow-covered surface after she fell.

Vonage retained ABM to provide property management services for the property, including the parking lot where plaintiff fell. Vonage and ABM entered into a professional services agreement, which included snow removal services. ABM subcontracted with Arctic to provide snow and ice removal services for the property as stipulated in their Master Subcontract Agreement (the Agreement). Pursuant to the Agreement, Arctic was required to "clear snow in parking lots, drive lanes, and fire lanes" for snow accumulation in excess of two inches.

In addition, if the snow continued during the day, the Agreement required Arctic to have "plow trucks" to "maintain roads and drive lanes." If the temperature fell below thirty-five degrees Fahrenheit, Arctic agreed to

---

and granted. In their amended complaint, plaintiffs did not name Mack-Cali as a defendant but added ABM Onsite Services, Inc. (ABM) as a defendant.

"minimize slippery conditions" in the "roadways and parking areas," and apply "rock salt/calcium chloride" in order "to ensure safety of those on [the] property." The night before the incident at 10:00 p.m., Arctic salted and plowed the parking lot and adjacent roadway during a period of "rain and wet snow." The next morning at 4:30 a.m., prior to plaintiff's fall, Arctic again salted the parking lot, and at 7:00 a.m., Arctic plowed the parking lot and roadway. Anthony Russo, a principal for Arctic, testified at his deposition that Arctic "does not apply the pre-salt application if it is raining or it will wash away."

Following a period of discovery, Vonage, Arctic, and ABM moved for summary judgment based on the ongoing storm rule outlined in Pareja. Arctic maintained it was snowing and sleeting when plaintiff fell and "the ground was covered in fresh snow." Based on National Weather Service information provided by its weather expert, Arctic argued "light snow and rain" began the night before and "transitioned to all snow" into the morning hours. Arctic's expert prepared an hourly weather table showing active snowfall from 3:00 a.m. until 11:00 a.m. on the date of plaintiff's fall.

In opposition to Arctic's motion for summary judgment, plaintiffs' snow management and liability expert opined Arctic was responsible for her fall because it did not "remediate unsafe conditions" in the parking lot area where

she slipped and fell. Plaintiffs asserted Arctic's "goal" was to salt the parking lot before employees arrived at 6:00 a.m. Plaintiffs argued the parking lot was "covered with snow" despite Arctic's "plowing and shoveling" beforehand. Plaintiffs' expert also stated Arctic did not have a "snow response plan" to evaluate how to service the site; had "no formal policy for inspecting and/or correcting unsafe conditions"; and the snow response plan was "subject to the whims of the snow contractor." According to plaintiffs' expert, "those in charge of the site had a responsibility to check to ensure ice mitigation was properly accomplished." Plaintiffs argue their expert's statements created genuine issues of material fact.

Plaintiffs' expert concluded that "no evidence was supplied to indicate a professional weather prediction service was engaged by any of the defendants," and plaintiffs contend the absence of such evidence supports their claim it was "unsafe" for plaintiff to walk in the parking lot. The expert also stated that the "thaw and refreeze conditions" caused the icy condition because there was a "delay of deicing or traction material having been applied." Plaintiffs contended the ongoing storm in Pareja is limited to public sidewalks and should not be extended to a private parking lot used by business invitees. In addition,

plaintiffs argued Arctic breached a common law duty to remove the snow and ice, precluding the award of summary judgment to Arctic.

On November 5, 2021, the court conducted oral argument on defendants' motions for summary judgment. At the time of argument, plaintiffs did not oppose Vonage and ABM's motions, and the court granted their motions for summary judgment that day. As to Arctic's motion for summary judgment, plaintiffs argued Arctic's failure to implement proper snow and ice removal methods increased the risk to plaintiff during the ongoing storm event but did not proffer an expert opinion on this theory. The court reserved decision as to Arctic's motion for summary judgment.

On January 3, 2022, the court granted Arctic's motion for summary judgment and issued a statement of reasons relying on the holding in Pareja. The court cited Pareja, where the Supreme Court adopted "the ongoing storm rule," under which "a landowner does not have a duty to remove snow or ice from a public walkway until a reasonable time after the cessation of precipitation." 246 N.J. at 548. The court acknowledged "two exceptions that could impose a duty: if the owner's conduct increases the risk, or the danger is pre-existing." Id. at 549. In addition, the court highlighted the Pareja holding, which "decline[d] to impose a duty that cannot be adhered to by all commercial

landowners," recognizing factors such as "size, resources, and [varying] ability of individual commercial landowners." Ibid.

Because plaintiff fell during an ongoing storm—a fact that was undisputed—the court found there was no genuine issue of material fact and Arctic did not owe plaintiff a duty pursuant to the ongoing storm rule. The court emphasized that Pareja involved a "public sidewalk and the commercial landowners' duty to remove snow and ice . . . during a storm." The court rejected plaintiffs' argument that Pareja does not apply to a private parking lot "because the Court did not limit its holdings to such situations."

The court then addressed the first exception set forth in Pareja that "commercial landowners may be liable if their actions increase the risk to pedestrians and invitees on their property, for example, by creating 'unusual circumstances' where defendant's conduct 'exacerbate[s] and increase[s] the risk of injury to plaintiff.'" 246 N.J. at 559 (quoting Terry v. Cent. Auto Radiators, Inc., 732 A.2d 713, 717-18 (R.I. 1999)). After considering plaintiffs' expert's opinion, the court found "nothing" in the report "support[ed] a conclusion that unusual circumstances existed" and therefore, the court concluded the first exception in Pareja was not met as a matter of law. The court went on to state that the second exception in Pareja was also inapplicable because nothing in the

record "suggest[ed] there was a failure to remove or reduce risk due to a previous snowstorm." A memorializing order was entered.

On appeal, plaintiffs argue the court erred in granting summary judgment to Arctic. Plaintiffs contend the court erred in expanding the ongoing storm rule in Pareja to private parking lots and that Arctic's conduct during the weather event created an increased risk to plaintiff under the first exception in Pareja. Plaintiffs also assert summary judgment was improvidently granted to Arctic because plaintiff was a business invitee when she fell on the property.

II.

We review orders granting summary judgment de novo and apply the same standard as the trial court. Lee v. Brown, 232 N.J. 114, 126 (2018). Summary judgment will be granted if, viewing the evidence in the light most favorable to the non-moving party, "there is no genuine issue of material fact and 'the moving party is entitled to a judgment or order as a matter of law.'" Conley v. Guerrero, 228 N.J. 339, 346 (2017) (quoting Templo Fuente De Vida Corp., 224 N.J. at 199; R. 4:46-2(c)).

To determine whether there are genuine issues of material fact, we 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." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)).

"An issue of material 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.'" Grande v. St. Clare's Health Sys., 230 N.J. 1, 24 (2017) (quoting Bhagat v. Bhagat, 217 N.J. 22, 38 (2014)).

In Pareja, the Court adopted the ongoing storm rule, holding "commercial landowners do not have a duty to remove the accumulation of snow and ice until the conclusion of the storm." 246 N.J. at 558. The Court in Pareja recognized removing snow during an ongoing storm is an "impossible burden" and "categorically inexpedient and impractical." Id. at 557-58. Imposing a requirement on a contractor to remove accumulated ice and snow would likewise be "unreasonable." Id. Moreover, it would impose a legal duty impossible to satisfy.

However, the Court noted two exceptions to the ongoing storm rule: (1) "commercial landowners may be liable if their actions increase the risk to pedestrians and invitees on their property, for example, by creating 'unusual

circumstances' where the defendant's conduct 'exacerbate[s] and increase[s] the risk' of injury to the plaintiff"; and (2) "a commercial landowner may be liable where there was a preexisting risk on the premises before the storm," including the duty to remove snow from a previous storm that has "since concluded." Id. at 559. Plaintiffs argue the first exception applies here.

Based upon our de novo review, we discern no error in the court's reliance upon Pareja in the matter under review. In fact, plaintiffs' attempt to limit the ongoing storm rule to public sidewalks and walkways is contrary to the holding in Pareja because a plain reading of the decision indicates the Court did not restrict its holding to public sidewalks and walkways. On the contrary, Pareja makes no distinction between private and public sidewalks and walkways. Plaintiffs argue the subject property is owned by Mack-Cali, whose anchor tenant, Vonage, contracted with ABM and Arctic for snow and ice management services. According to plaintiffs, there is no public sidewalk at or abutting the property. Plaintiff testified at her deposition that she fell on the pavement between her car and the curb, not on a sidewalk. We are unpersuaded.

Originally, the common law had no duty for a commercial landowner to "keep the public sidewalk adjoining their premises free of snow and ice." Pareja, 246 N.J. at 554-55 (quoting Qian v. Toll Bros., Inc., 223 N.J. 134, 135 (2015))

(internal quotations omitted). A commercial property owner's duty to keep their property reasonably safe was expanded to abutting public sidewalks, as the landowner derived a commercial benefit. Id. at 555 (citing Stewart v. 104 Wallace St. Inc., 87 N.J. 146, 157 (1981)). The purpose of such expansion as to public sidewalks was to provide a remedy for seriously injured plaintiffs and incentivize property owners to repair deteriorated sidewalks from which they derived a commercial benefit. Id. at 555-56 (citing Stewart, 87 N.J. at 157).

Given the aforementioned history related to premises liability in our State, a commercial property owner's duty to remove snow and ice from an abutting public sidewalk—except during active precipitation—expanded the common law duty to keep commercial property in a reasonably safe condition. We have held that commercial landowners have a duty to keep their premises reasonably safe for invitees. Buddy v. Knapp, 469 N.J. Super. 168, 189 (App. Div. 2021). Therefore, the duty to remove snow and ice from a public sidewalk is in addition to a commercial property owner or contractor's duty to keep its commercial property safe, rather than a distinction or limitation of their duty to public sidewalks. We conclude the court correctly applied the ongoing storm rule here as espoused in Pareja, and Arctic had no common law duty during the storm to

address hazardous conditions on the property caused by the accumulation of snow and ice. See Pareja, 246 N.J. at 557-60.

III.

We next address plaintiffs' contention that Arctic's conduct during the weather event created an increased risk to plaintiff under the first exception of Pareja. Specifically, plaintiffs claim Arctic increased the risk of pedestrians and invitees traversing the property through improper ice management, since there was ice underneath the snow where plaintiff fell, despite Arctic's crew having been on the scene that morning. Plaintiffs maintain that because Arctic endeavored to address the hazardous conditions created by the ongoing storm through ice and snow treatment, and removal just prior to plaintiff's fall, Arctic had a duty to not exacerbate or increase the risk of injury to invitees. See Pareja, 246 N.J. at 559. We reject plaintiffs' argument.

In Terry v. Central Auto Radiators, Inc., a Rhode Island Supreme Court case cited in Pareja and by the motion court, the court discussed the "unusual circumstances" of defendant's conduct that exacerbated or increased the risk of injury to the plaintiff. 732 A.2d at 717-18, "Unusual circumstances" existed where the defendant "actively increase[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." Pareja, 246 N.J. at 559 (quoting Terry, 732 A.2d at 718).

Plaintiffs argue there is a factual question presented as to whether Arctic "exacerbate[d] and increase[d] the risk of injury to plaintiff." They cite to their expert's report to establish Arctic's conduct increased the risk to plaintiff. The expert's report sets forth snow and ice removal standards, and alludes to Arctic's non-compliance with those standards. According to plaintiffs' expert, Arctic failed to mitigate the inherent risks of a snowstorm. Again, we are unpersuaded.

Plaintiffs did not present evidence showing Arctic's snow removal activities exacerbated the risk presented by the ongoing storm. Instead, plaintiffs' evidence merely demonstrated that Arctic's failure to clear the ice and snow and treat the parking lot caused plaintiff's fall. Plaintiffs' expert concluded that Arctic's Storm Documentation Report does not contain any "ice watch" or "ice control" notations for the time period prior to and up to plaintiff's fall. Plaintiffs' claim that Arctic exacerbated the risk is bereft of support in competent evidence presented in accordance with Rule 4:46-2.

There is simply no evidence here that Arctic's actions exacerbated or increased the danger presented by the accumulation of ice and snow during the storm. Pareja, 246 N.J. at 559. Thus, there is no basis in the motion record to

permit a finding that Arctic's actions exacerbated or increased the risk of injury to plaintiff caused by the accumulation of ice and snow during the storm.

Finally, we also reject plaintiffs' argument that Arctic has a duty of reasonable care under Hopkins v. Fox & Lazo Realtors, 132 N.J. 426 (1993). Plaintiffs cite Hopkins for the proposition that a landowner's duty of reasonable care extends to business invitees and "encompasses the duty to conduct a reasonable inspection to discover latent dangerous conditions." Relying on Hopkins, plaintiffs contend Arctic has a duty of reasonable care based on the four factor test established by our Supreme Court in that case: (1) the relationship of the parties; (2) the nature of the attendant risk; (3) the opportunity and ability to exercise care; and (4) the public interest in the proposed solution. Id. at 433.

Since plaintiff was an employee of a tenant at the subject building, plaintiffs argue she was a business invitee, and Arctic owed her "the same duty and liability" as an owner or tenant to manage snow and ice removal. Based on Hopkins, plaintiffs claim Arctic had "the opportunity, ability, and obligation to serve the public interest" by clearing ice and snow at the property on the day of the incident.

Application of the ongoing storm rule here under Pareja only permits a finding that Arctic had no common law duty during the storm to address hazardous conditions in the parking lot due to ice and snow. The Hopkins factors were specifically rejected by our Supreme Court in Pareja, and the ongoing storm rule was adopted instead. The holding in Pareja controls, and the Hopkins factors do not come into play. Arctic owed no duty to plaintiff to do anything during the storm other than to avoid increasing the inherent risk of danger over and above natural conditions that existed.

To the extent we have not specifically addressed any of plaintiffs' remaining arguments, we conclude they lack sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.