STATE OF MAINE

AROOSTOOK, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. HOUSC-CV-15-18

CHARLES L. GRIFFITH

PLAINTIFF

vs.

HOULTON BAND of MALISEET TRIBAL HOUSING AUTHORITY

DEFENDANT

ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On October 28, 2016 Defendant filed a motion for summary judgment. For the reasons set forth below, Defendant's motion is denied.

Plaintiff was injured on January 18, 2013 when he slipped on ice and fell to the ground in his driveway at 5 Eagle Drive in Houlton. 5 Eagle Drive is a single unit dwelling and part of a complex of dwellings owned and managed by the Defendant, Maliseet Indian Housing Authority. Plaintiff and his wife were residents of 5 Eagle Drive pursuant to a lease agreement.[1] The essence of Defendant's motion is no duty is owed to the Plaintiff regarding removal of snow or ice from the driveway.

Summary judgment is appropriate when there are no genuine issues of material fact, and the facts entitle a party to judgment as a matter of law. M.R. Civ. P. 56 (c); In Re Estate of Davis, 2001 ME 106, ¶7, 775 A.2d 1127, 1129. The Court should grant a defendant's motion for summary judgment if the evidence favoring the plaintiff is insufficient to support a verdict for the plaintiff as a matter of law. Curtis v. Porter, 2001 ME 158, ¶7, 784 A.2d 18,21. A fact is material when it has the potential to affect the outcome of the suit. Kenny v. Dep't of Human Services, 1999 ME 158, ¶3, 740 A.2d 560, 562. An issue is genuine if sufficient evidence supporting the claimed factual dispute exists to require a choice between the parties' differing versions of the truth at trial. *Id.*

The existence of a duty and the scope of that duty are questions of law. Alexander v. Mitchell, 2007 ME 108, ¶14. "What" a duty is involves the question whether the

[1] Only Pamela Griffith was a signatory to the lease agreement, but for purposes of this action the Plaintiff, as husband to Pamela Griffith, is considered a proper resident and tenant of 5 Eagle Drive.

defendant is under an obligation for the benefit of the particular plaintiff. Id., ¶15. If so, the duty is always the same-to conform to the legal standard of reasonable conduct in light of the apparent risk. Id. An owner or occupier of land is under the legal obligation to use ordinary care to ensure that the premises are reasonably safe to invitees in light of the totality of the existing circumstances. Isaacson v. Husson College, 297 A.2d 98, 103 (Me. 1972).

The case at hand involves a single family dwelling pursuant to a lease. The lease contains a number of provisions which purportedly delegate responsibilities. Relevant sections include:

> 8. TENANTS OBLIGATIONS AND RULES
> H.Tenant agrees to maintain grounds and landscaping adjacent to his/her dwelling unit. In the event TENANT fails or neglects to maintain grounds as assigned, TENANT shall pay to MANAGEMENT any and all expenses incurred by MANAGEMENT in the maintenance and repair of said grounds rendered necessary by such failure....
>
> 9. MANAGEMENT OBLIGATIONS
> The MANAGEMENT shall
> A. Maintain the premises and complex in a decent, safe and sanitary condition.
>
> 10. MAINTENANCE REPAIR
> Tenant shall use reasonable care to keep the dwelling unit clean and in such condition so as to prevent health or sanitation problems from developing. TENANT shall notify MANAGEMENT promptly of known needs for repairs to his/her dwelling unit, and of unsafe conditions in common areas and grounds of the project that may lead to damage and/or injury. See Lease § 8,9 and 10.

The lease does not specifically address snow and ice removal from the dwelling driveways. Defendant asserts the provisions set forth above render the tenants responsible. But the Court does not agree that the lease delegates responsibility of snow and ice removal to the tenants.

The Defendant had entered a contract with Houlton Band of Maliseet Indians (HBMI) to plow and sand all of the streets and driveways. The Defendant paid for these plowing and sanding services, which were delivered to the Plaintiff and other tenants. DSMF ¶8,9; Exhibit A (Contract). In addition, the Defendant directs HBMI to plow and/or sand the driveways in the Village when and if there is (a) three (3) or more inches of snowfall; (b) freezing rain resulting in ice accumulations; and (c) obvious freeze and thaw events that result in ice accumulation. DSMF ¶ 10. Also, as a courtesy to elderly tenants, the Defendant will provide snow removal and sanding of stairways and walkways when there is one of the above listed triggering events or when requested by the tenant. DSMF ¶ 11.

Defendant asserts that at the time of the Plaintiff's fall there had not been an accumulation of snow or ice, or a triggering event to warrant plowing or sanding. DSMF ¶ 24,25. In support of these allegations Defendant references the deposition of Fred Tomah. Tomah Depo. 39:24-40:1. Plaintiff denied these statements of material facts.

In this case the lease does not relieve the Defendant of a duty of care. The lease does not specify who is to maintain the driveway, either plowing or sanding. Although maintenance of grounds is assigned to the tenant in Paragraph 8H, grounds is distinguishable from snow and ice treatment. And if Defendant were to rely on Paragraph 8H to hold the Plaintiff responsible for maintenance of the driveway in the form of removal of accumulations of snow or ice, it did not follow its own lease. Defendant undertook the role of plowing and sanding the roads of the complex and individual driveways, with no additional charge to the Plaintiff or other tenants. This is inconsistent with the additional terms of Paragraph 8H which require Tenant to pay Management all expenses for maintenance. In short, an attempt to hold the Tenant responsible for treatment or maintenance of the driveway for accumulation of snow or ice via interpretation of the lease leads to an ambiguous result.

The Court therefore finds that the Defendant does owe a duty of care to the Plaintiff regarding the removal of ice and snow from the driveway. That duty is to conform to the legal standard of reasonable conduct in the light of the apparent risk. Alexander, ¶15. The Defendant has set forth a cogent argument that its practice of plowing and/or sanding upon a triggering event of 3" or more of snow, freezing rain resulting in accumulation, obvious free and thaw events, or when requested by the Tenant is a reasonable practice that relieves it of liability. Although the practice may indeed be reasonable, it is still a factual issue best left to the factfinder whether it is a reasonable practice to satisfy the duty it owes to the Plaintiff.

In addition, a factual question remains regarding the conditions in general. Defendant relies on the deposition of Fred Tomah for the proposition that there was not an accumulation of snow warranting plowing. Tomah Depo. 39:24-40:1 But reviewing that portion of the Tomah deposition in its entirety, Mr. Tomah stated "...it wasn't plowed because there was really no snow that would warrant such a plowing, **but certainly there would have been for sanding."** Tomah Depo. 39:25- 40:2, emphasis added. It may be a factfinder determines that the practice followed by the Defendant was reasonable and sufficient to meet the duty owed to its Tenant, the Plaintiff in light of the apparent risk. But that none the less remains a question for the factfinder to answer.

Accordingly, Defendant's Motion for Summary Judgment is denied.
The clerk shall incorporate this Order into the docket by reference pursuant to M.R.Civ.P. 79(a).

January 25, 2017

Justice, Superior Court

Attorney	Party	Representation Type	Representation Date
Olfene, Amy	**Houlton Band Maliseet Tribal Housing Auth - 2 Defendant**	**Retained**	**01/19/2016**
Smith, Kaighn	Houlton Band Maliseet Tribal Housing Auth - 2 Defendant	Retained	08/28/2015
Mccue, Carl	Charles L Griffith - 1 Plaintiff	Retained	08/05/2015
Van Dyke, David	Charles L Griffith - 1 Plaintiff	Retained	08/05/2015