STATE OF MICHIGAN

COURT OF APPEALS

TED LIPMAN and MARCY LIPMAN,

Plaintiffs-Appellants,

v

MICHAEL JOSEFF and SUZETTE JOSEFF,

Defendants-Appellants.

UNPUBLISHED
May 23, 1997

No. 191186
Oakland Circuit Court
LC No. 94-487237 NO

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

Plaintiff acknowledges he was a licensee, not a business invitee when he fell on an icy spot in defendant's driveway. Plaintiff makes a frontal attack on the entire natural accumulation doctrine, and argues in the alternative that the increased hazard doctrine applies. This appeal of right is being decided without oral argument pursuant to MCR 7.214(E).

At this point in time, the law is unquestionably settled that private persons, as well as government agencies, owe no duty and are not subject to liability for injuries caused by natural accumulations of ice and snow in any location. *Hall v Detroit Board of Education*, 186 Mich App 469, 471; 465 NW2d 12 (1990); *Zielinski v Szokola*, 167 Mich App 611, 615; 423 NW2d 289 (1988); *Bonnau v MDOT*, 450 Mich 983, 984; 547 NW2d 656 (1996) (Levin, J., dissenting). The sole recognized exception is for business invitors with respect to business invitees on the invitor's premises. *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244; 235 NW2d 732 (1975). Contrary to assumptions in plaintiffs' brief, that exception is very limited, and imposes no obligation on business invitors to remove natural accumulations of ice and snow from public sidewalks abutting their premises. *Morton v Goldberg*, 166 Mich App 366, 368-369; 420 NW2d 207 (1988); *Elam v Marine*, 116 Mich App 140; 321 NW2d 870 (1982). If this rule is unwise or if further exceptions to it should be recognized, that task is one properly left to the Supreme Court. *Reese v Wayne County*, 193 Mich App 215, 217-218; 483 NW2d 681 (1992).

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* Circuit judge, sitting on the Court of Appeals by assignment.

With respect to the assertion that a triable issue of fact exists concerning the increased hazard exception to the natural accumulation rule, there is no showing that defendants' act in shoveling their driveway caused an accumulation of ice at a point where the forces of nature would not otherwise have ultimately produced one. Thus, any existence of ice was not for this purpose an artificial accumulation. *Morton v Goldberg, supra*, 166 Mich App at 370, 372; *Weider v Goldsmith*, 353 Mich 339, 343-344; 91 NW2d 283 (1958). This Court has previously noted that a contrary rule would encourage persons in defendants' position to avoid liability by abandoning entirely all snow removal efforts, which would contribute to an overall increase in the hazard from natural accumulations of ice and snow. *Reese v Wayne County, supra*, 193 Mich App at 219; *Zielinski v Szokola, supra*, 167 Mich App at 617 n 1.

Plaintiffs' reliance on *White v Badalamenti*, 200 Mich App 434; 505 NW2d 8 (1993), is misplaced, as in that case a defect in the sidewalk created an unnatural hazard, and accordingly the Court had no reason to discuss the natural accumulation doctrine.

Affirmed.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot