IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JAMES TROMBETTI,	)	
Plaintiff,	)	
v.	)	C.A. No. N10C-09-101 PLA
	)	
WAWA STORE #809 and	)	
LB POWELL, LLC,	)	
Defendants.	)	

Submitted: July 25, 2012
Decided: August 13, 2012

UPON DEFENDANT WAWA STORE #809'S MOTION FOR SUMMARY JUDGMENT
DENIED

On this 13th day of August, 2012, it appears to the Court that:

1. Before the Court is a Motion for Summary Judgment[1] filed by Defendant Wawa Store #809 ("Wawa") on the grounds that both the terms of the contract between tenant Wawa and landlord LB Powell, LLC ("LB Powell"), and the subsequent acts of the parties as to how the contract was interpreted by them preclude Plaintiff James Trombetti ("Trombetti") from establishing that Wawa

[1] The motion submitted by Wawa bears the heading, "Motion for Summary Judgment." However, the recitation of the first paragraph seeks dismissal pursuant to Rule 12(b)(6) and asks the Court to dismiss Trombetti's and Powell's claims for failure to state a claim under which relief can be granted. Upon review of the record and the pleadings in this case, the Court is satisfied that a factual dispute as to the obligations of the tenant and the landlord with respect to business invitees exists. Therefore, under either standard, Wawa cannot recover at this stage of the litigation.

owed any duty to Plaintiff with respect to the condition of the sidewalk where Plaintiff slipped and fell. For the reasons set forth below, the Motion is DENIED.

2. This personal injury case arises from Trombetti's slip and fall on a patch of ice near the Wawa store in the Carpenter Station Road shopping center on the morning of December 24, 2008. Trombetti fell on an icy sidewalk while returning to his car after making his purchases at Wawa. At his deposition, Trombetti testified that he advised Wawa employees while he was in the store that the sidewalk was icy and that they should put down some salt.[2] After he fell, Trombetti testified, Wawa's manager came to the parking lot to check on Trombetti and then promptly salted the sidewalk.[3] Trombetti now seeks damages from both Wawa and LB Powell, asserting that they neglected their duty to keep the premises safe for business invitees.

3. Wawa and LB Powell have both denied liability and filed cross-claims against each other, each asserting that it was the other party's duty to keep the walkways to and from the store free of hazards. Wawa has now filed the instant motion for summary judgment, arguing that the express terms of its lease with LB Powell provide that LB Powell would be responsible for maintaining the common areas of the shopping center, including plowing and salting the sidewalks and parking lot. Wawa further relies on the testimony of Calvin Powell, LB Powell's

[2] Trombetti Dep. Tr. at 13.
[3] *Id.* at 23; 66.

general manager, who stated that his nephew plowed and salted surfaces at the shopping center in inclement weather because it was LB Powell's responsibility.

4. Defendant LB Powell has filed a Response in opposition to the Motion in which it cites Delaware cases that require the landowner or occupier to take reasonable steps to make the premises reasonably safe from the hazards associated with natural accumulations of ice and snow for the benefit of business invitees. Since Wawa *occupied* the property, LB Powell argues that the question is not one of duty but whether Wawa controlled the area where Plaintiff fell. LB Powell submits that whether Wawa controlled the sidewalk and whether it consequently had a duty to protect customers from ice and snow are questions of fact thus precluding summary judgment.

5. Summary judgment is appropriate where the record presents no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[4] When considering a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, and the Court must draw all reasonable inferences in favor of the non-moving party.[5] On a motion for summary judgment, the moving party bears the initial burden of showing that there are no material facts in dispute.[6] If the moving party meets this

[4] Super. Ct. Civ. R. 56(c).
[5] *E.g.*, *Merrill v. Crothall-American, Inc.*, 606 A.2d 96, 100 (Del. 1992).
[6] *Manucci v. The Stop 'n' Shop Companies, Inc.*, 1989 WL 48587, *2 (Del. Super. May 4, 1989).

burden, then the burden shifts to the non-moving party to set forth specific facts in its response to the motion for summary judgment that go beyond the bare allegations of the complaint.[7] Where a party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial," the Court must enter summary judgment against that party.[8]

6. In its Response to the Motion, LB Powell relies upon Delaware's adoption of the rule requiring the land owner or occupier to take reasonable steps to make the premises reasonably safe from the hazards associated with natural accumulations of ice and snow for the benefit of business invitees.[9] Furthermore, LB Powell argues that the manager's response to Trombetti's fall, including bringing a bag of salt out to the parking lot, indicates that Wawa exercised control over the premises,[10] and that Wawa may be held liable for its failure to exercise reasonable care in making its premises safe for invitees.[11] Having considered the cases cited in LB Powell's Response to the Motion and the fact that there is evidence of subsequent precautions taken by Wawa after the accident, which bear

[7] *Id.* at *3.
[8] *Id.* at *4.
[9] *Woods v. Price's Corner Shopping Ctr. Merchants' Assoc.*, 541 A.2d 574 (Del. Super. 1988);
[10] *Grochowski v. Stewart*, 169 A.2d 14 (Del. Super. 1961); D.R.E. 407.
[11] *Handler Corp. v. Tlapechco*, 901 A.2d 737 (Del. 2006) (holding that one who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person, is subject to liability for his failure to undertake reasonable care to protect the person if he has undertaken a duty and harm is suffered as a consequence).

on the issue of its control, the Court is convinced that there are obvious issues of fact, rendering summary judgment inappropriate. The Motion is therefore DENIED.

IT IS SO ORDERED.

/s/ Peggy L. Ableman
PEGGY L. ABLEMAN, JUDGE

Original to Prothonotary
cc: All counsel via File & Serve