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

SHARON CASH,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 08C-08-213-MMJ
	)	
v.	)	
	)	
	)	
EAST COAST PROPERTY MANAGEMENT, INC., SUSSEX COUNTY SENIOR SERVICES, INC., D/B/A CHEER AND/OR CHEER APARTMENTS, L.P.,	)	
	)	
Defendants.	)	

Submitted: May 11, 2009
Decided: June 8, 2010

On Defendants' Motion for Summary Judgment

GRANTED

MEMORANDUM OPINION

L. Vincent Ramunno, Esquire, Wilmington, Delaware, Ramunno & Ramunno, P.A., Attorney for Plaintiff Sharon Cash

Daniel P. Bennett, Esquire, Wilmington, Delaware, Weber Gallagher Simpson Stapleton Fires and Newby, LLP, Attorney for Defendants Sussex County Senior Services Inc. and Cheer Apartments L.P.

Mary E. Sherlock, Esquire, Dover, Delaware, Attorney for East Coast Property Management Inc.

JOHNSTON, J.

Plaintiff Sharon Cash slipped and fell on a sheet of ice as she stepped onto the sidewalk of the Cheer Apartment complex. Cash brought suit, arguing that the apartment complex failed to exercise a duty of reasonable care owed to business invitees. Although the apartment complex had a policy to remove ice and snow from the front walk of the apartment, even during inclement weather, Cash slipped on a patch of ice that had not been removed.

Defendants, East Coast Property Management and Sussex County Senior Services, filed a Motion for Summary Judgment. The Court finds that Delaware law permits a land owner to wait to remove ice until a reasonable time has elapsed following the end of the precipitation that created the hazardous condition. Further, the severity of the continuing storm does not affect the tolling of the "reasonable time" clock. The Court also finds that although defendants' implemented a policy to remove snow and ice during inclement weather, in this case that policy does not give rise to liability.

FACTS

The Court views the following facts in a light most favorable to plaintiff.

On February 13, 2007, Cash slipped and fell while entering the Cheer Apartments in Georgetown, Delaware. Cheer Apartments is an apartment complex for senior tenants owned by defendant Sussex County Senior Services ("SCSS") and maintained by defendant East Coast Property Management ("East Coast"). Cash worked as a nurse and was visiting a patient at the apartment complex.

On the day of her accident, Cash noticed a misty drizzle throughout the day. That drizzle was continuing at the time of her fall. She did not see any snow, sleet, or freezing rain and did not have any difficulty driving to the apartment complex or walking on the ground at any of the other locations she visited that day. As she stepped onto a portion of sidewalk Cheers Apartments, Cash slipped and fell on a sheet of ice that appeared wet but did show any noticeable snow or ice.

The property manager for the apartment complex admitted in deposition that SSCS was responsible for snow and ice removal on the property grounds. A maintenance person for East Coast also removed ice and snow. SSCS regularly removed snow before the snowfall subsided and spread salt and sand to prevent slippage from ice. Where SSCS was unable to completely remove ice and snow, the East Coast maintenance person would complete the removal.

STANDARD OF REVIEW

Under Delaware law, summary judgment is granted only if the moving party has established that there are no genuine issues of material fact in dispute and judgment may be granted as a matter of law.[1] All facts must be viewed in the light most favorable to the non-moving party.[2] Summary judgment may not be granted if the record indicates that a material fact is in dispute, or if there is a need to clarify the application of law to the specific circumstances.[3] However, when the facts permit a reasonable person to draw only one inference, the question becomes one for decision as a matter of law.[4]

ANALYSIS

"Continuing Storm" Doctrine

Generally, a landowner has a duty to exercise reasonable care to keep the premises safe for all business invitees.[5] A landowner also has a duty to make safe any dangerous condition on the land which the landowner either knows about or, upon a reasonable inspection, should discover.[6] This Court previously has found that "an owner or occupier of land, which is held open with an implied invitation to the public to come upon the land for the mutual

[1] Super. Ct. Civ. R. 56(c).
[2] *Hammond v. Colt Industries Operating Corp.*, 565 A.2d 558, 560 (Del. Super. 1989).
[3] Super. Ct. Civ. R. 56(c).
[4] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).
[5] *Hamm v. Ramunno*, 281 A.2d 601, 603 (Del. 1971).
[6] *Id.*

benefit of the public and the landowner or occupier, has an affirmative duty to keep the premises reasonably safe from the hazards associated with natural accumulations of ice and snow."[7]

However, in *Young v. Saroukos*,[8] this Court also found that a business "is permitted to await the end of the storm and a reasonable time thereafter to remove ice and snow from an outdoor entrance . . . ."[9] In *Young*, a tenant slipped and fell on a ramp entrance in front of her apartment. The tenant alleged that her fall was caused by accumulations of snow and ice.[10] The tenant brought suit, arguing that the landlord had a duty to keep the ramp entrance free and clear form ice and snow.[11] The Superior Court found that on the date of the accident, a large amount of snow fell before the accident and continued to fall throughout the day.[12] The Court held that "a business establishment, landlord, carrier, or other inviter . . . is permitted to await the end of the storm and a reasonable time thereafter to remove ice and snow from an outdoor entrance walk, platform, or steps."[13]

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[7] *Woods v. Prices Corner Shopping Center Merchants Ass'n*, 541 A.2d 574, 577 (Del. Super. 1988); *see also Argoe v. Commerce Square Apartments Ltd. Partnership*, 745 A.2d 251, 254 (Del. Super. 1999).
[8] 185 A.2d 274 (Del. Super. 1962).
[9] *Young*, 185 A.2d 282.
[10] *Id*. at 275.
[11] *Id*.
[12] *Id*. at 275-76.
[13] *Id*. at 282 (quoting *Walker v. Memorial Hospital*, 45 S.E.2d 898, 902 (Va. 1928)) (citing *Reuter v. Iowa Trust & Savings Bank*, 57 N.W.2d 225 (Iowa 1953)).

Severity of Continuing Storm

In contrast to *Young*, where multiple witnesses testified that snow continued to fall regularly and continuously throughout the day, the evidence in the instant case, when viewed in a light most favorable to the plaintiff, shows that only a "light drizzle" continued at the time of Cash's fall.

The Virginia Supreme Court held in a similar case that "a storm does not have to be 'raging' in order for a business inviter to wait until the end of the storm before removing ice and snow from its premises."[14] The Virginia Court found that a storm is ongoing when "moisture [is] falling and freezing on the ground,"[15] and a rule imposing upon a landowner "the necessity of repeated excursions into [a] storm, with the attendant risks of exposure and injury to himself, in order to relieve the invitee of all risk from [a] natural hazard," is unreasonable.[16]

In the case *sub judice*, plaintiff stated that a misty drizzle fell throughout the day and continued through to the time of her fall. The controlling principle in the "continuing storm" doctrine is that "changing conditions due to the pending storm render it inexpedient and impracticable to take earlier effective actions and that ordinary care does not require it."[17]

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[14] *Amos v. NationsBank*, 504 S.E.2d 365, 367-68 (Va. 1998).
[15] *Amos*, 504 S.E.2d at 368 (quoting *FAD Ltd. P'ship v. Feagley*, 377 S.E.2d 437, 438 (1989)).
[16] *Walker*, 45 S.E.2d at 907.
[17] *Young*, 185 A.2d at 282 (quoting *Walker*, 45 S.E.2d at 902).

The Court finds that a landowner has no legal duty to begin ice removal until precipitation has stopped, regardless of the severity of the storm. The law requires only reasonable care.

SCSS and East Coast's Snow Removal Policy

Plaintiff argues that the defendants had in place a policy wherein SSCS assumed primary responsibility for the removal of snow and ice on property grounds, and a maintenance person for East Coast also assumed ice removal responsibility, even during inclement weather. Cash argues that even if defendants had no other duty to remove ice and snow, they are liable for any injuries caused by failure to comply with their assumed duties.

Plaintiff cites *Handler Corp., et al. v. Tlapechco,*[18] for the proposition that liability arises "if one undertakes a duty and does not use reasonable care to carry out the assumed duty."[19] In *Handler*, an employee of an independent contractor fell off a second floor balcony onto the floor below. The general contractor for the worksite had contracted with a third party for the installation of a safety rail on the balcony but, on the day of the accident, the safety rail was not installed. *Handler* does not apply to this case. The Supreme Court's holding specifically was in the context of determining

[18] 901 A.2d 737(Del. 2006).
[19] *Handler Co.*, 901 A.2d at 747.

allocation of responsibility for workplace safety among general contractors and sub-contractors.[20]

CONCLUSION

When plaintiff fell on ice, precipitation had not abated. A landowner may wait to remove ice until the end of the precipitation creating the hazardous condition. A volunteer policy to begin ice and snow removal during a storm does not give rise to liability.

THEREFORE, Defendants' Motion for Summary Judgment is hereby **GRANTED**. This case is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

/s/ *Mary M. Johnston*
The Honorable Mary M. Johnston

[20] *See id*. at 744-50.