[Cite as *Sanfilippo v. Village Green Mgt. Co.*, 2010-Ohio-4211.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

CLERMONT COUNTY

FRANK SANFILIPPO, et al.,	:	
Plaintiffs-Appellants,	:	CASE NO. CA2010-04-027
	:	O P I N I O N
- vs -	:	9/7/2010
VILLAGE GREEN MANAGEMENT CO., et al.,	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2009CVH00095

O'Connor, Acciani & Levy, James C. Alexander II, 2200 Kroger Building, 1014 Vine Street, Cincinnati, Ohio 45202, for plaintiffs-appellants

Reminger Co., LPA, John M. Dunn, 250 Grandview Drive, Suite 550, Ft. Mitchell, KY 41017, for defendants-appellees, Village Green Management Company, Board of State Teachers Retirement System of Ohio and OTR

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HENDRICKSON, J.

{¶1} Plaintiffs-appellants, Frank and Loria Sanfilippo, appeal a decision of the Clermont County Court of Common Pleas granting summary judgment in favor of

defendants-appellees in a negligence action. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} At all times relevant, Frank Sanfilippo was a tenant who resided in an apartment complex in Anderson Township known as the Arbors of Anderson. The complex was owned by the Board of State Teachers Retirement System of Ohio and OTR and managed by Village Green Management Company. On the morning of January 24, 2007, Sanfilippo observed snow on the ground when leaving for work around 7:00 a.m. A snow log maintained by Village Green's service manager estimated the amount of snow on the ground at half an inch that morning.

{¶3} Sanfilippo returned to the complex around 9:00 p.m. that evening. He was aware that it had snowed throughout the day. Upon entering the parking lot, he observed approximately one inch of snow on the ground. Sanfilippo exited his truck and proceeded to walk carefully as his hands were full of personal items and he knew the ground was slippery. Despite his precautions, Sanfilippo slipped and fell in the driving lane, fracturing his ankle. Sanfilippo believed the area in which he fell had not been treated.

{¶4} Village Green managed snow and ice removal in the apartment complex. The maintenance staff cleared snow and ice from sidewalks and steps, while Village Green contracted with The Brickman Group, Ltd. to remove snow and ice from the parking lot. When Village Green determined that the parking lot required treatment, it would contact Brickman to request removal services and fax a hard copy of its request.

{¶5} On the morning of the incident, Brickman salted the driving lanes around the complex at the direction of Village Green. The salt was applied sometime between 7:15 a.m. and 8:00 a.m. Village Green did not call Brickman back to re-salt the area the rest of the day. Sanfilippo's fall occurred approximately 13 hours after Brickman salted the driving lanes.

{¶6} In January 2009, Sanfilippo filed a complaint against Village Green and two John Doe defendants. In August 2009, Sanfilippo filed an amended complaint asserting negligence claims against Village Green, the Board of State Teachers Retirement System, and Brickman. All three defendants moved for, and were granted, summary judgment. Sanfilippo timely appeals, raising one assignment of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT IN FAVOR OF THE DEFENDANTS."

{¶9} Sanfilippo argues that summary judgment was improper because there existed genuine issues of material fact regarding whether the defendants exercised ordinary care in removing snow and ice from the parking lot of the apartment complex. Sanfilippo initially insists that Brickman's performance in salting the parking lot on the morning in question fell below the standard of ordinary care. Alternatively, Sanfilippo asserts that Village Green breached its duty to continually monitor the weather conditions and re-treat the lot as necessary throughout the day.

{¶10} Summary judgment is a procedural device employed to end litigation when there are no issues in a case requiring a formal trial. *Nibert v. Columbus/Worthington Heating & Air Conditioning*, Fayette App. No. CA2009-08-015, 2010-Ohio-1288, ¶13. A trial court's decision on summary judgment is reviewed de novo. *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 296.

{¶11} Summary judgment is proper when (1) there are no genuine issues of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can only come to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor. Civ.R. 56(C). See, also, *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the initial burden of informing the court

of the basis for the motion and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. If the moving party meets its burden, the nonmoving party has a reciprocal burden to set forth specific facts showing a genuine issue for trial. Id.

{¶12} In order to withstand summary judgment in a negligence action, the plaintiff must establish the following elements: (1) the defendant owed plaintiff a duty of care; (2) the defendant breached that duty of care; and (3) as a direct and proximate result of the defendant's breach, the plaintiff suffered injury. *Packman v. Barton*, Madison App. No. CA2009-03-009, 2009-Ohio-5282, ¶12.

{¶13} Generally, an owner or occupier of land does not owe a duty to business invitees to remove natural accumulations of snow and ice or to warn such invitees of the dangers inherent to such accumulations. *Brinkman v. Ross*, 68 Ohio St.3d 82, 1993-Ohio-72, syllabus. The dangers associated with natural accumulations of snow and ice are typically considered to be so open and obvious that an owner or occupier may reasonably expect that a business invitee will safeguard himself against those dangers. *Sidle v. Humphrey* (1968), 13 Ohio St.2d 45, paragraph two of the syllabus.

{¶14} There are exceptions to this general rule of non-liability. For instance, a duty to exercise reasonable care to protect business invitees arises when an owner or occupier has superior knowledge that a natural accumulation of snow or ice has created a condition substantially more dangerous than an invitee normally associates with snow and ice. *Mikula v. Tailors* (1970), 24 Ohio St.2d 48, paragraph five of the syllabus; *LaCourse v. Fleitz* (1986), 28 Ohio St.3d 209, 210. In addition, an owner or occupier has a duty to exercise reasonable care to protect business invitees from unnatural, i.e., man-made or man-caused, accumulations of snow or ice. *Burress v. Associated Land Group*, Clermont App. No. CA2008-10-096, 2009-Ohio-2450, ¶12, quoting *Saunders v. Greenwood Colony*, Union App.

No. 14-2000-40, 2001-Ohio-2099.

{¶15} Neither of these two exceptions applies to the present matter. Sanfilippo did not allege that the defendants had superior knowledge that the snow in the parking lot created a condition substantially more dangerous than that normally associated with snow and ice. Nor did Sanfilippo argue that the accumulation of snow and ice in the parking lot was unnatural.

{¶16} Rather than relying upon the above exceptions to impose liability, Sanfilippo urges us to find that the defendants expressly or impliedly assumed a duty to remove natural accumulations of snow and ice and did not exercise this duty with reasonable care. In support, Sanfilippo cites the case of *Oswald v. Jeraj* (1946), 146 Ohio St. 676. The Ohio Supreme Court pronounced the following holding in *Oswald*:

{¶17} "The owner of an apartment building who reserves possession and control of the common approaches which provide ingress to and egress from such building to and from the public sidewalk and who assumes the duty of keeping such approaches clean and free from ice and snow is required to exercise ordinary care to render such common approaches reasonably safe for use by the tenants." Id. at paragraph one of the syllabus.

{¶18} Sanfilippo interprets this to impose a continuing duty on a landlord to remove natural accumulations of snow and ice from common areas where the landlord voluntarily undertakes to remove such accumulations. Such a duty arises by way of express or implied contract arising from the landlord's course of conduct in regularly removing natural accumulations of snow and ice. *Royce v. Yardmaster, Inc.*, Lake App. No. 2007-L-080, 2008-Ohio-1030, ¶20, citing *Oswald* at 679.

{¶19} The trial court's analysis employed Sanfilippo's interpretation of *Oswald*. This interpretation, however, has been disparaged by a number of appellate courts, including this one. This is because such an interpretation tends to "discourage the diligence of landlords

who exercise ordinary care in undertaking to clear their properties of ice and snow in a reasonable manner." See *Yanda v. Consol. Mgt., Inc.* (Aug. 16, 1990), Cuyahoga App. No. 57268, 1990 WL 118703 at *2. See, also, *Brooks v. Lee* (Dec. 4, 1995), Butler App. No. CA95-05-091, at 4; *Tom v. Catholic Diocese of Columbus*, Franklin App. No. 06AP-193, 2006-Ohio-4715, ¶14.

{¶20} If the reading of *Oswald* proffered by Sanfilippo is followed to its logical conclusion, a landlord who benevolently undertakes to clear natural accumulations of snow and ice to the best of his ability exposes himself to potential lawsuits by tenants who slip and fall on any patches of snow or ice that may remain. *Yanda* at *2. By contrast, a landlord who sits idly by and refrains from clearing natural accumulations of snow and ice to avoid assuming a duty can remain insulated from liability. Id. Such an interpretation discourages landlords from voluntarily assisting their tenants in wintry conditions.

{¶21} We do not read *Oswald* to abrogate any of the longstanding rules of premises liability in cases involving snow and ice. Indeed, it is arguably possible to align *Oswald* with the two aforementioned exceptions to the general rule of nonliability. So long as a landlord who voluntarily clears a common area (1) does not create a condition substantially more dangerous than a tenant normally associates with snow and ice, and (2) does not create an unnatural accumulation of snow or ice by his efforts, a tenant can still be expected to remain vigilant of the open and obvious dangers that accompany wintry weather in Ohio. Cf. *Mayes v. Boymel*, Butler App. No. CA2002-03-051, 2002-Ohio-4993, ¶14 (observing that snow and ice and their attendant dangers are part of wintertime life in Ohio).

{¶22} Under the facts of this case, there is no evidence to contradict a finding that the hazardous conditions in the parking lot were open and obvious. Nor is there any evidence that the defendants' efforts in treating the parking lot created a condition substantially more dangerous than a tenant normally associates with snow and ice, or that their efforts resulted

in an unnatural accumulation of snow or ice.

{¶23} To the contrary, the evidence clearly supports that the accumulation of snow in the parking lot was a *natural* accumulation. Sanfilippo's own testimony confirms the open and obvious character of the parking lot conditions on the day in question. In his deposition, Sanfilippo acknowledged that there was snow on the ground when he left for work in the morning. He was aware it snowed throughout the day. In addition, Sanfilippo conceded that he observed snow "covering" the parking lot when he arrived home from work that night. He also admitted to engaging his truck's four-wheel drive mechanism while driving to and from work. When asked whether the snow on the ground appeared to be a natural accumulation, Sanfilippo responded in the affirmative. These admissions support the conclusion that the hazardous conditions in the parking lot were readily discernable, and that Sanfilippo indeed noticed them.

{¶24} Sanfilippo's testimony also demonstrated that he appreciated the dangers associated with such a natural accumulation of snow and ice, and that he attempted to take precautions while traversing the parking lot. Sanfilippo testified that he had lived in the Cincinnati area for 15 years at the time of the incident, and that he was familiar with winter weather patterns in the area. He acknowledged that the ground was "slippery" when he arrived at the apartment complex after work. Though it was dark and his hands were full, he walked slowly and took small steps. Unfortunately, he fell despite being cautious. The fact that these precautions did not prevent Sanfilippo from injury, however, does not negate the open and obvious nature of the conditions in the parking lot.

{¶25} Due to the fact that there are no genuine issues of material fact regarding the open and obvious nature of the natural snow and ice accumulation in the parking lot on the day in question, Sanfilippo is barred from recovery in his negligence action and summary judgment in favor of the defendants was proper. *Armstrong v. Best Buy Co., Inc.*, 99 Ohio

St.3d 79, 2003-Ohio-2573, ¶5.

{¶26} Even if *Oswald* must be read to impose a continuing duty on a landlord to remove natural accumulations of snow and ice due to past course of conduct, the evidence in the record does not support a finding that the defendants were negligent in performing this duty.

{¶27} As stated, the owner of the Arbors of Anderson complex, the Board of State Teachers Retirement System, employed Village Green to carry out the management operations for the apartment complex. The record indicates that Village Green phoned Brickman to treat the driving lanes in the parking lot at 6:15 a.m. and faxed its request at 7:15 a.m. Brickman arrived and salted the driving lanes sometime between 7:15 a.m. and 8:00 a.m.

{¶28} The fact that Village Green did not ask Brickman to return and re-treat the area later that day does not necessarily amount to negligence. Sanfilippo concludes, based upon testimony offered by Village Green employees Lori Collins and Jeff DeMasters, that the company had an informal policy of treating the parking lot whenever: (1) snow accumulation exceeded one inch, (2) roads were icy and slippery, or (3) there was freezing rain.

{¶29} Sanfilippo offered no evidence that any of the above conditions existed on the day he fell. While he estimated the snow accumulation at one inch, he did not opine that it exceeded this threshold amount. Unlike in *Oswald*, there is no evidence that the inch of snow in the parking lot accumulated soon after Sanfilippo left for work in the morning and sat there for the 13 or so hours he was gone. Rather, the evidence suggests that the snow accumulated throughout the day. It would be unreasonable to hold that Village Green was required to remove the snow as fast as it fell.

{¶30} Village Green's two remaining informal policy conditions for treating the parking lot were also not triggered on the day in question. By his own testimony, Sanfilippo

acknowledged that the roadways were clear that day. Furthermore, he failed to present any evidence that there was freezing rain on the day in question. Thus, none of Village Green's informal conditions for treating the parking lot occurred between the time Sanfilippo left for work and returned to the complex.

{¶31} Village Green treated the parking lot in the morning in order to aid its tenants. The company was not strictly required to re-treat the area throughout the day. Under the facts of the case, we find no indication that Village Green violated its duty of care towards the tenants on the day of the incident. By extension, the owner of the complex, the Board of State Teachers Retirement System, also did not violate its duty of care towards the tenants.

{¶32} We reach the same conclusion with regard to Brickman. As mentioned, Village Green contracted with Brickman to perform snow and ice removal services. The record contains no evidence that Brickman negligently performed its services on the day in question.

{¶33} Sanfilippo theorizes that Brickman failed to salt the area where he fell. But this theory is mere speculation, unsupported by any personal knowledge or evidence. Sanfilippo conceded that he did not observe Brickman executing its services on the day of the fall. Hence, he did not see what Brickman did or failed to do in treating the driving lanes. Sanfilippo also admitted that the entire parking lot was covered with snow when he got home from work at 9:00 p.m. That means the area where he fell was visually indistinguishable from the remainder of the driving lanes, suggesting that it had been treated no differently. Furthermore, while Sanfilippo believed he slipped and fell on ice beneath the snow, he admitted that he only observed snow on the ground. Thus, Sanfilippo had no factual basis upon which to conclude that Brickman did not treat the area where he fell when it salted the parking lot approximately 13 hours before he returned to the apartment complex.

{¶34} We conclude that, even when the facts are construed in favor of Sanfilippo as the nonmoving party, there are no genuine issues of material fact precluding summary

judgment. The record supports that the accumulation of snow in the parking lot of the apartment complex on the day in question was a natural accumulation that was so open and obvious that the defendants could reasonably expect Sanfilippo to safeguard himself. *Sidle*, 13 Ohio St.2d at paragraph two of the syllabus. Even if the defendants assumed a duty to clear such natural accumulations by way of past conduct, the record supports that the defendants did not fail to exercise reasonable care in performing this duty on the day in question.

{¶35} Accordingly, we find that there were no genuine issues of material fact and all three defendants were entitled to judgment as a matter of law.

{¶36} Sanfilippo's single assignment of error is overruled.

{¶37} Judgment affirmed.

YOUNG, P.J., and BRESSLER, J., concur.

[Cite as *Sanfilippo v. Village Green Mgt. Co.*, 2010-Ohio-4211.]