[Cite as *Peyton v. Univ. of Akron*, 2006-Ohio-7212.]

IN THE COURT OF CLAIMS OF OHIO

JOHN M. PEYTON	:	
Plaintiff	:	
v.	:	CASE NO. 2005-08808-AD
UNIVERSITY OF AKRON	:	MEMORANDUM DECISION
Defendant	:	

: : : : : : : : : : : : : : : : :

{¶ 1} On March 4, 2005, plaintiff, John M. Peyton, suffered property damage when ice fell from a building owned by defendant, University of Akron, and struck plaintiff's parked car. Specifically, the convertible top and rear window of plaintiff's vehicle were damaged by ice falling from defendant's Edwin J. Thomas Performing Arts Hall ("Thomas Hall"). Plaintiff, who worked in Thomas Hall, had parked his 1989 Chevrolet Cavalier Convertible in a parking space next to defendant's building. After completing his work shift on March 4, 2005, plaintiff returned to his parked car and discovered the vehicle's convertible top and rear window had been damaged by falling ice emanating from the roof of the Thomas Hall structure. Plaintiff contended his car was damaged as a proximate cause of negligence on the part of defendant in maintaining a dangerous condition on University premises. Consequently, plaintiff filed this complaint seeking to recover $1,100.00 for repairing his vehicle. Plaintiff submitted three repair estimates for $699.21, $987.44, and $750.00. The $25.00

filing fee was paid.

{¶ 2} Defendant denied any liability in this matter. Defendant pointed out plaintiff's property damage was the result of a falling natural accumulation of ice and snow and therefore, the University was not charged to protect plaintiff from hazards normally associated with such natural accumulations. See *Brinkman v. Ross* (1993), 68 Ohio St. 3d 82, 623 N.E. 2d 1175. Defendant denied plaintiff's property damage was related to any negligent act or omission on the part of the University.

{¶ 3} An owner of land generally owes a duty to individuals such as plaintiff to maintain the premises in a reasonably safe condition. *Paschal v. Rite Aid Pharmacy, Inc.* (1985), 18 Ohio St. 3d 203, 480 N.E. 2d 474. However, a land owner ordinarily owes no duty to business invitee plaintiffs to remove natural accumulations of ice and snow on the premises or to warn the invitees of dangers associated with these natural accumulations. *Brinkman*, supra. Everyone is assumed to appreciate the risks presented by such snow and ice accumulations and consequently, everyone is expected to bear responsibility for protecting himself from such risks presented by natural accumulations of ice and snow. *Brinkman*, supra.

{¶ 4} Conversely, liability may result if the premises owner permits an unnatural accumulation of ice or snow to exist. See *Lopatkovich v. City of Tiffin* (1986), 28 Ohio St. 3d 204, 207, 503 N.E. 2d 154; *Tyrrell v. Investment Associates, Inc.* (1984), 16 Ohio App. 3d 47, 474 N.E. 2d 621. In *Porter v. Miller* (1983), 13 Ohio App. 3d 93, 468 N.E. 2d 134, the court clarified

the distinction between an unnatural and natural snow accumulation stating: "'Unnatural' accumulation must refer to causes and factors other than inclement weather conditions of low temperatures, strong winds, and drifting snow, i.e., to causes other than meteorological forces of nature. By definition, then, the 'unnatural' is the man-made, the man-caused; extremely severe snow storms or bitterly cold temperatures do not constitute 'unnatural phenomena.'"

{¶ 5} In *Myers v. Forest City Enterprises, Inc.* (1993), 92 Ohio App. 3d 351, 635 N.E. 2d 1268 appeal dismissed (1994), 69 Ohio St. 2d 1213, 633 N.E. 2d 1136, the court further addressed the state of unnatural accumulations, noting: "In cases involving an unnatural accumulation of ice and snow, a plaintiff must show that the defendant created or aggravated the hazard, that the defendant knew or should have known of the hazard, and that the hazardous condition was substantially more dangerous than it would have been in the natural state. Melting snow that refreezes into ice is natural, not an unnatural accumulation of ice."

{¶ 6} Based on the evidence in the instant claim, the court concludes the ice and snow that damaged plaintiff's car was a natural accumulation. Ordinarily, defendant would be relieved from legal liability for injury resulting from this natural occurrence. However, there are exceptions to this general rule. If the landowner is shown to have had notice, actual or implied, that a natural accumulation of snow and ice on the premises has created a condition substantially more dangerous than an invitee

should have anticipated by reason of the knowledge of conditions prevailing generally in the area, negligence may be shown. *Paschal*, supra; *Gober v. Thomas & King, Inc.* (1997), Montgomery App. No. 16248, 1997 Ohio App. LEXIS 3564. Northeastern Ohio's freeze and thaw cycles, which commonly cause icy conditions, are natural accumulations absent a showing of negligence on the part of the landowner. *Hoenigman v. McDonald's Corp.* (Jan. 11, 1990), Cuyahoga App. No. 56010, 1990 Ohio App. LEXIS 131. For liability to attach the landowner must have some superior knowledge of the condition. *LaCourse v. Fleitz* (1986), 28 Ohio St. 3d 209, 503 N.E. 2d 159. No evidence supporting this proposition has been presented. Plaintiff, in the present claim, has failed to establish defendant owed him a duty to remove natural accumulations of snow from the University building. Therefore, absent a duty, negligence cannot be proven.

IN THE COURT OF CLAIMS OF OHIO

JOHN M. PEYTON :

Plaintiff :

v. : CASE NO. 2005-08808-AD

UNIVERSITY OF AKRON : ENTRY OF ADMINISTRATIVE DETERMINATION

Defendant :

: : : : : : : : : : : : : : : : :

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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