

**Supreme Court Holds No Duty of Landlord to
Remove Snow and Ice from Private Driveway**

By: Brian R. Lehrer

In a case involving a fall-down where plaintiff fell on snow and ice while delivering a letter to a commercial tenant, the New Jersey Supreme Court recently held that a landlord owed no duty to the plaintiff where the lease delegated responsibility to clear snow and ice to the tenant, and held that the doctrine of the non-delegable duty did not apply. Shields v. Ramslee Motors, 240 N.J. 479 (2020).

Plaintiff, Baldwin Shields, was a Federal Express driver who slipped and fell on ice while delivering an envelope to Ramslee Motors, a used car dealership. He fell on snow and ice in the driveway leading back to the sidewalk.

Ramslee Motors leased the property from 608 Tonnelle Avenue, LLC. The lease agreement placed responsibility for clearing snow and ice at the property on the tenant, Ramslee Motors. The lease did provide the landlord the right to enter the property without notice for the purpose of making repairs necessary for the safety and preservation of the property.

The Supreme Court held that the lease delegated the responsibility to clear snow and ice to the tenant. It further pointed out that a reservation of a right to enter property is not the same as a covenant to make repairs and the fact that a commercial landlord reserved the right to re-enter the premises did not render it liable for repairs.

The Court then held that the landlord did not have a non-delegable duty to clear snow and ice from the driveway because the landlord had vested the tenant with exclusive possession. The Court rejected the lower Court's analogy of the private driveway with a public sidewalk, which a landlord has a non-delegable duty to maintain. The Court found that the undisputed evidence in the record showed that the landlord did not enjoy the sort of control over the driveway which would give rise to a duty of care.

The Court then employed the balancing test of Hopkins v. Fox & Lazo Realtors, 132 N.J. 426 (1993) and concluded that the analysis of the Hopkins factors dictated that fairness precluded the landlord's liability for plaintiff's injuries. The Court noted that the landlord had no relationship with the plaintiff. The Court noted that the tenant had control over the driveway and the tools on hand to eliminate the risk of snow and ice. The Court noted that it would be impractical to require the landlord to prevent harm caused by snow and ice on property it did not control. Finally, the



Court noted that since plaintiff could recover from the tenant, there was no concern from a public policy perspective that plaintiff would be left without recourse.