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# Civil Practice Update

## *All the Law That's Fit to Print*

by Michael J. Epstein

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**Does A Condominium Association Have A Responsibility to Shovel Snow?** For those of you saying didn't we discuss this before, you would be correct. No, this is not *deja vu*, and I have not lost my mind (at least not yet). The answer to the question remains NO according to the Supremes. See Luchejko v. Hoboken, 207 N.J. 191 (2011). In affirming the Appellate Division's ruling, the Supremes held that the residential/commercial dichotomy governs condominium liability for sidewalks adjacent to the condominium structure, and that a sidewalk adjacent to a 104-unit condominium was residential. Thus, under Stewart v. 104 Wallace Street Inc., 87 N.J. 146 (1981), and its progeny, the condominium association was not liable for the plaintiff's fall. The Supremes also concluded that the management company could not be liable because it owed no duty to plaintiff as the agent of the association, which had no such duty. The ruling respecting the management company is puzzling – the management company is hired to manage and maintain the building and its surrounding areas. As a result, the management company contracts with a snow removal company. If the sidewalk is dangerous, how can the

management company be immunized because the owner is residential when the company's sole purpose is to maintain and manage the property? Practice Tip: Before you file a claim against a condominium association for a fall on snow or ice, make sure you identify the snow removal companies.

### **Is A Housing Authority Immune From Liability For Its Snow Removal Activities?**

For those of you who said yes because of the Tort Claims Act and/or because of weather-condition immunity, you would be wrong. In Tymczyszyn v. Columbus Gardens, 422 N.J. Super. 253 (App. Div. 2011), the Appellate Division reversed a trial court's grant of a motion for summary judgment where the Hoboken Housing Authority engaged in snow and ice removal on a sidewalk abutting a residential property owned by the Authority. The Appellate Division first explained that the weather immunity under N.J.S.A. 59:4-7 applies only to streets and highways, and not to other pieces of public property. In addition, the panel held that as a landlord, the Housing Authority had a duty to maintain its sidewalk free of ice and snow. Thus, the panel concluded that a jury had to determine

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whether a public employee created the dangerous condition of ice on the sidewalk through negligent acts or omissions. In this case, the plaintiff created an issue of fact because the snow was accumulated on both sides of the sidewalk.

**Is A 74-Day Extension Of The Discovery End Date Sufficient When A Defendant Is Added Near The End Of Discovery?** For those of you who said yes, you would be wrong. See Gresh v. ABC Building Solutions, Inc., A-2622-10T4, Slip Op. Oct. 25, 2011. In Gresh, the deposition of a defendant occurred near the end of the discovery end date because the defendant adjourned the depositions several times. As a result, the plaintiff learned the identity of a key defendant late in the game, and moved to add the defendant, which the trial granted, but extended the DED for only seventy-four days and stated in the order that no further extensions were likely to be granted. Ultimately, plaintiff was unable to conduct discovery in the short extension because the answer was filed late. The case was then dismissed on summary judgment because the plaintiff did not produce an expert report. The Appellate Division made it clear

that the short extension was insufficient given the reality of practice – when a motion to amend to add a party is granted, time is required to serve the amended complaint, to answer the amended complaint, and to conduct discovery. At the end of the opinion, the Appellate Division also took issue with the trial court's use of a trial date to alter the standard for extending discovery end dates from good cause to exceptional circumstances. As previously noted, the standard to extend a DED is good cause so long as a date for an arbitration or trial has not been set. Many orders extending DEDs include an arbitration and trial dates to limit the practitioners' right to extend discovery. This case provides an excellent example that not all cases are alike, and that trial courts should be encouraged to exercise their discretion when examining requests to extend a DED rather than applying a formula to deny the motion.

**Contributions.** If you have an interesting case, rule interpretation, ethics issue, or civil-related story, please contact me at (201) 845-5962, (f) (201) 845-5973, or e-mail [mjepstein@theepsteinlawfirm.com](mailto:mjepstein@theepsteinlawfirm.com).

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