IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

THE HARFORD MUTUAL INSURANCE COMPANY, A/S/O DANIEL BECKER,	:	C.A. No. K13C-01-009WLW
Plaintiffs,	:	
v.	:	
JEFFREY M. WEINER, MAX E. WEINER, and DAVE HALL, INC.,	:	
Defendants.	:	

Submitted: June 26, 2014
Decided: July 15, 2014

ORDER

Upon Defendants Jeffrey and Max Weiner's Motion for Summary Judgement. *Denied.*
Upon Defendant Dave Hall, Inc.'s Motion for Summary Judgment. *Denied.*
Upon Defendants Jeffrey and Max Weiner's Motion to Strike Portions of Plaintiff's Answering Brief. *Denied.*

Mary E. Sherlock, Esquire of Weber Gallagher Simpson Stapleton Fires and Newby, LLP, Dover, Delaware; attorney for Plaintiff.

Arthur D. Kuhl, Esquire of Reger Rizzo & Darnall, LLP, Wilmington, Delaware; attorney for Defendants Jeffrey M. Weiner and Max E. Weiner.

Susan List Hauske, Esquire of Tybout Redfearn & Pell, Wilmington, Delaware; attorney for Defendant Dave Hall, Inc.

INTRODUCTION

This subrogation case involves a slip-and-fall accident suffered by a laborer at a job site. Specifically, the accident allegedly occurred on a snow-covered walkway, the laborer was the employee of a subcontractor, and the job site was a residence undergoing renovations at the behest of the homeowners.

The homeowners, Defendants Jeffrey and Max Weiner (individually "Jeffrey W." and "Max W.," collectively "the Weiners") have filed the instant motion for summary judgment on the grounds that the Weiners had no responsibility for job site safety and were not in control of the premises. Additionally, the Weiners have filed a motion to strike portions of the answering brief filed by the Plaintiff, The Harford Mutual Insurance Company (hereinafter "Plaintiff"), on the grounds that Plaintiff's answering brief references an inadmissible subsequent remedial measure.

The general contractor for the renovation project, Defendant Dave Hall, Inc. (hereinafter "Dave Hall") has also moved for summary judgment, on the basis that, as general contractor for the renovation project, Dave Hall owed no duty to protect the subcontractor's employee. Dave Hall further contends that no recognized exception allowing for general contractor liability applies in this case.

The Court has carefully considered the submissions of the parties, including the deposition transcripts provided by each party. For the reasons set forth below, the Weiners' motion for summary judgment, as well as their motion to strike portions of Plaintiff's answering brief, are DENIED. Dave Hall's motion for summary judgment is also DENIED.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff has filed the instant subrogation action for workers compensation benefits paid by Plaintiff's insured, Robert Mullin HVAC Contractors (hereinafter "Mullin") to a former employee, Daniel Becker (hereinafter "Becker"). Becker received workers compensation for injuries sustained in a slip-and-fall accident that occurred at a Wilmington property owned by the Weiners.

Mullin was hired as a subcontractor by Dave Hall for the Weiners' renovation project. The renovations commenced in the fall of 2010 and lasted until late 2011. While the renovations were ongoing, neither Jeffrey W. nor Max W. resided at the property during the renovation. Max W. lived in Colorado at the time, while Max's father, Jeffrey W., lived at his home elsewhere in Wilmington. The Weiners jointly owned the renovated property, and according to Jeffrey W., the property was purchased for Max W. to ultimately reside in once the renovations were complete. William Michelinie (hereinafter "Michelinie"), Dave Hall's on-site supervisor for the project, and Robert T. Mullin, Jr. (hereinafter "Robert M."), principal of Mullin, considered the house to be vacant. Becker also believed the house to be vacant. The Weiners had no contact with any representative of Mullin, including Robert M. and Becker, at any time during the renovations. Over the course of the renovations, the Weiners would periodically visit the job site. Jeffrey W. believed he had been there on two or three occasions but never actually went inside the property. Max W. had been in the area every few months during the renovations, but Jeffrey W. was not sure whether or to what extent Max W. visited the property.

At some point, Jeffrey W. gave a key to Dave Hall to use to access the property. The key was hidden under a rock in the backyard for workers, including Mullin employees, to use to get inside the house. Michelinie and other Dave Hall employees maintained a work log detailing every date on which someone with Dave Hall would visit the property and the work that was conducted. Dave Hall employees were at the renovation site multiple times prior to January 10, 2011, including on four consecutive days from January 4 through January 7. According to the work log, Michelinie was to meet with a representative of Mullin on January 10 about installing a new gas line. In his deposition, Michelinie stated that the meeting occurred that day, but he could not recall exactly when. Michelinie did not see Becker there nor recalled having any conversations about Becker.

On January 10, 2011, Becker and another Mullin employee, Patrick Mullin (hereinafter "Patrick M.") went to the property to install a heater. On the morning of January 10, there were no other workers present at the site besides Becker and Patrick M. Becker noticed a "few inches" of snow on the ground. Becker used the key hidden under the rock to enter the house through the back door and unlocked the front door in order to bring in the heater. The front door pathway was covered with snow but Becker took no steps to clear it because it was "just not our job description" and Becker thought it was "only about an inch or two of snow." Becker retrieved tools from his truck and made his way towards the front door through the snow-covered pathway, at which point he fell and sustained injuries. Patrick M. told Becker afterwards that there was ice underneath the snow, and told Becker that was likely

how Becker fell.

The Weiners, Dave Hall, and Mullin never reached any kind of agreement regarding who would be responsible for snow removal. During the prior dealings between Dave Hall and Mullin, neither company ever discussed who would be responsible for snow removal during a project. Becker did not believe it was his responsibility to remove the snow. Robert M. did not expect the Weiners to be responsible for snow removal because the house was vacant, and stated during his deposition that the normal procedure would be for subcontractors such as Mullin to "remove the snow at [their] expense" in order to access the job site. Robert M. clarified that there was no contractual responsibility for Mullin to remove snow and ice or otherwise maintain the property.

Michelinie stated during his deposition that there was never any understanding or discussion that either Mullin or the Weiners would be responsible for snow removal, nor did Michelinie have any general idea how the snow would have been removed. Jeffrey W. believed that Dave Hall, as general contractor, would be responsible for removal because "control of the premises was given to Dave Hall, Inc. in connection with the construction project." Jeffrey W. further testified during his deposition that he would expect the subcontractors to "not go on the property" if there were issues with snow or ice if there was no prior approval by or discussion with the general contractor. Jeffrey W. believed that a subcontractor such as Mullin would "do whatever is necessary to act safely" if confronted with snow or ice on the premises.

Becker ultimately received workers compensation for his injuries. Plaintiff filed the instant subrogation action on January 7, 2013 against the Weiners and Dave Hall. Both defendants now move for summary judgment. The Weiners argue that, as homeowners of a vacant construction site, they had no control over the property nor any responsibility to Becker. Dave Hall argues that, as general contractor, it owed no duty to Becker and did not have any possessory control over the job site.

As to the Weiners' motion, Plaintiff argues that the Weiners owed a duty to business invitees such as Mullin to inspect and maintain the property for hazards such as snow and ice. Plaintiff also contends that the Weiners' argument that they relinquished control of the residence to Dave Hall is belied by a subsequent contract for snow removal the Weiners entered on January 27, 2011, after Becker's fall. Plaintiff contends that the Weiners' subsequent contracting for snow removal services illustrates that the Weiners did in fact have control over the premises.

Following Plaintiff's response, the Weiners filed a motion to strike portions of Plaintiff's response. Specifically, the Weiners contend that Plaintiff's reference to the January 27 snow removal contract is a subsequent remedial measure that is inadmissible under the Delaware Uniform Rules of Evidence. The Weiners argue that while there is an exception allowing for such evidence when control is controverted, such exception does not apply in the instant case.

As to Dave Hall's motion, Plaintiff responds that Dave Hall did in fact have possessory control of the house during Mullin's work on the renovation project, and thus owed a duty to Becker. Plaintiff also argues that Dave Hall is liable because

Dave Hall undertook responsibility for safety measures on the site. Specifically, Plaintiff points to Dave Hall's installation of basement steps and a handrail, which Plaintiff argues was done to ensure the safety of Mullin employees in accessing the basement in order to install a new heater.

STANDARD OF REVIEW

Summary judgment will be granted when, viewing all of the evidence in the light most favorable to the nonmoving party, the moving party demonstrates that "there are no material issues of fact in dispute and that the moving party is entitled to judgment as a matter of law."[1] This Court shall consider the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any" in deciding the motion.[2] The moving party bears the initial burden of demonstrating the nonexistence of material issues of fact; the burden then shifts to the nonmoving party to show that there are material issues of fact in dispute.[3] The Court views the record in the light most favorable to the nonmoving party.[4] When material facts are in dispute, or "it seems desirable to inquire more thoroughly into the facts, to clarify the application of the law to the circumstances," summary

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[1] *Burkhart v. Davies*, 602 A.2d 56, 59 (Del. 1991 (citing *Benge v. Davis*, 553 A.2d 1180, 1182 (Del. 1989)); *see also* Del. Super. Ct. Civ. R. 56(c).

[2] Del. Super. Ct. Civ. R. 56(c).

[3] *Fauconier v. USAA Cas. Ins. Co.*, 2010 WL 847289, at *2 (Del. Super. Mar. 1, 2010) (citing *Moore v. Sizemoore*, 405 A.2d 679, 680 (Del. 1979)).

[4] *Id.* (citing *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995)).

judgment will not be appropriate.[5] However, when the facts permit a reasonable person to draw but one inference, the question becomes one for decision as a matter of law.[6]

DISCUSSION

General rule of owner's and general contractor's non-liability to independent contractor's employees and the recognized exceptions

As observed by the Supreme Court in *Handler Corp. v. Tlapechco*,[7] the law regarding the duties owed by a home owner and general contractor to the employee of an independent contractor is well-established:

> Generally, an owner or general contractor does not have a duty to protect an independent contractor's employees from the hazards of completing the contract. There are, however, recognized exceptions to this general rule in Delaware common law. Specifically, a general contractor has a duty to protect an independent contractor's employees when the general contractor: (1) actively controls the manner and method of performing the contract work; (2) voluntarily undertakes the responsibility for implementing safety measures; or (3) retains possessory control over the work premises during work.[8]

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[5] *Ebersole v. Lowengrub,* 180 A.2d 467, 468-69 (Del. 1962) (citing *Knapp v. Kinsey*, 249 F.2d 797 (6th Cir. 1957)).

[6] *Wootten v. Kiger*, 226 A.2d 238, 239 (Del. 1967).

[7] 901 A.2d 737 (Del. 2006).

[8] *Id.* at 743 (internal quotations and citations omitted).

General superintendence over an independent contractor's work does not rise to the level of "active control" sufficient to trigger an owner's or general contractor's duty to provide a safe workplace for the subcontractor.[9] The right of control "must go directly to manner or methods used by the independent contractor in his performance of the delegated tasks."[10] Similarly, a general contractor's supervision of safety conditions and reporting of unsafe conditions to the independent contractor does not constitute an assumption of a duty to protect the safety of the independent contractor's employees.[11] However, when the general contractor assumes any responsibility for subcontractor employee safety, it has an obligation to fulfill that duty with care.[12] As to the third recognized exception, possessory control has been found to not have been exercised over the subcontractor's work area when no employees of the general contractor were present at the time of the subcontractor employee's injury and when the possessor of the property had turned over the keys to the property to the subcontractor.[13]

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[9] *Cox v. Biddle*, 2002 WL 31814545, at *1 (Del. Super. Nov. 20, 2002) (citing *Seeney v. Dover Country Club Apartments, Inc.*, 318 A.2d 619, 621 (Del. 1974)).

[10] *Seeney*, 318 A.2d at 621.

[11] *Urena v. Capano Homes, Inc.*, 930 A.2d 877, 878 (Del. 2007).

[12] *Tlapechco*, 901 A.2d at 747.

[13] *Id.* at 749.

The above rules do not subsume the possessor of land's duties owed to the independent contractor's employee as a business invitee

The *Tlapechco* Court declined to expand upon the three recognized exceptions to the general rule of non-liability.[14] However, the Superior Court in *Seeney v. Dover Country Club Apartments, Inc.* recognized that the possessor of land, notwithstanding the above rules, could still be liable to an independent contractor's employees on the basis of premises liability.[15] An independent contractor employed by the possessor of land is considered a "business invitee" while engaged in the performance of his duties on the land.[16] Accordingly, the independent contractor is owed a duty by the possessor of land "to maintain the premises in a reasonably safe condition and to warn them of all defects of which he knows or has reason to know."[17] The possessor of land does not owe these duties to the independent contractor "where the contractor and the possessor are equally knowledgeable of the defective conditions existing on the property. . .or where the defective conditions are created by the work of the independent contractor or his employees."[18]

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[14] *Id.* at 743-44 (rejecting trial judge's "obvious safety hazard exception" as a fourth exception allowing for general contractor liability).

[15] *See Seeney*, 318 A.2d at 622.

[16] *Id.* (citing *Fahey v. Sayer*, 106 A.2d 513, 515 (Del. 1954)); *see also Vorous v. Cochran*, 249 A.2d 746, 747 (Del. Super. 1969).

[17] *Id.*

[18] *Id.* at 623 (internal citations omitted).

The Superior Court's decision in *Woods v. Prices Corner Shopping Ctr. Merchants Ass'n*[19] discussed the scope of the landowner's or occupier's duty to business invitees to protect them from natural accumulations of ice and snow.[20] After analyzing the different approaches taken by states concerning this issue, the *Woods* Court concluded that landowners have an "affirmative duty" to business invitees "to keep the premises reasonably safe from the hazards associated with the natural accumulations of ice and snow."[21] This is not an absolute duty, and the measures taken by the landowner are subject to a reasonable person standard.[22] Merely warning the invitee of the danger is not enough to discharge the landowner's duty.[23] The landowner is entitled to wait until a reasonable time after the snowfall to clear the accumulation of ice and snow; the reasonableness of any delay by the landowner in taking the required actions "should be treated as would any question of fact."[24]

The Court notes the obvious distinction from the case *sub judice* that *Woods* did not involve a private home renovation, but rather the parking lot of a public

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[19] 541 A.2d 574 (Del. Super. Apr. 7, 1988).

[20] *Id.* at 575-78.

[21] *Id.* at 577-78.

[22] *Id.* at 578.

[23] *Id.* at 577.

[24] *Id.* at 578.

shopping center.[25] This distinction played a part in some respects in the *Woods* decision, as evidenced by that Court's occasional reference to the landowner as "business owner" and the statement that the affirmative duty to keep the premises reasonably safe arises from the landowner's "implied invitation to the public to come upon the land for the mutual benefit of the public and the landowner. . . ."[26] However, the *Woods* decision itself was an expansion upon prior Delaware law that had only been applied in the context of the landlord-tenant relationship, and the *Woods* Court stated that the rule that a landowner owes an affirmative duty to make a premises reasonably safe from natural accumulations of ice and snow "should apply to all persons which fall within the category of 'business invitee' as that term is defined and applied by the statutory and decisional law of this state."[27]

Based on the foregoing, the Court concludes that under *Woods*, in the context of a private residence undergoing renovations, it is not unreasonable to require the possessor of the property to have the duty to make hazardous conditions caused by the accumulation of snow and ice reasonably safe. This is a distinct analysis from the general rule of nonliability and the recognized exceptions under *Tlapechco,* and is in no way an additional exception to the general rule of nonliability under *Tlapechco*, which rejected the lower court's attempt to add a fourth exception to the rule.

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[25] *Woods*, 541 A.2d at 575.

[26] *Id.* at 577-78.

[27] *Id.* at 577.

Further, this holding is consistent with the *Seeney* Court's holding that a possessor of land may still be liable for breaching its duty to independent contractors as business invitees, provided that the possessor and subcontractor are: (1) not equally knowledgeable of the hazardous condition (in this case, the natural accumulation of snow ice); and (2) the subcontractor or its employees did not create the hazardous condition.

The possessor of land for the purposes of premises liability will generally be the property owner, and thus the analysis will usually be relatively straightforward. However, the analysis becomes more difficult where, as here, the owners contend that they have relinquished control and possession of the property to the general contractor. The Court further notes that "possessor of land," in the broad sense for purposes of determining liability under *Woods*,[28] is distinct from "possessory control" in the context of the third recognized exception to nonliability under *Tlapechco*, which restricts the question of possessory control to a "defined work area."[29] In other words, failing to meet the third exception under *Tlapechco* does not necessarily mean that no affirmative duty to make natural accumulations of ice and snow reasonably safe is owed under *Woods*.

In determining the instant motions for summary judgment (as well as the

[28] "Possessor of land" for the purposes of premises liability entails "owners who are in actual possession of the property" as well as possessors "who physically control and exercise dominion over identifiable real interests." *Stratford Apartments, Inc. v. Fleming*, 305 A.2d 624, 626 (Del. 1973).

[29] *Tlapechco*, 901 A.2d at 749.

Weiners' motion to strike portions of Plaintiff's answering brief), the Court finds it helpful to consider each defendant separately, and to: (1) first address whether the Weiners or Dave Hall owed a duty to Becker under *Tlapechco*; then (2) address whether the Weiners or Dave Hall owed a duty to Becker under *Woods*.

There are material issues of fact regarding whether the Weiners owed a duty to Becker

The Weiners do not satisfy any of the three exceptions under *Tlapechco*. As to the first exception, the Weiners did not actively control the manner or method of Becker's work. The Weiners only visited the work site periodically. It is unclear how often Max W. visited the site, and according to his deposition, Jeffrey had only been to the site on two or three occasions prior to Becker's fall. Jeffrey did not recall going inside the property during any of those visits. Further, it does not appear that the Weiners had any meaningful contact with Mullin whatsoever. It is evident from the record that the Weiners did not exercise the high level of control needed to trigger this exception.

As to the second exception–voluntarily undertaking safety measures–the only action taken by the Weiners that could be considered to fall within this exception is the snow removal contract the Weiners entered into after Becker's accident. The Weiners argue that this is an inadmissible subsequent remedial measure that cannot be considered by the Court. The Weiners are correct that under the Delaware Uniform Rules of Evidence, measures taken after an injury that, if taken previously, would have made the injury less likely to occur are inadmissible to prove

negligence.[30] However, such measures are not inadmissible when offered for a proper purpose, "such as proving ownership, control or feasibility of precautionary measures, if controverted, or impeachment."[31] Control is controverted in this case–Jeffrey W. specifically testified during his deposition that "control of the premises was given to Dave Hall, Inc. in connection with the construction project." Further, the Weiners' motion for summary judgment focuses in large part on the issue of control, in that the Weiners contend that they exercised no actual control over the property. Accordingly , the issue of control is controverted, and evidence of the subsequent snow removal contract is admissible. It follows that the Weiners' motion to strike portions of Plaintiff's answering brief must be denied. As the subsequent snow removal contract is relevant to whether the Weiners voluntarily assumed responsibility for safety measures, there is a genuine issue of material fact regarding the second *Tlapechco* exception.

As to the third *Tlapechco* exception, it is arguable that the work area in this case encompasses the front-door walkway. Strictly speaking, the work area was the basement where the heater was to be installed. If the front-door walkway was merely to be used as a means of ingress to the basement, under the restrictive scope of the third exception, that would not fall within the rule and give rise to a duty. However, if the front-door walkway was the only means by which Patrick M. and Becker could

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[30] D.R.E. 407.

[31] *Id.*

transport the new heater into the building and to the basement, it may be considered to be a part of the work area. If so, the subsequent snow removal contract entered into by the Weiners could prove relevant to establishing possessory control. Thus, there is a material issue of fact as to this exception as well.

Finally, for the same reasons, there are material issues of fact as to whether the Weiners exercised control over the property, in the broad sense, for the purposes of premises liability and the duty under *Woods* to make natural accumulations of ice and snow reasonably safe for business invitees such as Becker. The snow removal contract could be used as evidence of such control. As explained *infra* in regards to Dave Hall's motion, there is no evidence in the record to reflect that Mullin and the Weiners were equally knowledgeable of the hazardous condition, as no one had the same understanding regarding who would be responsible for snow removal. There is also nothing in the record to indicate that Mullin or its employees created the hazardous condition.[32]

For the foregoing reasons, the Weiners' motion for summary judgment must

[32] The Court notes that the two factors noted in *Seeney* do not lend themselves well to an analysis when the hazardous condition is the natural accumulation of ice and snow. If the parties are equally knowledgeable as to *who* would be responsible for the removal of ice and snow, or if all the parties are aware of the accumulation and ignore it, those would be scenarios where this factor precludes liability under *Woods*. As to the creation of the hazardous condition, because precipitation is natural, that factor would logically not apply to situations such as the present case. No party has suggested, and the Court declines to accept, that this factor should be construed narrowly as meaning that the failure of the subcontractor or employee to remove the snow or ice constitutes creation of the hazardous condition. The failure to act reasonably in the face of a hazardous condition is an issue of comparative negligence, not the creation thereof.

be DENIED. As previously stated, the Weiners' motion to strike portions of Plaintiff's answering brief is also DENIED.

There are material issues of fact as to whether Dave Hall owed a duty to Becker

As to the first *Tlapechco* exception, it is clear that Dave Hall exercised more active control over Mullin's work than the Weiners. Employees of Dave Hall were there frequently in the days leading up to Becker's fall, and Michelinie was supposed to meet with Mullin the day of the accident, though Michelinie (nor any other Dave Hall employee) appears to not have been present when Becker fell. However, at best, this control can only be described as general superintendence, and does not rise to the high level needed to trigger the exception. The first recognized exception to nonliability does not apply to Dave Hall.

As to the second exception, there are material issues of fact. Dave Hall installed stairs and a handrail in the basement. According to Plaintiff, this was done in order to ensure the safety of Mullin's workers in carrying the new heater to the basement. This could be considered to be undertaking a responsibility for the Mullin contractors' safety. Conversely, there could be reasons unrelated to the safety of Mullin's workers why the stairs and handrail were needed–*e.g.*, to facilitate transportation of the heater to the basement. Thus, this presents a material issue of fact–both as to whether the installation of the stairs and handrail constituted an assumption of responsibility for workplace safety, and, even if it did, whether that translates to assuming a responsibility for the condition of the front-door walkway as well.

As to the third *Tlapechco* exception, summary judgment is also inappropriate. It is true that no one from Dave Hall was present at the time of the accident, and that Dave Hall had left the keys to the property for Mullin to use. These factors support finding no possessory control was exercised by Dave Hall over the work area. However, the installation of the stairs and handrail supports application of this exception as an exercise of possessory control. If the work area can be considered as including the front-door walkway, then this exception may not apply–it appears from Michelinie's deposition that Dave Hall did not consider itself responsible for the walkway. Thus, even when construing the record in the light most favorable to Dave Hall, there is a genuine issue of material fact as to whether this exception applies.

As to whether Dave Hall could be considered the possessor of the property for the purposes of the *Woods* rule, there are also issues of material fact. The Court stresses again that possessory control for the purposes of premises liability is distinct from the limited possessory control under the third *Tlapechco* exception. Dave Hall's receipt of the key to the property by Jeffrey W., Dave Hall's frequent presence at the property, and the installation of the stairs and handrail could all lead a reasonable fact finder to conclude that Dave Hall was in actual possessory control of the property, and thus was responsible for making the accumulation of ice and snow on the front-door walkway reasonably safe for workers to use.

The record reflects that the owners, general contractor, and subcontractor in this case each had a different belief as to who was responsible for maintaining the property. Michelinie, Becker, and Robert M. each considered the property to be

vacant. Jeffrey W. believed that the Weiners had relinquished control of the property to Dave Hall, yet then took on the responsibility of entering a snow removal contract after Becker's fall. Further, Jeffrey W. believed that Dave Hall was responsible for snow removal; Michelinie did not believe there was any understanding at all as to who would be responsible for snow removal nor did he know who would be responsible; Becker did not believe that Mullin, as the subcontractor, would be responsible for snow removal; and Robert M. believed that Mullin *was* responsible for clearing the snow at their own expense. The complete failure of any of these parties to reach a mutual understanding or contractual arrangement regarding snow removal is somewhat surprising given the relative sophistication and experience of the parties. It cannot be said that there is no genuine issue of material fact when no single party had the same understanding regarding who was responsible for the removal of snow from the premises. Thus, there is an issue of material fact as to who was the possessor of the property under *Woods* who would owe a duty to Becker to make the accumulation of ice and snow reasonably safe.

Based on the foregoing, summary judgment is not appropriate as to Dave Hall. Accordingly, Dave Hall's motion for summary judgment is DENIED.

CONCLUSION

The Weiners' motion for summary judgment is **DENIED.** Dave Hall's motion for summary judgment is **DENIED.** The Weiners' motion to strike portions of Plaintiff's answering brief is also **DENIED**.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh