SUPREME COURT OF NEW JERSEY
C-382 September Term 2019
083003

Janet Dixon,

Plaintiff-Petitioner,

FILED
FEB 13 2020
Heather J. Baker
CLERK

v. ORDER

HC Equities Associates, LP,

Defendant-Respondent.

A petition for certification of the judgment in A-005756-17 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at Trenton, this 13th day of February, 2020.

Heather J. Baker
CLERK OF THE SUPREME COURT

CHIEF JUSTICE RABNER and JUSTICES LaVECCHIA, PATTERSON, FERNANDEZ-VINA, SOLOMON, and TIMPONE join in this Order.
JUSTICE ALBIN filed a dissent.

JUSTICE ALBIN dissents from the Order.

I would grant certification because the petition raises an issue of general public importance that has never been addressed by this Court. See R. 2:12-4. The question simply put is whether the owner of a commercial building owes a duty to a building's tenants, visitors, and the general public to make a reasonable effort to render safe the sidewalks leading to a parking lot while there is still sleet or snow falling. The Appellate Division has responded that there is no such duty by mistakenly suggesting that this Court has spoken to this issue through its precedents.

Whatever the ultimate conclusion should be, the issue is one of first impression for our Court and worthy of our review. Therefore, I respectfully dissent from the denial of certification.

I.

On March 3, 2015, plaintiff Janet Dixon, a Union County Senior Probation Officer, went to work in an office building owned by defendant HC Equities Associates, LP, located in Elizabeth. Her shift ended that evening at 7:00 p.m. At approximately 5:15 p.m., a mix of freezing rain and snow began to fall and stick to the ground -- as predicted by weather reports. Shortly after 7:00 p.m., while it was snowing, Dixon left the building and walked toward her car on the snow- and ice-covered sidewalk that led to the rear parking lot.

After it began to snow and sleet, the building's live-in maintenance manager made no effort to salt or shovel the sidewalk that Dixon was required to traverse to get to the parking lot. While making her way on the sidewalk, Dixon slipped on the snow and ice, falling and fracturing her hip.

Dixon filed a personal-injury lawsuit, alleging that defendant negligently maintained its grounds, breaching its duty to make reasonable efforts to ensure the safety of its tenants. Based on the facts described, the trial court granted summary judgment in favor of defendant, finding that defendant had no duty to clear the pathway until the snow had stopped falling.

II.

The Appellate Division affirmed, holding that a commercial landowner owes no duty to its tenants or the public to take reasonable steps to remove snow or ice from its pathways until a reasonable time after the precipitation stops. In support of that approach, the Appellate Division cited Qian v. Toll Bros. Inc., 223 N.J. 124 (2015), Mirza v. Filmore Corp., 92 N.J. 390 (1983), and Bodine v. Goerke Co., 102 N.J.L. 642 (E. & A. 1926). Not one of those cases, however, supports the proposition that a commercial landowner has no duty to make any effort to clear its walkways until a reasonable time after sleet or snow stops falling.

Qian merely held that a homeowners' association and its management company had a duty to clear snow and ice from the community's private sidewalks. 223 N.J. at 127, 142. Nothing in that opinion suggests that the duty is triggered only after snow and ice stop falling.

Mirza held that a commercial landowner's responsibility for maintaining an abutting public sidewalk in a reasonably safe condition extended to a duty to clear snow and ice from the walkway "in a reasonably prudent manner under the circumstances to remove or reduce the hazard." 92 N.J. at 395. The Court stated that the duty to act is not triggered until a reasonable time after the commercial landowner has received notice of the unsafe condition or hazard. Id. at 395-96. Mirza does not indicate that the commercial landowner can wait a reasonable time after the snow or ice stops falling before it has a duty to make efforts to render the walkway reasonably safe.

In Bodine, while it was snowing, Wilma Bodine fell on the slushy ground in front of the defendant's commercial store, breaking her arm. 102 N.J.L. at 642-43. Bodine alleged in her complaint that the defendant was negligent for "allow[ing] snow to remain on the store entrance or approach for an unreasonable length of time having notice thereof; that it would be slippery and dangerous to persons using the same." Id. at 643. The Court of Errors and Appeals vacated a jury verdict in favor of Bodine, evidently because Bodine

did not prove the allegations in the complaint. Id. at 644. No expansive declaration of law can be discerned from the spare two-page opinion, and absent from the opinion is any definitive holding that a commercial landowner has no duty to render safe a business entrance of snow or ice until precipitation has ceased.

This is at least the third unpublished Appellate Division opinion, which, in my judgment, misconstrues Qian, Mirza, and Bodine and holds that a commercial landowner owes no duty to tenants or the public to make a reasonable effort to remove snow or ice from a sidewalk until sleet or snow ceases.

Jurisdictions have reached different outcomes in deciding whether a commercial landowner has a duty to make reasonable efforts to render safe a walkway covered with snow or ice while precipitation is still falling. The majority rule is that a commercial landowner owes no duty to remove snow or ice until a reasonable time after the precipitation ends. See, e.g., Kraus v. Newton, 558 A.2d 240, 243-44 (Conn. 1989); Laine v. Speedway, LLC, 177 A.3d 1227, 1229-31 (Del. 2018); Reuter v. Iowa Tr. & Sav. Bank, 57 N.W.2d 225, 227 (Iowa 1953); Mattson v. St. Luke's Hosp., 89 N.W.2d 743, 745 (Minn. 1958); Solazzo v. N.Y.C. Transit Auth., 843 N.E.2d 748, 749 (N.Y. 2005); Goodman v. Corn Exch. Nat'l Bank & Tr. Co., 200 A. 642, 643 (Pa.

1938); Benaski v. Weinberg, 899 A.2d 499, 503 (R.I. 2006); Walker v. Mem'l Hosp., 45 S.E.2d 898, 902 (Va. 1948). The majority rule -- the ongoing-storm rule -- is premised on the ground that it is impracticable and inexpedient to impose a duty on a commercial landowner to remove snow or ice from a walkway while a storm is in progress. See Newton, 558 A.2d at 243; Walker, 45 S.E.2d at 902.

The minority rule is that a commercial landowner has a duty to take reasonable steps to render a walkway -- covered by snow or ice -- reasonably safe for its invitees, considering all of the circumstances, even when precipitation is still falling, with the ultimate question of liability to be decided by the jury. See, e.g., Carter v. Bullitt Host, LLC, 471 S.W.3d 288, 299-300 (Ky. 2015); Budzko v. One City Ctr. Assocs. Ltd. P'ship, 767 A.2d 310, 314 (Me. 2001); Henderson v. Reid Hosp. & Healthcare Servs., 17 N.E.3d 311, 318-19 (Ind. Ct. App. 2014); Lundy v. Groty, 367 N.W.2d 448, 449-50 (Mich. Ct. App. 1985). The minority rule's rationale, as exemplified in Budzko, is that the owner of a commercial building "who anticipates that 500 to 1000 invitees may enter and leave its premises during a snow or ice storm has a duty to reasonably respond" during the storm when there is a foreseeable danger posed to the invitees. See Budzko, 767 A.2d at 312, 314.

III.

The petition before us meets the standard for granting certification, posing "a question of general public importance which has not been but should be settled by" this Court. R. 2:12-4. The Appellate Division did not consider any of the out-of-state cases that have adopted or rejected the ongoing-storm rule but, instead, in my view, erroneously concluded that our precedents answered the question. I do not express an opinion on how the question should be answered.

Despite the denial of certification, the Appellate Division -- in an appropriate case -- may revisit the erroneous use of our precedents and address the issue anew in light of the competing rationales presented by cases in other jurisdictions.