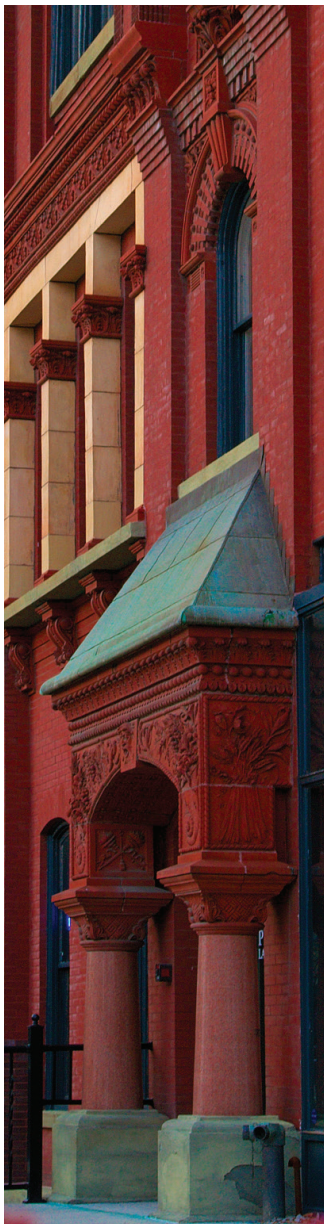
plf
the perry law firm llc.

NEWSLETTER

MAY 2013

The goal of our monthly newsletter is to keep you abreast of changes in the legislature affecting your industry as well as important court decisions. Should you have any questions regarding any of this information, please feel free to contact us via phone or email.



The Pennsylvania Superior Court Affirms Entry of Summary Judgment in Slip and Fall Case

The Superior Court, in a non-precedential opinion, recently affirmed a trial court's entry of summary judgment in a slip and fall case, Skulnik v. Tyreman, 805 EDA 2012, but affirmed on different grounds. The trial court found that the plaintiff failed to produce sufficient evidence to overcome the hills and ridges doctrine, which operates as a defense in slip and fall cases. The doctrine protects a landowner from liability when there are generally slippery conditions as a result of snow and ice and the landowner did not allow the snow and ice to unreasonably accumulate in ridges or elevations.

On appeal, Skulnik argued that the trial court failed to consider the evidence in the light most favorable to him because there was evidence that the ice on the driveway where Skulnik fell had tire track ridges on it. The pictures showed that the ice had unnaturally created craters and ridges. Further, Skulnik argued that it could be reasonably inferred, based on the sloped nature of the driveway, that the ridges in the ice were created over time as a result of freeze-thaw cycles. The Superior Court agreed with Skulnik that the trial court improperly disregarded this evidence when it entered summary judgment based on the hills and ridges doctrine.

However, the Superior Court determined that entry of summary judgment in favor of the defendant was appropriate based on evidence that the slippery condition of the driveway was open and obvious to Skulnik. Based on the photos, the icy section of the driveway was easily discernible, yet Skulkin chose to park there instead of the non-icy section. The tire track ridges were also easily visible. Further, the testimony established that Skulnik voluntarily chose to walk on the ice. The Court quoted the Pennsylvania Supreme Court's opinion, Carrender v. Fitterer, 469 A.2d 120, 125 (Pa. 1983), which states:

> "When an invitee enters business premises, discovers dangerous conditions which are both obvious and avoidable, and nevertheless proceeds voluntarily to encounter them, the doctrine of assumption of the risk operates merely as a counterpart to the possessor's lack of duty to protect the invitee from those risks… It is precisely because the invitee assumes the risk of injury from obvious and avoidable dangers that the possessor owes the invitee no duty to take measures to alleviate those dangers."

As a result, the Superior Court affirmed the trial court's entry of summary judgment in favor of defendant, but based on the open and obvious nature of the icy conditions.

For a copy of this opinion, please contact Elizabeth A. Giannotti, Esquire at Elizabeth@theperrylawfirm.com.

Scranton Office
305 Linden Street
Scranton, PA 18503
Phone: (570) 344-6323
Fax: (570) 344-6326

Bethlehem Office
87 S. Commerce Way | Suite 740
Bethlehem, PA 18017
Phone: (610) 694-1100
Fax: (610) 694-1120

www.theperrylawfirm.com