

NJ Appellate Division Holds Commercial Tenant In Shopping Center Is Not Responsible To Maintain An Area In the Parking Lot In Which the Landlord Is Contractually Obligated To Maintain.

The Appellate Division has held in Kandrac v. Marrazzo's Market at Robbinsville (A-6081-10T3) that a commercial tenant in a multi-tenant shopping center does not owe a duty to its patrons to maintain an area of the parking lot that the landlord is contractually obligated to maintain. The Court found that while the determination as to whether a duty exists remains a fact-sensitive inquiry, commercial tenants not in exclusive occupancy of a shopping center have no common law duty to maintain a parking lot shared with other tenants.

In this case, the plaintiff, Arlene Kandrac, tripped and fell in the parking lot at The Shoppes at Foxmoor, a 36-store shopping center owned by Foxmoor Associates. The fall occurred after she left defendant Marrazzo's store and walked across the roadway separating the shops from the parking area. She subsequently filed suit against the landowner and the store, alleging their negligence resulted in her injuries.

Marrazzo's lease provides "the [landlord] covenants and agrees that it shall maintain the common areas of the shopping center in good operating condition and repair . . ."

The Site Manager for the landlord testified that his responsibilities included "overseeing the maintenance of the shopping center, cleaning and maintenance." It was his understanding that the tenant did not have any responsibility to maintain the parking lot. A shopping center maintenance worker, who worked at the shop five days a week, testified that he inspected the parking lot each day to search for potholes. The owner of Marrazzo's testified that his store manager's duties included inspecting the parking area for safety issues. If an issue was discovered, they were to notify the landlord.

Marrazzo's motion for summary judgment was granted by the trial court, which found that as a commercial tenant in a multi-tenant facility, the store owed no duty of care to its invitee for an injury that occurred in the shopping center's common area. On appeal, the plaintiff argued that Marrazzo's had a duty to provide safe passage to and from its store.

The Court acknowledged the expansion of a duty on commercial landowners to provide patrons with safe ingress and egress, which includes maintaining the condition of a parking lot and the area between an owned establishment and a parking area. The Appellate Division also noted that case law extended this duty to commercial lessees who were exclusive occupants of a facility. However, in affirming the trial court's grant of summary judgment to Marrazzo's, the court refused to extend liability to commercial tenants in a multi-tenant shopping center when those

tenants do not have control over common areas, or an obligation, contractual or otherwise, to maintain such areas.

According to the Court, the policy reasons for expanding the duty of a commercial landowner set forth in Stewart v. 104 Wallace St., Inc., 87 N.J. 146 (1981), when applied in this case, did not warrant further expansion to commercial tenants. Likewise, while stating that contractual provisions in a lease requiring a landlord to maintain common areas will not necessarily relieve a commercial tenant of all duties to its customers regarding ingress and egress, the assignment of maintenance responsibilities significantly impact the ability of a tenant, such as Marrazzo's, to address conditions in common areas. Finally, the Court explained that innocent victims would not be left without redress, as it was clear in this case that the commercial landowner was liable for any negligence in maintaining the parking lot where the plaintiff fell.

- Thomas M. Reardon III