



OUT-OF-POSSESSION LANDLORD MAY BE LIABLE FOR PLAINTIFF'S SLIP AND FALL ON ICE WHICH FORMED ON THE STEP LEADING TO HER APARTMENT, DESPITE IT BEING PLAINTIFF'S RESPONSIBILITY TO REMOVE ICE AND SNOW FROM THE AREA (THIRD DEPT).

The Third Department, reversing Supreme Court, determined there was a question of fact whether defendant out-of-possession landlord is liable for plaintiff's slip and fall on ice on a step leading to her apartment, despite it being plaintiff's responsibility to remove ice and snow from the area. Plaintiff alleged the ice formed because of a leak in the porch roof:

... [P]laintiff contends that the condition that led to the formation of the ice patch was present and ascertainable for at least several days. ...

... "[A] landlord has a duty to use ordinary care to keep those areas which are reserved and intended for the common use of the tenants and owner of the building and subject to the landlord's control, i.e., the common areas, in a reasonably safe and suitable condition"

The roof here was not accessible or available for use by the tenants ... , but the record indicates that the exterior of the building may have been within defendants' control. Since purchasing the building in 1994, defendants had replaced the roof, replaced the gutter system along at least one side of the building and recoated part of the roof with tar. Defendant Timothy J. Charest, who was responsible for managing the property, testified that the gutter system was on the building when defendants purchased the property, but also testified that "if there were problems with a gutter" on the side of the building containing the apartment entrances, "there were repairs made," though he could not remember when any such repairs had been made. Charest testified that he inspected the property approximately weekly, as well as after every storm. He did not keep records of his inspections but would do them on a weekday; plaintiff's accident occurred on a Friday evening. Neither defendant could specifically identify when he had last inspected the property. [Harkins v Tuma, 2020 NY Slip Op 02145, Third Dept 4-2-20](#)