JUST IN TIME FOR NEXT WINTER- HOMEOWNER LIABILITY FOR PERSONAL INJURIES OCCURRING ON ADJACENT MUNICIPAL SIDEWALKS

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Like most New Englanders, I am up at the crack of dawn the morning after a predicted snowstorm in order to leave plenty of time for shoveling my driveway before the workday begins. My neighbors and I are sure to clear both the driveway for our use and the public sidewalk adjacent to our front yards for the use of mailmen and passers-by. "If only the roads were as clean as the sidewalks," we inevitably lament. The unspoken understanding is that the extra effort required to clear the sidewalks is necessary for anyone who does not wish to expose themselves to liability for a pedestrian's slip-and-fall related injury. A new Supreme Court decision in Connecticut seems to indicate, however, that a homeowner's liability for third-party injuries may depend upon the town in which she lives.

In *Robinson* v. *Cianfarani*, 314 Conn. 521, 107 A.3d 375, the Plaintiff was injured when she slipped on snow and ice on a municipal sidewalk owned by the Town of Enfield, which abutted the Defendants' property. The defendants moved for summary judgment (judgment as to liability without the need for trial) on the basis that they could not be held liable because they did not own the sidewalk, and no town ordinance or statute shifted the burden of liability for sidewalk injuries onto the homeowner. The Enfield Code of Ordinances §§ 9-10 through 9-12 call for civil and even criminal penalties if a homeowner fails to clear their sidewalk of snow and ice, but do not specifically transfer civil liability for third party claims from the municipality to the adjacent homeowner. The trial court granted summary judgment, and the plaintiff appealed.

As with any snow-related sidewalk slip-and-fall, the Supreme Court first looked to the precedent regarding municipal ordinances established by *Willoughby* v. *New Haven*, 123 Conn. 446, 197 A.85 (1937). The *Willoughby* Court stated: "[a]t common law there is no liability upon an abutting property owner for injuries resulting from the effects of natural causes upon streets or sidewalks such as the accumulation of snow or ice. Primarily it is the sole duty of the municipality to keep its streets in reasonably safe condition for travel, and not the duty of private persons. . . . . Therefore if the liability is or can be shifted from the municipality to the individual it must be accomplished by statutory or charter provision or by ordinance adequately authorized by such provision, and, being the creature of statute or such ordinance, it can be no greater than specifically imposed thereby." (Citations omitted.) *Id.,* at 451. This means that generally, one is not liable for accidents which occur on public land outside but adjacent to one's property, unless the town has passed a local rule shifting liability from the town to the property owner.

The Court further noted that the *Willoughby* decision similarly dealt with the existence of a town ordinance which imposed a penalty for failure to clear a sidewalk, but found that the existence of an ordinance creating a penalty cannot be used to *infer* that the adjacent homeowner would also be liable for third party injuries. (Emphasis added.) *Id.* at 454. Concluding its analysis of the *Willoughby* decision, the Court then stated that the legislature has since passed General

Statutes § 7-163a[1], which gives every municipality the choice to adopt its language and thereby transfer liability for sidewalk injuries caused by the presence of ice and snow from the municipality to the abutting landowner. *Robinson* v. *Ciamfarani*, supra, 314 Conn. at 526-27. Because the Enfield ordinances predated the passing of § 7-163a in 1981, however, it clearly did not apply. *Id.*

The Plaintiff next argued that the defendants as homeowners still had a common law duty to care for property in their possession, i.e., the sidewalk, over which they regularly exert control, i.e., snow removal. The Court disagreed, holding that although the existing ordinances did create a duty on behalf of the homeowner to clear the sidewalks, it was a duty owed to the municipality, not to third parties, and therefore the homeowner could not be liable under a negligence theory. *Id.,* 528. Although any homeowner may be liable for a defective condition that they create, absent such condition, the homeowner is only under duty to keep a public sidewalk reasonably safe for travel to the extent that a municipal ordinance creates such a duty. *Id.,*528-29. The Court thus affirmed the judgment of the trial court in granting summary judgment for the defendants.

So how does the *Robinson* decision affect the average Connecticut homeowner? The Court's decision stands for the principal that your liability as homeowner for snow-related third-party injuries is defined, ultimately, by your hometown ordinances and regulations. The lesson, therefore, is to be aware of your town's ordinances regarding snow and ice removal. Besides a potentially significant fine, your town may have shifted liability for third party ice-and-snow related injuries from itself to you without your knowledge, or before you even owned your property. For example, as of the date of this article, the City of Danbury Ordinances Section 17-7 (a) states that any homeowner who fails to clear an adjacent sidewalk of ice and snow within four hours of daylight after the cessation of snowfall faces a $250.00 per diem penalty, and Section 17-7 (d), (e), and (f) adopt the language of § 7-163a, thus transferring liability for third party injury to the homeowner. The nearby towns of Brookfield (Ordinance §§ 192-27 and 192-28) and Bethel (Ordinance § 92-1), however, have not adopted the requisite liability-transfer language

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[1]General Statute § 7-163a states in relevant part: "(a) Any town . . . may, by ordinance, adopt the provisions of this section.

(b) Notwithstanding the provisions of section 13a-149 or any other general statute or special act, such town . . . shall not be liable to any person injured in person or property caused by the presence of ice or snow on a public sidewalk unless such municipality is the owner or person in possession and control of land abutting such sidewalk . . . provided such municipality shall be liable for its affirmative acts with respect to such sidewalk.

(c)(1) The owner or person in possession and control of land abutting a public sidewalk shall have the same duty of care with respect to the presence or ice or snow on such sidewalk toward the portion of the sidewalk abutting his property as the municipality had prior to the effective date of any ordinance adopted pursuant to the provisions of this section and shall be liable to persons injured in person or property where a breach of said duty is the proximate cause of said injury. (2) No action to recover damages for injury to the person or property caused by the presence of ice or snow on a public sidewalk against a person who owns or is in possession and control of land abutting a public sidewalk shall be brought but within two years from the date when the injury is first sustained."

and each call for smaller monetary penalties. You can view your own town's ordinances through the state law library database, which you may find here: http://www.jud.ct.gov/lawlib/ordinances.htm.

When the snow starts to fall again, and like me, you find yourself wondering just what kind of jogger you may be digging out your sidewalk for, you can be prepared by knowing precisely what is at stake. I'll see you with your mittens on!