

Slip and Falls: Tenants not Liable for Common Areas

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A tenant is not liable for a plaintiff's slip and fall on common areas that are maintained by its landlord. The Alberta Court of Appeal's decision in *Murkute v. Owners of Condominium Plan 8210034*, 2006 ABCA 315 (click [here](#) for the decision) upheld the trial judge's decision below dismissing the plaintiff's claim against a neighbouring tenant for an alleged slip and fall on a common area.



In *Murkute*, the plaintiff alleged she slipped and fell on ice located on a sidewalk in front of her neighbour's residence in January 2001. She alleged she sustained personal injuries as a result and sued her neighbour, the condo corporation, and the maintenance company hired to clear the ice and snow from the common areas owned by the condo corporation, including lawns and sidewalks.

The trial judge found that the condo corporation and the neighbour were occupiers under the *Occupiers' Liability Act*. Accordingly, as occupiers, they owed a duty to the plaintiff to take such care that the plaintiff was reasonably safe on the premises. The court found the condo corporation, through its property manager, had hired a maintenance company to clear the ice and snow from common areas, and thus had discharged its duty. Since the maintenance company had inspected the premises on a daily basis, the court found the maintenance company, although not an occupier, was not negligent and thus not liable for the plaintiff's accident. Although the court indicated it was not necessary, the court found the plaintiff fell on the lawn outside the neighbour's residence rather than on the sidewalk as the plaintiff alleged. The court did not comment on any obligation to remove snow from the lawns, but found the common areas were owned by the condo corporation.

More importantly, however, was the trial judge's finding regarding the neighbour. The court found the neighbour was an occupier but had no legal responsibility to maintain the common areas. This was the legal responsibility of the condo corporation since they owned the areas. As a result, the trial judge found no liability on the part of any of the defendants and dismissed the plaintiff's claims. The Court of Appeal agreed with the trial judge and dismissed the plaintiff's appeal.

Murkute stands for the proposition that a tenant cannot be held liable for a plaintiff's slip and fall on common areas that a landlord has a legal responsibility to maintain. In such cases, it is prudent that counsel defending tenants consider making a summary judgment application dismissing the plaintiff's claims against the tenant where there is no legal obligation for a tenant to maintain the common areas.