CITATION: Sprowl v. First Capital, 2025 ONSC 3628
COURT FILE NO.: CV-20-901
DATE: 2025/06/18

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
ROSE MARIE SPROWL	)	
Plaintiff	)	Nick de Koning and Alexander David, Counsel for the Plaintiff
– and –	)	
FIRST CAPITAL (BRIDGEPORT) CORPORATION AND MAL-MAL ENTERPRISE (OPERATING AS CLINTAR LANDSCAPE MANAGEMENT)	)	
Defendants	)	Jess Boyd and Mary Teal, Counsel for the Defendants
	)	**HEARD:** September 23 – 25, 2024

THE HONOURABLE JUSTICE I.R. SMITH

REASONS FOR JUDGMENT

Introduction

[1] The plaintiff, Rose Marie Sprowl, slipped and fell in the parking lot of the Bridgeport Plaza in Waterloo, Ontario (the "plaza"), on January 12, 2020. On that date she was almost 81 years of age. Ms. Sprowl says that she slipped on a patch of ice and suffered damages. She further submits that the defendants, the "occupiers" of the plaza, by failing to keep the parking lot free of ice and snow, failed in their duty to ensure that the plaza was "reasonably safe" for those entering the property: *Occupiers Liability Act*, R.S.O. 1990, c. O-2 (the "Act"), ss. 1 and 3.

[2] The defendant First Capital (Bridgeport) Corporation ("First Capital") is the owner of the plaza. The defendant Mal-Mal Enterprise operating as Clintar Landscape Management ("Clintar") is the company that First Capital hired to provide winter maintenance for the plaza. The defendants say that they met their duty of care in this case and that Ms. Sprowl's fall was unfortunate, but not the result of any negligence on their part.

[3] These reasons address only whether Ms. Sprowl's fall and injuries were the result of negligence on the part of either or both defendants. The parties have agreed on an award of damages in the event that I find that they were.

[4] For the reasons which follow, I find for the plaintiff.

Overview of the evidence

The plaza

[5] The subject property is a retail plaza in Waterloo. The main tenants of the plaza are a Walmart store and a Sobeys grocery story. Those businesses and others, including a Rogers Communications store, are housed in a large and long main building that runs on a roughly east/west orientation.

[6] The store fronts of the businesses in the main building face south onto a large parking lot of some 6 acres in size (over 23,000 square metres) with room for hundreds of vehicles. At the east end of the long portion of the parking lot in which the relevant events took place,[1] in buildings unconnected to the main building, are a Tim Horton's restaurant and an Anytime Fitness gym. At the west end of the parking lot, also in a separate building, is a Bulk Barn store and some other small shops. About halfway between the Tim Horton's and the Bulk Barn, bisecting the parking

[1] In the aerial photographs in evidence, it appears that the parking lot continues further to the east and north, but that portion of the parking lot is not relevant to the events in this case except insofar as it is included in the measurement of the total size of the parking lot, which is relevant to issues including how much time is required to plow, salt or inspect the lot, and how much salt ought to be applied.

lot is a driveway running roughly north/south by which vehicles may enter and exit the lot. The south border of the parking lot is formed by Bridgeport Road East.

[7] Between the Tim Horton's and the Bulk barn there are seven north/south double rows of parking spaces and three single rows. There is also a single east/west row of spaces along the south side of the lot, just to the north of Bridgeport Road.

[8] The Sobeys and Walmart stores were open no later than 8:00 a.m. on the day of the plaintiff's fall, which happened at about 12:20 p.m. that afternoon. Anytime Fitness is open 24 hours per day. The Tim Horton's was open at 5:00 a.m. Sobeys and Walmart use the lot overnight for their night crews.

The plaintiff at the plaza

[9] January 12, 2020, was a Sunday. The plaintiff wanted to pay her Rogers bill and do some shopping, so she drove herself to the plaza for that purpose. She was in good health and did not require assistance walking. She was not intoxicated by drugs or alcohol.

[10] The plaintiff drove herself to the plaza and parked in the half of the parking lot closer to the Bulk Barn, that is, to the west of the driveway midway between the Tim Horton's and the Bulk Barn, but closer to the driveway than to the Bulk Barn. She was also parked closer to Bridgeport Road than to the stores in the main building.

[11] After parking at about 10:00 a.m., the plaintiff walked north to the Rogers store to pay her bill but discovered that it did not open until 11:00 a.m. She decided to get a coffee and something to eat at the Tim Horton's while she waited for Rogers to open. Accordingly, she walked from the Rogers store across the parking lot (passing across three double-rows of parking spots and two or three single rows) to its east end to the Tim Horton's. At 11:00 a.m., she walked back across the lot in the opposite direction to the Rogers store when it had opened. She paid her bill and then walked to the west to do some grocery shopping at Walmart. When she was finished, just before noon, she walked south across the lot to her car and put her groceries in the trunk. At that time, the plaintiff noticed the Bulk Barn and decided to visit that store. She walked from her car to the

west across the lot to the Bulk Barn (passing across three double-rows of parking spots) but found that it was closed. As she was walking east back to her car, at about the midway point of the western half of the lot, the plaintiff fell.

[12] The plaintiff was not hurrying and was carrying only her purse. She was wearing suitable winter boots that were in good condition. She said that one of her feet slid on a patch of ice and went out from under her. The patch of ice was within one of the double rows of parking spaces. In other words, it was not in one of the driving lanes between the rows of parking spaces. The plaintiff said that she did not see any salt on the lot and, more specifically, saw none in the area where she fell. She estimated the size of the patch of ice to be at least the size of a twin bed. It was not snowing when she was at the plaza but there was light "fluffy" snow covering the lot. She had noticed that the lot was slippery in various areas as she crossed it that day.

[13] The plaintiff was taken to Grand River Hospital by ambulance. The fall caused her to suffer a hip fracture, the correction of which required surgery.

Clintar's maintenance of the plaza lot on January 12, 2020

[14] According to records from Environment Canada, on January 11, 2020, the day before the accident, temperatures were above 0º Celsius. Clintar did no plowing at the lot on that day. However, Clintar was monitoring the weather closely on January 11, 2020, because the next day was expected to be an "all hands-on deck" weather event. A Clintar employee, on "weather watch patrol," attended at the lot on January 11 for 10 minutes beginning at 5:50 p.m. Emails from January 11 show that Clintar was aware of a forecast of freezing rain overnight with temperatures falling to below freezing. In an email sent at 3:47 p.m. on January 11, a Clintar supervisor, Dan Smiley, sent an email saying that freezing rain was "inevitable" that evening and directing salters to be set up for 1:00 a.m. and 2:00 a.m. on January 12. The evidence establishes that Clintar employees came in ready to be deployed for salting (or pre-salting before the rain froze on the ground) in the very early morning of January 12 and waited for instructions.

[15] Mr. Smiley reported by email at 6:29 p.m. on January 11 that the expected rain may change to freezing rain later than had been predicted. He directed that Clintar hold off on salting "until

there are signs of freezing or the forecast is calling for temps to drop quickly shortly thereafter." He added that he did not want the salt to be washed away by the rain before the temperature dropped. There is evidence before me that allowing this to happen would be both wasteful and harmful to the environment, while doing nothing to reduce ice build up.

[16] The predicted freezing rain did not come. Clintar's records show that there was rain all night until about 4:30 or 5:00 a.m. on January 12 when the rain turned to snow. The snow then began to accumulate and eventually there were between 2 and 4 cm of snow at the plaza. The employees who had reported to work to operate salters were sent home, while other employees were called in to operate plows. Clintar's records show that a crew arrived at the plaza (one of about 90 properties to which Clintar was providing winter clearing services at that time) to shovel and salt sidewalks at 5:50 a.m. and stayed until 8:55 a.m. Two plows were also dispatched to the plaza at 6:10 a.m. and arrived shortly thereafter. One plowed the lot until 8:25 a.m. and the other until 8:30 a.m. After the plowing was complete, and beginning at 8:45 a.m., another Clintar employee salted the parking lot until 9:15 a.m.

[17] Brad Talbot, another Clintar supervisor, attended at the plaza to inspect the work that had been done there. He was in the lot for approximately 10 – 12 minutes beginning shortly after 11:25 a.m. His email report at 12:33 p.m. indicated that the plaza was "good." At other locations he noted that some work remained to be completed.

[18] At 8:30 p.m., a Clintar employee attended at the plaza to do "spot salting," described in the evidence as "checking for runoff and salting it, as well as salting open parking spaces that may have been blocked by parked cars earlier in the day."

Duty and standard of care

[19] The parties agree that the defendants owed a duty of care to the plaintiff. That duty is set out in the Act. There is no debate respecting the defendants' status as "occupiers" of the plaza as that term is defined in s. 1 of the Act. As such, pursuant to s. 3(1), each of them "owes a duty to take such care as in all the circumstances of the case is reasonable to see that person entering on the premises … are reasonably safe while on the premises."

[20] In *Waldick v. Malcolm*, [1991] 2 S.C.R. 456, Iacobucci J. described the duty imposed by the Act as follows (at para. 33, emphasis in the original):

> After all, the statutory duty on occupiers is framed quite generally, as indeed it must be. That duty is to take reasonable care in the circumstances to make the premises safe. That duty does not change but the factors which are relevant to an assessment of what constitutes reasonable care will necessarily be very specific to each fact situation -- thus the proviso "such care as in all circumstances of the case is reasonable".

[21] The case-specific nature of the inquiry to determining whether an occupier has acted reasonably to keep premises safe in winter weather is evident from the many cases which have considered this issue. Counsel have put a significant collection of such cases before me, and I will refer to some of them as necessary below. Suffice it to say now, though, that the standard of care in these cases was well-summarized by Baltman J. in *Fragomeni v. Ontario Corporation 1080486*, 2006 CanLII, 12968, (Ont. S.C.J.). After referring to the decision of the Court of Appeal in *Waldick* ((1989) 70 O.R. (2d) 717), she wrote as follows (at para. 20):

> The court emphasized what constitutes reasonable care will turn on the specific facts of each case. Subsequent cases have expanded upon this principle to address situations of known danger, for example ice and snow conditions in parking lots. Courts have stated defendants need not meet a standard of perfection; however, the owner "must have a system in place to ensure users will be reasonably safe from slipping and falling due to weather conditions. Furthermore, the system must be functioning properly." (*Gardiner v. Thunder Bay Regional Hospital*, [1999] O.J. No. 833 (Gen. Div.) p. 8; *Przelski v. Ontario Casino Corp.*, [2001] O. J. No. 3012).

[22] In the present case, the position of the plaintiff is that Clintar failed to implement an adequate system for monitoring weather conditions, and for responding adequately or promptly to hazardous situations. Clintar therefore failed to discharge its duty to the necessary standard of care. First Capital, which relied entirely on Clintar is also liable, according to the plaintiff, given that there is no evidence that First Capital fulfilled the requirement to ensure that Clintar was competent to undertake the work First Capital entrusted to Clintar. That requirement is found in s. 6(1) of the Act, which reads as follows (emphasis added):

> 6(1) Where damage to any person or his or her property is caused by the negligence of an independent contractor employed by the occupier, the occupier is not on that account liable if in all the circumstances the occupier had acted reasonably in entrusting the work to the independent contractor, if the occupier had taken such steps, if any, as the occupier reasonably ought in order to be satisfied that the contractor was competent and that the work had been properly done, and if it was reasonable that the work performed by the independent contractor should have been undertaken.

Discussion

[23] The plaintiff's criticisms of Clintar's work, and the basis for her claim of negligence, focus on what she says are five themes in the evidence: (1) shortcomings in Clintar's weather monitoring system; (2) the failure to send salters out on time; (3) poor methods of plowing and salting; (4) the use of an insufficient amount of salt; and (5) the use of a superficial inspection process. The plaintiff also criticizes what she says is First Capital's failure to supervise Clintar's work.

[24] I consider each of these criticisms below.

Weather monitoring

[25] The plaintiff argues that the evidence establishes that Clintar's monitoring of the weather was inadequate. Her criticisms fall into two categories: (a) that Clintar maintains inadequate records of its observations of the weather; and (b) that Clintar's observations were not specific to the plaza.

[26] The first criticism is a reflection of the fact that much of Clintar's weather monitoring was reported by Clintar employees by way of two-way radio and not recorded. The second criticism is that Clintar's monitoring of the weather was regional in nature and therefore did not necessarily reflect the actual conditions at the plaza. This, in turn, prevented Clintar from providing adequate services to ensure promptly that the plaza was safe.

[27] In my view, the evidence does not establish that Clintar failed to monitor the weather properly (and I note that counsel did not press this issue forcefully in argument). Indeed, the evidence shows careful attention and real-time reactions to predicted and changing weather.

[28] James Maloney, the president of Clintar, gave evidence that Clintar monitors the weather 24 hours every day. It does so through forecasts from the Weather Network, news broadcasts, online sources, satellite imaging, forecasting from the University of Waterloo, cameras owned and operated by Clintar at various spots around the Waterloo Region (referred to at trial as "cameo cameras"), and staff who are tasked with patrolling the various sites which Clintar services in the Region. Reports are shared among Clintar staff mostly by two-way radio, but also sometimes by email. The cameo cameras take and save a still photograph every 10 minutes.

[29] The Clintar cameo camera which is closest to the plaza is about 4 km away, to the north. Environment Canada data is captured at the Waterloo Region Airport, which is about 15 km from the plaza.

[30] Although the two radio communications have not been preserved, the email and other evidence in the record shows both that the weather was actively being monitored at all hours from January 11 into January 12 and that, even though there was no visit to this particular lot after 6:00 p.m. on January 11, the conditions there were almost certainly the same as the conditions that were being observed regionally. As counsel for the defendants argued, the photographs from the nearest cameo camera, which is north of the plaza, and email reports from Cambridge, south of the plaza, were consistent with each other and with other email evidence. I agree that there is a high degree of probability that the weather at the plaza in the early morning hours of January 12 was as it was captured in those photos and in Clintar's emails. That evidence tends to show that the expected freezing rain never arrived. Instead, non-freezing rain fell until some point after 4:30 a.m. and was followed by snow beginning between 4:40 and 5:00 a.m. This is roughly consistent with the Environment Canada records from the airport, which show the temperature consistently above freezing on January 11 and falling each hour after midnight about the temperature is at 0.1º and 0.2º at 4:00 and 5:00 a.m. and then consistently below freezing thereafter.

[31] In my view, it has not been established that Clintar failed to monitor the weather adequately, either generally or in relation to the lot at the plaza.

Salting before plowing

[32] The plaintiff's second area of criticism is that Clintar failed to salt the plaza parking lot before the snow fell and before plowing occurred, or what at trial has been called "pre-salting." In this respect the plaintiff points to internal Clintar emails in which pre-salting is considered.

[33] At 3:57 a.m. on January 12, Eric Patterson of Clintar reports that side streets are wet and "there's nothing freezing over yet." Mr. Smiley replies at 4:05 a.m. saying that "radar is indicating one last heavy wave of precipitation and it looks like it will clear and temps drop." He suggests doing a light salting "just as the next wave is starting to let up" or to start salting earlier if there are "signs of freezing." At 5:23 a.m., Paul Schnarr of Clintar writes that there is about 1 cm of snow coverage in Cambridge, that it is still snowing, and that plowing at retail locations should start "for sure." At 5:47 a.m. Mr. Smiley replies that the snow is expected to stop falling within an hour, that it is "packing down solidly" if driven over but is still "wet." He offers the opinion that if the weather clears "everything will ice up." Ultimately, the plaza's lot was plowed first, then salted.

[34] These emails seem to me to be consistent both with the reported temperatures and precipitation and with the cameo photos. The ground seems wet and free of snow until just before 5:00 a.m. when light snow appears but spots which appear wet can still be observed. Snow accumulates thereafter but ends between 6:00 and 7:00 a.m.

[35] Crews assigned to attend to the sidewalks were at the plaza by 5:50 a.m. and two plows arrived to attend to the parking lot shortly after 6:10 a.m., working until 8:30 a.m. Salting started at 8:45 p.m.

[36] The plaintiff argues that the salters who had been called in could have been deployed to do pre-salting which can have the effect of reducing the strength of the bond between ice and asphalt. It is a preventative measure.

[37] There is also evidence, to which I have already referred, that salting while it is still raining can be both wasteful and damaging to the environment, while providing little or no benefit. The

salt applied is simply washed away. Moreover, there is little point in salting over snow which is just going to be plowed off soon thereafter.

[38] I read Mr. Smiley's 4:05 a.m. email, which was sent just before he was going to try to get some sleep, not as a direction but as a suggestion should the right weather conditions present themselves: a gap between the end of the rain and the beginning of the snow as temperatures approach and fall below freezing. This idea is repeated in his email at 5:47, which was contingent: "if the weather clears" (emphasis added). The evidence suggests that those weather conditions either did not materialize or were not in place long enough to allow for pre-salting. It was already snowing just before 5:00 a.m., less than an hour after Mr. Smiley's 4:05 a.m. email and before his 5:47 a.m. email. Plows were dispatched to the plaza at 6:10 a.m. Once snow began falling, the benefits of pre-salting diminished significantly.

[39] Plowing first at the plaza made sense in the circumstances and was consistent with Transportation Association of Canada standards, which recommend that "snow should be plowed from the treatment area prior to the application of a freeze point depressant [*e.g.* salt] to minimize the amount of material needed, and the potential for dilution and refreeze."[2]

[40] On this evidence, it has not been established that the course of action taken by Clintar at the plaza – plowing before salting – was negligent. On the contrary, the evidence shows Clintar reacted reasonably to changing and unpredictable circumstances and did so promptly.

[41] Of course, however, the fact that it had been raining preceding a drop in temperature still presents a danger of ice forming on the ground and being covered by falling snow. And it is this fact which is the subject of the plaintiff's next criticisms.

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[2] "Syntheses of Best Practices Road Salt Management", Transportation of Association of Canada, April 2013, part 10.0, "Salt Use on Private Roads, Parking Lots and Walkways", at p. 7. See also, at p. 8: "Parking lots and sidewalks should be plowed / shovelled to remove as much snow as possible before a melting agent is applied. This minimizes the amount of melter needed to achieve final bare pavement conditions." The Association does not recommend the application of salt when the temperature is above freezing (see pp. 6 and 7).

Inadequate methods of plowing, salting, and inspection

[42] It is most efficient to deal with two of the plaintiff's objections together.

[43] The plaintiff submits that Clintar's method of plowing and salting was inadequate because it gave insufficient attention to the parking spaces in the lot, focusing instead on the lanes between the rows of spaces. Further, it is argued that Clintar's inadequate inspection system prevented it from correcting problems created by this deficiency.

[44] In this respect, the evidence is that Clintar's salter did his job by driving the salting truck up and down the laneways in the lot spreading salt, which would be sprayed into the adjacent rows of parking spots. The difficulty with this method is that any cars parked in the lot would block the distribution of salt into the parking spaces. It is important, therefore, to plow and salt as early as possible when the fewest vehicles are likely to be parked in the lot, bearing in mind that most of the businesses open at 8:00 a.m. or later. The contract between the defendants provides that plowing was to be complete by 8:00 a.m. following an overnight storm. In this case, plowing was not complete until 8:30 a.m.

[45] As noted earlier in these reasons, Mr. Talbot was Clintar's inspector on January 12, 2020. He gave evidence that he was at the plaza and had concluded his inspection of it by 11:40 a.m. He reported by email that the lot was "good," by which he meant that "the laneways had been plowed and salted, and that sidewalks and storefronts had been shovelled and salted." He believed that "no further winter maintenance services were required" at the plaza, otherwise, he would have ordered such services, as he did for other locations that day. He said that he looks to ensure that salt has been laid down.

[46] In cross-examination, Mr. Talbot said that when he inspects a parking lot he does not get out of his truck and walk around to see if the lot is slippery. He drives around the lot to ensure that plowing and salting have occurred, focusing on laneways and the entrances to the lot. Mr. Talbot agreed "in theory" that he misses hazards in other areas because of this focus. He agreed that it is hard to assess the state of the lot between parked cars from inside his truck, that people visiting the plaza need to walk in such areas to get into and out of their vehicles and that, if he had gotten

out of his truck, he could have checked for slippery spots. He did no spot salting while he was at the plaza conducting his inspection.

[47] There is no evidence before me as to how many vehicles were in the lot shortly after 6:00 a.m. when the plowing started, nor at 8:45 when the salting started. Mr. Talbot provided evidence that Clintar prioritizes laneways and storefronts because they have the most pedestrian and vehicular traffic, and because vehicles will be travelling at their slowest while entering and exiting parking spaces. There is no evidence that any parking spaces were plowed or that any attention was paid to snow collecting between or around any parked vehicles which were present during plowing and salting. Salting of the rows of parking spaces was dependent on salt spraying into them as the salter drove down the lanes. No extra attention was given to parts of those rows where parked vehicles impeded the spray of salt.

[48] There is evidence in Clintar's emails that there were concerns about icing around the Region on the morning of January 12. Of special significance, the plaintiff says, is an email at 6:57 a.m. where Paul Schnarr of Clintar writes that "I think we need to get salt into parking spaces, 600 Hespeler is very slick after plowing." Spot salting did not occur at the plaza until 8:30 p.m., well after the plaintiff's fall. An email late on January 12 warns overnight crews that "there will probably be a lot of sheet ice out there in the parking spaces."

[49] The plaintiff says that Clintar knew of the danger posed by ice in the parking spaces on January 12, relied on a system of plowing and salting that did not focus on those spaces, did not account for the fact that parked cars would impede the spread of salt to parking spaces, did not deploy spot salters in a timely way, and relied on a perfunctory inspection system for a six acre lot.

[50] The defendants argue that Clintar did not act unreasonably. On the contrary, it acted reasonably and promptly in connection with the changing weather conditions. The lot is six acres in size. It is not unreasonable to expect that even with a reasonable and professional response to the weather there might be isolated slippery spots in a lot that big. Moreover, the parking spaces are not the priority because they do not receive the highest level of traffic. Even still, the evidence shows that, in total, without incident until the end, the plaintiff walked east/west across the length

of the lot, from one end of the lot to the other and back, and north/south across almost its entire width, back and forth, and carrying her groceries when she went from north to south.

[51] In this respect, among other authorities, the defendant relies on the judgment in *Przelski v. Ontario Casino Corporation, et al.*, [2001] O.J. No. 3012 (S.C.J.), where Quinn J. wrote as follows (at paras. 41 – 42):

> After considering the weather, the time of year, the size and usage of the Lot and the inspection and maintenance program practised by the defendants and those employed by them, I am unable to find any liability on their part. In the circumstances of this case, the presence of a small patch of ice does not amount to a breach by the defendants of the duty set out in s. 3(1). I asked Ms. Hoy whether, on a 2 acre lot in February, one must reasonably expect a few, isolated slippery spots. She replied "No." In my respectful opinion, she espouses too high a standard and, effectively, suggests that the defendants must meet a standard of perfection. This is not what s. 3(1) contemplates.
>
> To hold the defendants liable in this case would necessitate imposing upon them an unrealistically high duty of care.

[52] The defendants say this reasoning should apply in this case, where the subject lot is even bigger. I agree that Clintar is not held to a standard of perfection, and that where reasonable steps are taken, liability should not attach just because a small patch of ice was missed. The difficulty for Clintar, however, is that the evidence supports the conclusion that its inspection and maintenance program did little to address the problem of snow and ice in and around the parking spaces and in between cars. While I accept that the laneways, sidewalks and entranceways (both vehicular and pedestrian) may require the greatest level of attention because they bear the most traffic, I agree with the plaintiff that the very purpose of a parking lot at a shopping plaza is to entice people to park in it so that they will shop at the plaza. To do so, they need to get in and out of their vehicles, and to walk through parking spots and between cars to get to and from the shops. These areas then, also require some attention to protect the people enticed to park in them.

[53] In *Przelski*, for example, Quinn J. found that the defendants were able to escape liability because of “the inspection and maintenance program” they used. In that case the owner of the lot had employees in it at all hours of the day and making regular observations of it, including for ice

and snow, sometimes attending to problems themselves. The contractor whose job it was to provide winter maintenance, "maintained 24-hour patrols of the areas being serviced" and visited the lot himself two or three times daily.

[54] I do not want to be taken as holding that every parking lot in the winter must have such robust surveillance for ice and snow, but the facts in *Przelski* stand in stark contrast to the facts in the present case where there is no evidence that the owner of the lot, First Capital, had any employee who was charged with monitoring ice and snow, and where the winter maintenance contractor, Clintar, had one inspection at the plaza on January 11, an inspection of the plowing and salting at 11:25 a.m. on January 12, and spot salting roughly nine hours later.

[55] With respect to surveillance of the conditions at the plaza, the defendants point to Clintar's surveillance of the weather, which I have summarized above. While I have accepted that Clintar's surveillance of the forecasted weather did not require it to have a person physically at the plaza, and that reliance on regional forecasts and reports of the weather nearby was reasonable and sufficient for determining when to dispatch plows and salters, that does not mean that the monitoring of weather in that way was sufficient for ensuring that the service provided at this particular plaza had been effective, or that specific areas of the lot did not required extra attention. In this case, as noted earlier, Mr. Talbot did not even get out of his truck to consider whether the parking spaces were "very slick after plowing" as had been reported by a Clintar employee at another location at 6:57 a.m., or to consider whether salt had reached all the spots that might have been (or still were) blocked by parked vehicles when salting was done.

[56] The defendants rely on *Cannon v. Cemcor Apartments Inc.*, et al., 2016 ONSC 2828, at para. 48, among other cases, for the proposition that the standard is not one of perfection, and I agree. But there is no evidence that Clintar did anything to ensure the safety of the parking spaces after the rain and snow received on January 11 and 12, other than to run the salter along the laneways and spray salt onto spaces not occupied or otherwise blocked by parked vehicles. While not every step that could be imagined needs to be taken, it seems to me that it would have been reasonable to expect that Clintar would have some system to take some care to ensure that the rows of parking spaces were safe for those enticed to park in them.

[57] Take, for example, the case of *Cannon* itself, where the plow operator was taking care to plow individual parking spaces by using a technique called "back-blading", whereby snow is pulled out of individual spaces and moved away.[3] In addition, the apartment complex in that case had a system for ensuring that the lot was as free of cars as possible when it was plowed and salted after significant snow storms. Importantly, in that case, the plow operator himself testified.

[58] Here, neither of the drivers who plowed the lot, nor the driver who salted the lot, testified before me. There is, therefore, no evidence about exactly what was done. Although it may be inferred that early on a Sunday morning it is likely that there were few vehicles parked in the lot when it was plowed and salted, there is no direct evidence as to how many vehicles were present. There is certainly no evidence that any attention was paid to individual parking spaces, or to the use of back-blading, or that anyone on foot took steps to shovel or salt in areas that the plows and salters could not reach, or even to check in any way if there were especially dangerous spots which had been missed. Indeed, the evidence suggests that no attention at all was paid to the parking spaces apart from spraying salt in their direction. On Mr. Talbot's evidence, it is not even clear that any of the parking spaces was plowed. As noted above, his attention was on the laneways.

[59] Again, I do not want to be taken as having held that plowing each parking space, or shovelling between parked cars, will always be necessary. I do find, however, that paying little or no attention to the parking spaces is not sufficient, especially when Clintar was clearly aware of the risk of ice in the parking spaces.

[60] Further, I do not agree with the defendants that this is simply a case of a plaintiff who unluckily slipped on an isolated patch of ice in an otherwise well maintained six-acre parking lot. She testified that the lot was slippery in various places and that she was aware of the ice as she was walking. In addition, she said that the patch of ice on which she slipped was the size of a twin bed. There is no evidence to contradict her on these points. Indeed, the Clintar emails suggest that her observations in this respect are very likely to be correct.

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[3] See also *Houston v. McDonald's Restaurants*, 1996 CanLII 6470 (B.C.S.C.) at para. 8, where the contractor had a policy of "doing additional sanding in areas not reached by the sand truck, and hand shoveling sand between cars as necessary." See also, paras. 12 – 13 of that decision.

[61] In my view, Clintar's system for the maintenance of the parking lot at the plaza was inadequate insofar as it failed to provide for ensuring that the parking spaces in the lot were adequately free of snow, adequately salted, and adequately inspected, such that shoppers at the plaza could be reasonably safe while on the premises. Clintar was in breach of s. 3(1) of the Act.

The amount of salt used

[62] The plaintiff also submits that Clintar did not use a sufficient amount of salt at the lot given its six-acre size. Given the conclusions I have already reached, it is not necessary to consider this issue in depth, especially as counsel for the plaintiff candidly acknowledged during argument that he could not prove that the salt used in this case was insufficient (submitting instead that it was incumbent on the defendants to show that their maintenance system ensured that a sufficient amount of salt was used). Based on the evidence of the defendant's witnesses, and Clintar's records, it has not been established that the amount of salt used by Clintar was insufficient.

[63] In my view, however, the crucial issue is the one discussed under the previous heading. In other words, insofar as that issue concerns salting, the issue is whether enough salt got into the parking spaces. The plaintiff gave evidence that she noticed no salt on the lot, and none around her as she lay on the ground after having fallen. While I am confident that the first of these two observations is incorrect given that there is substantial evidence that the lot was salted before the plaintiff fell, the second observation cannot be discounted give the manner in which Clintar attended to the parking spaces, which I have already found to be inadequate.

The role of First Capital

[64] I have found that Clintar's system as executed did not meet the standard of care required by s. 3 of the Act. The question then becomes whether First Capital has also failed to meet the standard of care imposed on it.

[65] The plaintiff makes various criticisms of First Capital's approach in this case, but in my view, this issue is straightforward. Section 6(1) of the Act provides that an occupier will not be liable for a contractor's negligence if (a) it acted reasonably in entrusting the work to the contractor; and (b) it took reasonable steps to ensure that work had been properly done.

[66] It is an agreed fact in these proceedings that Clintar was contractually responsible for the winter maintenance at the plaza. In my view, it is obvious from the evidence of Mr. Maloney alone that Clintar is a well-established company that is competent and well-equipped and resourced to do the job for which they were hired. Further, the contract between First Capital and Clintar is detailed and requires Clintar to ensure that the lot is properly salted "to ensure meltdown" and to "perform any such other measures which may be required to ensure maintenance of clear, hazard-free conditions and avoidance of any further accumulation of snow or ice." The contract also requires Clintar to maintain "a log of all site visits, accurately and completely describing site conditions, time and length of visits, treatments and services performed" and to report to First Capital weekly on Clintar's activity at the property. There is evidence before me that that was done.

[67] In all these circumstances, I am satisfied that First Capital acted reasonably in entrusting the work of winter maintenance to Clintar, but I am not satisfied that First Capital took reasonable steps to ensure that the work had been properly done.

[68] First Capital contracted with a competent contractor, set out detailed contractual requirements for the winter maintenance of the lot, required inspection of the lot, and received regular reports on Clintar's work from Clintar. But there is no evidence before me that allows me to conclude that First Capital took any step to ensure that the work was properly done. There is no evidence from any First Capital employee or representative. There is no evidence that anyone from First Capital ever inspected Clintar's work. There is no evidence that First Capital ever responded to Clintar's reports. There is no evidence that, apart from the contents of the contract itself, First Capital gave any direction to Clintar. In this respect I note that the contract provides that Clintar is to initiate and provide all services on a timely basis and to take "additional direction in this regard from" First Capital. There is no evidence that First Capital designated any one of its employees to provide such direction.

[69] It is argued that there was no need for First Capital to inspect Clintar's work given the comprehensive systems Clintar had in place. Counsel for the defendants submitted that First Capital was "essentially irrelevant to our liability analysis" because Clintar was reporting weekly,

and because Clintar was contractually and completely responsible for the winter maintenance of the lot.

[70] I do not accept this argument. First Capital's duties to the plaintiff are imposed by the Act, not by a contract between the defendants to which the plaintiff is not a party. The argument in favour of First Capital on this point amounts to the submission that First Capital is relieved of its duty under s. 6(1) of the Act to take reasonable steps to be satisfied that "the work had been properly done" because it had a contract with Clintar to ensure that the work had been properly done. That is not sufficient. In the absence of any evidence that First Capital took any step to ensure that Clintar's work had been completed properly, I am left to conclude that they took no such step.

[71] For these reasons, First Capital was also in breach of s. 3(1) of the Act, having failed to meet the requirements of s. 6(1) of the Act.

Contributory negligence

[72] The defendants argue that the plaintiff contributed to the accident in this case by continuing to walk on a property she had found to be slippery. She gave evidence, on which she was not cross-examined at trial, that she was wearing appropriate footwear, that she was physically able to walk without assistance, and that she was not hurrying. When she fell, she was carrying only her purse. When examined on discovery, the plaintiff said that there was light snow on the lot, she was "careful" when walking, that she did not slip before her fall, she "just walked," and that when she noticed that it was slippery she walked "a little slower." She said "I think it was slippery everywhere that day but I, you know, I don't mind walking. I just walked along and watched how I walked." There was nothing obstructing her view, and she was looking for her car as she returned from the Bulk Barn.

[73] In my view, nothing in this body of evidence leads to the conclusion that the plaintiff was contributorily negligent.

a. She did not herself cause the accident. She was already in the plaza parking lot when she noticed slippery conditions. Having done so, she adjusted to them, walking carefully and more slowly. She was carrying only her purse and was not hurrying. She had satisfactory footwear and was an experienced walker (she testified that she loves walking).

b. Her harm was not foreseeable before she arrived at the lot and was not foreseeable thereafter given the care she took (walking carefully, more slowly, and in proper footwear). She had a clear view around her but there was light snow on the ground. There is no evidence that she could have seen a sheet of ice the size of a bed underneath that snow.

c. To the extent that any risk was foreseeable, she took preventative steps by walking carefully and slowly and wearing proper boots.

   See: *Zsoldos v. Canadian Pacific Railway Co.* (2009) 93 O.R. (3d) 321 (C.A.), at para. 54.

[74] This is, quite simply, not a case of a plaintiff's want of attention, or of lack of reasonable care given the circumstances presented to the plaintiff: *Chepurnyj v. Collingwood Home Hardware Building Centre*, 2022 ONSC 6749, at para. 16, quoting Fridman, *The Law of Torts*, 3rd ed. (Toronto: Thompson Reuters Canada Limited, 2010), at pp. 463-464. Instead, this is a case like *Ranger v. Triovest Realty Advisors, et al.*, 2024 ONSC 1782. There, the plaintiff was walking back to her car after doing some shopping. She was aware that the ground was slippery. She walked carefully but nevertheless slipped and fell at an icy crosswalk in a mall parking lot. In that case, Henderson J. concluded as follows (at paras. 124 – 125):

> … I find that Ranger walked through the crosswalk in a reasonable manner. She wore winter boots, she walked carefully, she was aware of the slippery conditions, she kept a watch on the traffic, and she used the marked crosswalk that the defendants had provided for the purpose of moving pedestrian traffic in and out of the store. There was nothing more that Ranger could have reasonably done for her own safety.
>
> Accordingly, I find that there was no contributory negligence on the part of the plaintiff.

[75] I draw the same conclusion in this case.

Causation

[76] I further conclude that the plaintiff's fall was the result of the defendants' negligence, which I have already described. But for that negligence, the plaintiff's damages would not have occurred. The failure to ensure that the parking spaces were properly free of snow and ice, properly salted, and properly inspected, was the probable cause of the plaintiff's fall and of the resulting injury: *Clements v. Clements*, [2012] 2 S.C.R. 181, at paras. 9 – 10.

Conclusion and costs

[77] For all these reasons, I find the defendants breached their duty set out in s. 3(1) of the Act and are collectively 100% responsible for the plaintiff's damages.

[78] If the parties cannot agree on costs, the plaintiff may serve and file brief written submissions respecting costs within 14 days of the release of these reasons to my judicial assistant at mona.goodwin@ontario.ca and copy to Kitchener.SCJJA@ontario.ca. The defendants may serve and file brief responding submissions within seven days of the service of the plaintiff's submissions. The plaintiff's reply, if any, may be served and filed within three days of the service of the defendants' submissions.

I.R. Smith J.

Released: June 18, 2025

CITATION: Sprowl v. First Capital, 2025 ONSC 3628
COURT FILE NO.: CV-20-901
DATE: 2025/06/18

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ROSE MARIE SPROWL

Plaintiff

– and –

FIRST CAPITAL (BRIDGEPORT) CORPORATION AND MAL-MAL ENTERPRISE (OPERATING AS CLINTAR LANDSCAPE MANAGEMENT)

Defendants

REASONS FOR JUDGMENT

I.R. Smith J.

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