

You Can't Put That There... Or Can You?

By Abigail C. Cacovic

July 1, 2025

In *Fowlkes v The Abbeys of Westland Condo Ass'n and Shakespeare Services, Inc.*, ___ Mich App ___ (May 13, 2025) (Docket No. 366609), the Court of Appeals tackled a slip and fall case in the world of *Kandil-Elsayed v F & E Oil, Inc.*, 512 Mich 95 (2023) and *Janini v London Townhouses Condo Ass'n*, ___ Mich App ___ (Docket No. 164158).

The case arose from a slip and fall on a mound of snow and ice on the sidewalk of a condominium complex. Plaintiff owned a condominium in the complex which was run by The Abbeys of Westland Condominium Association ("Association"). Plaintiff was walking her dog when she encountered a mound of snow and ice on the sidewalk; as she tried to avoid the mound, she slipped and fell. She sustained injuries to her right leg, received surgery, and suffered permanent damage. The Association contracted with Shakespeare Services for snow removal. Shakespeare Services placed the plowed snow and ice onto the sidewalk. The trial court granted summary disposition to Defendants, dismissing Plaintiff's claims.

I. Premises Liability Against the Association

The issue under this claim was whether the Association owed Plaintiff a duty of care given that Plaintiff was a co-owner of the premises using the condominium's common areas at the time of her injury. Under the master deed, like *Janini*, the Association is responsible for maintenance, repair, replacement, and snow removal with respect to all sidewalks. Plaintiff was an invitee pursuant to the master deed and could pursue a premises liability claim against the Association. The Court reversed the trial court's decision and ruled that there are genuine issues of material fact.

II. Breach of Contract Against the Association

The issue with this claim was whether the Association satisfied its contractual obligation to remove snow from the sidewalks under the master deed by contracting with Shakespeare Services. The Association had an enforceable contractual duty to perform as agreed, which includes snow removal from its sidewalks. There is no evidence Plaintiff agreed to discharge the Association of its duties under the master deed. Further, the contract with Shakespeare Services does not indicate that Shakespeare Services was to assume the

Secret Wardle Notes

For condominium associations in a world post *Kandil-Elsayed* and *Janini*, master deeds and bylaws are important in establishing potential duties owed to co-owners. If a co-owner surrenders control of the common areas to the association, they will be an invitee and a duty of reasonable care is owed. If an association has a duty of reasonable care and that duty is not discharged or assumed by another party to a contract, the association will still have a duty to exercise reasonable care. However, that duty sounds in premises liability, not in ordinary negligence or in negligent performance of a contract. And if you are a contractor in the midst of all this, you must perform your contractual obligations with ordinary care and recognize a duty of care to third parties foreseeably injured by your negligent performance of a contract.

duty. The Court held that the Association's delegation of snow removal duties did not discharge them of its obligations under the master deed. The Association had an enforceable contractual duty, and Plaintiff had a right to enforce the obligation.

III. Negligent Performance of a Contract Against the Association

This claim was regarding whether the Association owed Plaintiff a duty that was independent of its contractual obligations. The Association's duty to Plaintiff to exercise reasonable care comes from premises liability, not ordinary negligence or negligent performance of a contract. Plaintiff's claim for negligent performance of a contract is construed as duplicative of Plaintiff's claim for premises liability. The Court affirmed the trial court's decision to dismiss the claim.

IV. Negligent Performance of a Contract Against Shakespeare Services

The last claim the Court addressed was whether Shakespeare Services owed Plaintiff a duty of ordinary care in performing its contractual obligations. Shakespeare Services had a duty to fulfill the contractual obligations with ordinary care and could be held liable to third parties foreseeably injured by its negligent performance. The Court held that the trial court erred in saying Plaintiff's claim against Shakespeare Services was sound in premises liability rather than negligence and granting summary disposition. Shakespeare Services' duty arose from performance of contractual obligations that allegedly created a foreseeable risk of harm to others, not possession or control of the premises.

**Please click below to sign up for Secrest Wardle newsletters
pertinent to other areas of the law**

SIGN UP

We welcome your questions – please contact:

Premises Liability Practice Group Chair

[Mark F. Masters](#) | mmasters@secrestwardle.com or 248-539-2844

For questions pertaining to this article

[Abigail C. Cacovic](#) | acacovic@secrestwardle.com or 248-247-3942





Troy | 248-851-9500
Grand Rapids | 616-285-0143

www.secrestwardle.com

Contributors

Premises Liability Practice Group

Chair

Mark F. Masters

Editors

Sandie Vertel
Susan Willcock

This newsletter is for the purpose of providing information and does not constitute legal advice and should not be construed as such. This newsletter or any portion of the newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

Copyright © 2025 Secrest Wardle. All rights reserved.
9962220