SUPREME COURT OF NOVA SCOTIA
Citation: *Linders v. Ordinelli*, 2026 NSSC 27

Date: 20260121
Docket: Hfx No. 500706
Registry: Halifax

Between:

John Francis Linders

Plaintiff

v.

John Ordinelli and Penny Ordinelli

Defendants

DECISION

Judge: The Honourable Associate Chief Justice Darlene A. Jamieson

Heard: October 27 and 28, 2025 in Halifax, Nova Scotia

Counsel: David S. R. Parker and Elizabeth E. Dreise, for the Plaintiff

Jocelyn M. Campbell, K.C. and Hannah Helm, for the Defendants

By the Court:

Background

[1] On January 4, 2019, the property located at 16 Irisweg Drive in Brookside, Nova Scotia ("the property") was owned by the Defendants, John and Penny Ordinelli. The Plaintiff, Mr. Linders, a real estate agent, says he fell on ice when he was showing the property to potential purchasers. He says the Defendants were negligent and breached their duty and standard of care as occupiers of the property.

[2] This was a liability trial only. The parties reached agreement on the quantum of damages should liability be found.

Evidence at Trial

[3] Mr. Linders called the following witnesses at trial: himself and Mr. Masoud Afrazy. Each of the Defendants testified. A Joint Exhibit Book as well as various exhibits were entered. In addition, several portions of Mr. Ordinelli's discovery transcript were entered into evidence.

[4] I have considered all of the evidence I heard during this trial, although I will not mention all of it. The following are the facts of this matter as I find them, unless stated to be otherwise.

Facts

Mr. John Linders' Evidence

[5] Mr. Linders was 74 years of age on January 4, 2019. He had worked as a residential real estate agent for 38 years. He planned to show his out-of-province clients, the Afrazys, three properties that were for sale. They were on a tight schedule.

[6] Mr. Linders was wearing Clarke shoes with rubber soles. He said they had a good grip. He was wearing similar shoes in court at the time he testified.

[7] Mr. Linders arrived at the property with his clients at approximately 10:30 am. The itinerary for the day shows the Irisweg property as the first property to be visited from 10:30 to 11:15 am.

[8] It was a cloudy day. The roads were clear and Mr. Linders did not encounter any precipitation. He did not recall the weather in the few days leading up to January 4, 2019, but recalled that on January 4th there was no precipitation, no snow. At trial Mr. Linders said the temperature the day of his fall was below freezing; however, his evidence at discovery was that he could not recall whether it was mild or cold. He said that he has had more time to think it over but otherwise cannot explain why his memory was better at trial than at discovery.

[9] This was Mr. Linders' first visit to the property. Upon arrival, he noticed a miniscule amount of snow on the driveway; otherwise it was very clear. He could see the gravel on the driveway. He did not see any ice there. He had no concerns about taking his clients on the property when they arrived. He was not concerned about the upkeep of this property.

[10] He parked near the detached garage, close to the grass in case someone needed to exit the garage. He stepped on the grass with perhaps a heel on the gravel and the grass was crunchy. The gravel was sort of crunchy also. He cautioned his clients it could be slippery. He could see the blades of grass on the lawn. He saw a crystal gleam on the blades of grass and was making footprints as he walked on the grass and heard a crunching sound.

[11] He walked across the grass diagonally to the front entry of the house. At the entry there is a concrete slab or landing ("landing"), then a concrete step and then wooden steps to a wooden landing at the entry door. During his direct examination he said that the concrete landing and the step had two inches of snow on them that was glistening, shiny. However, during his discovery examination he said there was a dusting of snow on the concrete. At discovery, his evidence was that he made no measurement or observation of the snow on the concrete other than it was a dusting. The dusting of snow was uniform across the whole concrete landing and step. Mr. Linders did not see any footprints in the snow on the concrete step or landing. He said the wooden steps after the concrete step that led to the front door were completely bare. Mr. Linders described ascending the stairs by stepping over the concrete while holding onto the wooden rail and putting his left foot on the bare first wooden step rather than onto the concrete landing or concrete step. This was a conscious decision to avoid the concrete and to choose the bare wooden step. He

was cautious the landing could be slippery and chose this as the best option. Mr. Linders acknowledged that in Nova Scotia it was not unusual to have a slippery spot under a dusting of snow.

[12] After a few moments in the house and realizing that his clients were not behind him, he then began to descend the stairs. He wanted to go and find them promptly. On descending the stairs to search for his clients, he said he could not jump over the concrete as it would not be feasible at his age, so he stepped onto the first concrete step while his right hand was on the wooden post. This was a conscious decision to step onto the concrete step. His earlier concern about the snow on the concrete did not enter his mind.

[13] His right hand was on the handrail when he stepped on the concrete, and his feet went out from underneath him. The left side of his head and shoulder struck the concrete. Initially in his direct examination when asked where his feet slipped, he said to the best of his recall it was on the first concrete step but on cross-examination he said that he was not sure where he fell. He said he did not actually know where he fell but that he stepped onto the concrete step and landing and "was gone". He thinks he took a step on both. He later said he thinks he fell when he stepped onto the concrete landing but is not sure.

[14] After the fall his body was laying pointing toward the street and was close to the lattice (his head was by the landing and feet by the step). He was on the grass. Exhibit 2 is a blow up of the street side of the property that illustrates the entry stairs. Mr. Linders placed a blue sticky note on Exhibit 2 at the point where he observed ice after his fall. The blue sticky note points to the concrete step. However, he also said that he saw ice on the landing that was part of the entry concrete when he rolled onto his right side. He later said he knows he saw ice on the landing but cannot say if it was also on the step. He said he did not see any ice prior to his fall.

[15] During cross-examination, it was pointed out to Mr. Linders that on discovery he said he saw shining, glistening concrete when he rolled over after his fall. In response, he said there is no difference between shining, glistening concrete and ice. Mr. Linders did not say where he saw the shining, glistening concrete, whether it was in one area or over the entire surface of the landing. He did not take his hand and run it over the concrete landing, nor did he stand on it after his fall. When Mr. Linders' clients returned from the lake, he was standing leaning against the lattice that is around or under the wooden landing.

[16] Mr. Linders sent a text message to the listing agent at 10:17 pm wherein he referenced his fall. He said in the text message "it is treacherous" and explained at trial that he meant the concrete landing was treacherous.

[17] Mr. Linders did not observe any salting at the property. He said that this was not a reason for him to terminate the visit. He said he recognized that people with wells and who live on lakes do not use salt and therefore, he was not surprised there was no salting at this lakefront property with a well. He said that there are alternatives to salting such as ice melt.

Mr. Mansour Afrazy

[18] Mr. Mansour Afrazy ("Mr. Afrazy") gave evidence virtually from Pickering, Ontario. His evidence was different than Mr. Linders at times. For example, Mr. Afrazy said the first house they viewed on January 4th was on Sarah Ingraham Drive and not the house where Mr. Linders fell. He said on direct examination the property where Mr. Linders fell was the 3rd or 4th property they viewed; then on cross examination that it was the 2nd or 3rd property they viewed. He said the visit to the Irisweg Drive property was toward noon. On cross examination he noted that it was over six years ago so he could not disagree if Mr. Linders said they visited the Irisweg property first.

[19] Mr. Afrazy recalled it being very cold on January 4, 2019. He said there was snow on the property, and it was getting hard due to the temperature. When asked what part of the property contained snow, he answered the majority of the front and back of the house with some a little bit cleaner than the rest. He later recalled there being 2 to 3 cm of snow on the driveway. He said it looked like no one had cleaned the driveway. He said there was snow on the ground, and it was slippery.

[20] Mr. Afrazy said that when he and his wife walked to the lake, he took her hand so she would not slip. They were wearing regular shoes. When they returned to the front of the house, he recalled Mr. Linders standing on the landing before the stairs. He was injured. He said the landing had snow on it as did the steps and it was hard and slippery. He did not recall how much snow was present. He was uncertain what material the landing was made of. He said that all of the houses they saw had some snow and none were clear.

[21] He and his wife viewed the home, but he recalled virtually nothing about the inside of the house because they were shocked due to Mr. Linders' condition. He said they did not fall while entering the house from the stairs. He held his wife's

hand. He recalled there being snow on the stairs and on the landing. He said it was hard and slippery. He said on cross-examination that he was not sure if it was on all of the steps. He did not know where Mr. Linders fell.

[22] Mr. Afrazy said Mr. Linders was bleeding and there was a bump on his forehead. He said that later Mr. Linders was unable to buckle his seat belt; therefore, he drove Mr. Linders' car. He was unsure whether they saw another property after leaving Irisweg Drive.

[23] I am of the view that there are issues with the reliability of Mr. Afrazy's evidence as he seems to be mixing up the visit to Irisweg Drive with the other properties they viewed. Although he said he did not think he was mixing up the properties as all had some snow and were not clear, based on the totality of his evidence I am not confident his recollections are reliable. He himself acknowledged that the fall was over 6 years ago and he deferred to Mr. Linders with respect to the sequence of the visits to the various properties. He also could not recall anything about the inside of the property. In short, I am of the view that Mr. Afrazy's testimony adds nothing to the evidence.

[24] As part of the Plaintiff's case Mr. Linders entered various excerpts from the discovery evidence of the Defendant, Mr. John Ordinelli.

Mr. John Ordinelli

[25] Mr. Ordinelli and Ms. Ordinelli (now Ms. Corkum) owned the property on January 4, 2019. The property was built in 2001, and they moved into the home in 2002. Ms. Corkum moved out in 2016. Mr. Ordinelli did the exterior maintenance himself.

[26] He described the property and noted there was a concrete sidewalk going to the front entrance of the house with the first step being concrete and the remaining stairs being wooden. He described the bottom concrete step being as wide as the stairs. There is a wooden landing at the entrance door that is 6 feet by 5 feet deep.

[27] Mr. Ordinelli gave a statement to the insurance adjuster on February 20, 2019. He did not review the statement nor was he asked if he wished to make any changes or deletions. He did not know where Mr. Linders fell but had assumed it was in the driveway. He learned of the fall the evening of January 4, 2019, from his ex-wife Penny.

[28] Mr. Ordinelli said he did not carry out any winter maintenance when he learned there would be a showing of the property on January 4, 2019. He said there was no need to because everything was clear and safe to walk up and down the stairs. He said he did not use any traction material as all looked normal to him so there was no need for any treatment. He worked on January 4th from 7:30 am until 4:00 pm and left his home at approximately 6:30 am. He exited the front door, went across the wooden landing, down the stairs and out onto the bottom concrete landing and then to his truck. He said the condition of the stairs was normal, meaning not covered in snow or ice. When he walked over the stairs, the concrete step and landing on the morning of January 4th he did not note any slipperiness. He stepped on each of the wooden steps, concrete step and landing. He said that when he left for work that morning it was not yet light but was not pitch dark as there was light from a streetlight. He did not observe any snow or ice. He did not specifically check for ice over the entire area of the concrete step and landing.

[29] He arrived home that day at approximately 4:45 pm and said the condition of the stairs was normal. They were in good condition and safe. He went up the stairs and into the house. He had worked the same hours January 2nd and 3rd and entered and exited the house at around the same time at 6:30 am and 4:45 pm by the front entrance. He did not recall the weather in the days leading up to January 4th. He thought it was mild on January 4th as after he arrived home from work, he heard kids playing hockey on the lake so it would have been a nice day.

[30] He said he would not have left snow on the landing or the step.

[31] Mr. Ordinelli described his winter maintenance regime and said he would keep the steps free and clear regardless of who was coming on the property. He said he never used salt anywhere on the property due to possible contamination of his well. Not salting his property was an assumption he had made. He said the city never salted in his area nor did his neighbours. His primary concern with winter maintenance was the garage to the house and up the steps and then to the street. He used traction control from time to time but not regularly. It was not part of his regular maintenance. He would only use it if his other tools were not effective. He described the traction control he used as crusher dust or kitty litter.

[32] Mr. Ordinelli described the numerous tools he had for snow and ice removal. When dealing with ice, he used a scraper. He would chip away at any ice that formed, for example, in the driveway. On the concrete step and landing he said he would remove the ice no matter how thin it was. He would use traction material if there

were still small amounts of ice; however, he did not use it regularly. He did not use any products like ice melt on his property.

Ms. Penny Corkum

[33] Ms. Corkum (formerly Mrs. Ordinelli) lived at the subject property until October of 2016. She returned briefly in 2017 and 2018. Ms. Corkum gave evidence that during this entire period Mr. Ordinelli looked after all of the outdoor maintenance at the property. In the summer this included things like mowing the lawn, tree cutting and grooming, planting and installing patio stones. She said that during the winters he did all of the snow and ice removal. She did not do any outside work.

[34] She indicated that Mr. Ordinelli had a number of winter maintenance tools including a John Deere tractor that she described as a big snow tractor, a snow blower, a scoop shovel, a pick type tool and a metal half moon cutter used for ice. She was unable to say what criteria he used for snow removal, but the property was always clear and she never slipped. She said they parked two vehicles side by side in the driveway and Mr. Ordinelli cleared edge to edge. She said he broke the ice manually when it formed and she saw him use crusher dust or sand. She recalled the use of crusher dust on the driveway but was uncertain if it was used on the concrete landing. She was certain it was not used on the wooden steps.

[35] She noted that she never used the back door to the house but always the front entrance. She said she did not even have a key to the back door. She said in winter Mr. Ordinelli always cleared and would sweep including under the rails of the stairs.

[36] She noted that Mr. Ordinelli would go out during a storm to get a head start. She said when she went out, she never worried as the stairs were always clear and it was clear to the gravel. She said that she never had to worry walking down the steps. She said he seemed to have a system for whatever the weather was, but she did not know what it entailed.

Weather Station Data

[37] Entered into evidence by consent was Government of Canada weather station data from five separate weather stations for the period January 1 to January 4, 2019. None of the weather stations are specific to where the property is located, which is Brookside, Nova Scotia.

[38] The Bedford Basin weather station does not show any precipitation on January 1st, 2nd, 3rd or 4th. The St. Margarets Bay weather station does not record hourly weather conditions but does indicate there was 5 cm of snow on January 1st. It does not record any precipitation for January 2nd, 3rd or 4th. The Halifax Dockyard weather station data indicates there was no precipitation on January 2nd, 3rd or 4th prior to Mr. Linders' visit. On January 4th it notes at 11 am an "M" which the legend indicates means that data is missing. Similarly on January 1st no precipitation is noted but there are Ms or missing data hourly from 11 am until 11 pm. Again, there is no evidence of any precipitation on this date. The Halifax Stanfield Airport weather station reports no precipitation on January 1st but in the section titled weather from 5 am until 5 pm there are references to snow, moderate snow, blowing snow, moderate ice pellets, fog and drizzle. There is no indication of any precipitation on either January 2nd or 3rd. On January 4th the Airport weather station indicates there was no precipitation but under the weather heading it notes "snow showers" from 7 am until 1 pm. There is also weather data from the Shearwater RCS weather station. There is precipitation shown on January 1st from 8 am until 3 pm (total 17.2 mm). On January 2nd no precipitation is recorded. On January 3rd at 11 am 0.2 mm of precipitation is noted. On January 4th there is no precipitation recorded until 1 pm.

[39] The temperature at each weather station that recorded hourly conditions shows a period of time on January 1st where the temperature was slightly above zero; otherwise, the temperature was consistently below zero until Mr. Linders' fall on January 4th.

[40] The sum total of the evidence of precipitation before the Court is that at the Shearwater weather station there was some precipitation on January 1st (17.2 mm) and also at St. Margarets Bay weather station (5 cm). The Airport weather station, while not recording precipitation amounts, does note snow, blowing snow etc. on January 1, 2019. None of the weather stations report any precipitation on January 2nd, 3rd and 4th, other than 0.2 mm reported at Shearwater on January 2nd. The Airport weather station, while not reporting any measurement of precipitation, does report snow showers from 7 am until 1 pm on January 4th. None of the other weather stations report any precipitation on January 4th prior to Mr. Linders' fall.

[41] Mr. Linders did not recall the weather in the days leading up to January 4th but noted there was no precipitation on the day of his fall. At trial he recalled January 4th being cold but at discovery had no recall of the temperature.

[42] Mr. Ordinelli said it may have snowed on New Years Day but similarly had no recollection of the weather, other than on January 4th, when he surmised it must have been nice as kids were playing hockey on the lake.

[43] Mr. Afrazy recalls it being cold on January 4th.

Issues

[44] In dismissing the Defendants' non-suit motion, I found that Mr. Linders had presented some evidence on which a properly instructed jury could infer that the Defendants breached the standard of care and were, therefore, negligent. However, now that I have heard all of the evidence, the question is whether Mr. Linders has established his case on a balance of probabilities.

[45] The issues are as follows:

1. Has Mr. Linders established a *prima facie* case of negligence?
2. If the answer to question number 1 is yes, what system of maintenance did the Ordinellis have in place? Have they demonstrated that they had a reasonable regime of inspection and maintenance sufficient to discharge their duty?
3. In the event there is any finding of liability against the Ordinellis, was Mr. Linders contributorily negligent to any degree?

The Law and Analysis

[46] Section 4 of the *Occupiers' Liability Act*, 1996, c. 27 (the "*Act*") sets out the duty of care owed to persons entering on premises. The Defendants do not dispute that they were occupiers pursuant to the *Act* and that a duty of care was owed to Mr. Linders and to Mr. and Mrs. Afrazy when they visited the property on January 4, 2019.

[47] The caselaw establishes that the duty under the *Act* is not a standard of perfection, but of reasonableness in the circumstances. Recently in my decision in *Moore v. Capital Sales Limited*, 2025 NSSC 395, I set out the applicable caselaw at paras. 39-43 and I incorporate those paragraphs here. LeBlanc, J. in *Miller v. Royal Bank*, 2008 NSSC 32 (affirmed at 2008 NSCA 118), said the following at para. 113:

> …The duty of an occupier was considered in *Corbin v. Halifax (Regional Municipality)* (2003) 214 N.S.R. (2d) 345 (S.C.), where Wright, J. stated, with respect to the duty set out in s. 4(1):
>
> > [32] In interpreting the identical provision found in the *Occupiers Liability Act of Ontario* in *Waldick et al. v. Malcolm et al* (1989) 35 O.A.C. 389; 70 O.R. (2d) 717 (C.A.), Blair, J.A., described the essence of this statutory duty in the following passage (at para. 19):
> >
> > > A similarly worded statement of an occupier's duty occurs in all other Occupiers Liability Acts. All courts have agreed that the section imposes on occupiers an affirmative duty to make the premises reasonably safe for persons entering them by taking reasonable care to protect such persons from foreseeable harm. The section assimilates occupiers' liability with the modern law of negligence. The duty is not absolute and occupiers are not insurers liable for any damages suffered by persons entering their premises. Their responsibility is only to take "such care as in all the circumstances of the case is reasonable". The trier of fact in every case must determine what standard of care is reasonable and whether it has been met….
> >
> > [Emphasis added]

[48] The Nova Scotia Court of Appeal in *Theriault v. Avery's Farm Markets Limited*, 2022 NSCA 36 addressed the duty of care owed by occupiers to users of premises, reaffirming the applicable principles:

> [62] The legal principles applicable to a claim under the OLA are not controversial. At trial, both parties relied upon this Court's decision in *Miller* [*Miller v. Royal Bank*, 2008 NSCA 118]. They do so again on appeal.
>
> [63] There, this Court upheld the lower court's articulation and application of the legal principles of occupiers' liability drawn from a number of case authorities, including those set out by the Newfoundland Court of Appeal in *Gallant v. Roman Catholic Episcopal Corporation*, 2001 NFCA 22:
>
> - There is a positive obligation upon occupiers to ensure that those who come onto their properties are reasonably safe;
> - The onus is on the plaintiff to prove on a balance of probabilities that the defendant failed to meet the standard of reasonable care;
> - The fact of an injury in and of itself does not create a presumption of negligence. The plaintiff must point to some act or failure to act on the part of the defendant that resulted in their injury;
> - If a plaintiff is able to demonstrate a *prima facie* case of negligence, the occupier can discharge its evidential burden by showing it has a

> regular regime of inspection, maintenance and monitoring sufficient to achieve a reasonable balance between what is practical in the circumstances and what is commensurate with reasonably perceived potential risk to those lawfully on the property; and
>
> - An occupier is not a guarantor or insurer of the safety of the persons coming on its premises.
>
> [64] Additionally, I would note:
>
> - In assessing whether an occupier has taken reasonable care in the circumstances to make the premises safe, the factors to be considered by the trial judge will be specific to the particular fact situation (*Waldick v. Malcolm*, [1991] 2 S.C.R. 456 at para. 33); and
> - Demonstrating the existence of an act or omission by an occupier does not give rise to an automatic finding of negligence. Whether an action or omission constitutes negligence giving rise to a statutory breach will depend on all the circumstances (*Miller*, at para. 9).
>
> [Emphasis added]

[49] Section 4(3) of the *Act* requires that I give consideration to various factors. I have weighed these as part of my analysis. They are as follows:

> **Occupier knowledge of persons being on the premises - s. 4(3)(a)**
> The Defendants clearly knew a real estate agent and his clients would be visiting the property.
>
> **Circumstances of the entry into the premises - s. 4(3)(b)**
> Mr. Linders was authorized to be on the premises. He had never visited the property previously.
>
> **Age of the person entering the premises - s. 4(3)(c)**
> Mr. Linders was an adult aged 74 at the time of the fall.
>
> **Ability of person entering premises to appreciate the danger - s. 4(3)(d)**
> Mr. Linders had no identified issues with perception or observation of the conditions he found on arrival at the property.
>
> **Effort made by occupier to give warning of the danger concerned or to discourage persons from incurring the risk - s. 4(3)(e)**
> This consideration often refers to the presence or lack of warning signs or equivalent. There were no signs in the vicinity of Mr. Linders' fall. When

> he approached the stairs, he saw a dusting of snow on the concrete with completely clear wooden steps. There were no footprints in the dusting of snow. Mr. Ordinelli had left for work using the same stairs several hours earlier. He did not note any issues and said there was no need for any winter maintenance. The absence of a warning in these circumstances was reasonable.
>
> **Is the risk one against which, in all the circumstances of the case, the occupier may reasonably be expected to offer some protection - s. 4(3)(f)**
> Mr. Linders is not completely sure where he fell, whether on the concrete step or concrete landing. Mr. Linders did not say whether there was ice over the entire landing or whether it was a small patch of ice. The dusting of snow on the concrete step and the landing contained no footprints, meaning if it was present, it must have fallen after Mr. Ordinelli left for work. There is no evidence of it being windy that day such that snow would blow around and again the wooden steps were completely clear.

[50] While a consideration of these factors is mandatory, the list is not exhaustive. I have weighed them together with the other issues raised in the evidence that I have highlighted below.

[51] Mr. Linders was a credible witness. The outcome of this case will not turn on whether he was attempting to mislead the Court. The most that could be said is that Mr. Linders was uncertain about where he fell and the condition of the concrete where he fell. Where his memory at trial differed from his discovery evidence, I accept his discovery evidence as being closer in time to the events which occurred almost 6 years ago. I am of the view that his memory was fresher or clearer during his discovery examination. I find that he saw a dusting of snow on the concrete step and landing and after his fall when he rolled over, he saw glistening, shining concrete on the landing. That is the extent of his evidence concerning snow and ice on the stairs.

[52] I fully realize that ice is a common occurrence during winter in Nova Scotia. However, in essence, Mr. Linders asks the Court to infer that he slipped on ice. His evidence is insufficient to conclude he slipped on ice. It is Mr. Linders' burden to prove what unsafe condition or hazard caused him slip and fall and thereafter, to illustrate that the condition or hazard existed due to a breach of duty by the Defendants. An occupier is not a guarantor or insurer of the safety of persons coming

onto the occupier's premises. Mr. Linders has not proven that he slipped on ice on the concrete step or on the landing. It is just as likely that he lost his footing while rushing down the stairs to meet up with his clients. The Court cannot speculate when determining the cause of a Plaintiff's fall. As noted above, Mr. Linders' evidence was at times contradictory as to where he fell and what was present on the concrete step and landing.

[53] After his fall when he rolled over, Mr. Linders saw glistening, shining concrete on the landing. It may well have been ice that he saw. However, whether this ice was in the area where he fell is unknown as he is not sure whether he fell on the concrete step or on the concrete landing. Whether this was a large or very small area of glistening, shining concrete is also unknown. He did not give any evidence as to the extent of the ice he saw; in other words, how much ice or shining, glistening concrete was present.

[54] Mr. Linders must point to some act or failure to act on the part of the Defendants that resulted in his injury: see *Theriault* at para. 63, citing *Miller* and *Gallant*. Mr. Linders was alone when he fell. No one else witnessed him fall. In this case, the evidence of the Plaintiff is not clear as to why he fell and where he fell after exiting the house. It is unclear whether he fell when he stepped on the concrete step or onto the lower concrete landing. I accept that Mr. Linders fell on either the concrete step or the concrete landing on January 4, 2019; however, it is not clear whether he fell due to rushing to meet up with his clients or he slipped on a patch of ice on the concrete step or concrete landing.

[55] As noted above, Mr. Afrazy's evidence came across as confused. He was convinced that the first home they visited was the Sarah Ingraham property and Irisweg Drive where the fall occurred was the 3rd or 4th home visited (later he said it was the 2nd or 3rd home visited). The plan was to visit Irisweg Drive first as set out in the written schedule and as confirmed in Mr. Linders' evidence. Although he is unsure, Mr. Afrazy seemed to say they did not see any properties after the fall and that he drove Mr. Linders home. However, Mr. Linders says that after his fall they proceeded to two other property showings because his clients were only in town for a brief period of time. He said that his client, Mr. Afrazy, did the driving after his fall.

[56] Further Mr. Afrazy said that after the fall Mr. Linders was standing on the cement landing whereas Mr. Linders said he was standing/leaning against the lattice. If the landing was icy, why would he be standing on it after his fall? I had the clear

impression listening to Mr. Afrazy's evidence that he had the various properties mixed up, which is understandable six years later. His evidence that there was snow and ice on the stairs including the wooden stairs is inconsistent with both Mr. Linders' and Mr. Ordinelli's evidence. In short due to his confusion, I find Mr. Afrazy's evidence to be unreliable.

[57] Mr. Linders says there was a dangerous build up of ice that formed in the days leading up to January 4th. It would be foolhardy on my part to infer that snow or ice fell on January 1st and due to a thaw/freeze cycle that day ice formed on the cement step and landing and because it stayed below zero from January 1st until the time of Mr. Linders' fall on January 4th, this ice remained and caused Mr. Linders to fall. There is simply insufficient evidence to support that this was the case. I do not accept that from the minimal reference to precipitation in the weather station data that I should infer there was a build up of ice at this property that occurred on January 1st and remained until January 4th. The evidence before me does not support this.

[58] Mr. Linders says that Mr. Ordinelli knew there was a risk in winter of ice forming, yet did not inspect the stairs before leaving for work. He says exiting the home as he did on any normal day is not enough when it is the entrance to the house. He says there should have been an inspection given the weather conditions.

[59] This argument is not consistent with the state of the property that Mr. Linders himself described. On arrival he was not concerned with the upkeep of the driveway or steps leading to the home. He described a very clear driveway with a miniscule amount of snow, the wooden steps were completely bare, there was a dusting of snow on the bottom concrete area with no footprints in it despite Mr. Ordinelli having walked through the area that morning.

[60] Applying the test of reasonable care to make the premises reasonably safe I must look at all of the circumstances. I am unable to conclude on the evidence before me that the conditions were ideal to produce slippery surfaces but only on the concrete step and concrete landing. Having regard to the weather conditions indicating a lack of precipitation, there is nothing more that the Ordinellis should have done. Mr. Ordinelli exited and entered the home using the stairs over the days prior to January 4th and on the early morning of January 4th. He saw no snow or ice on the stairs or landing. He descended the stairs and crossed the cement landing with no difficulty. There is no evidence that there were changing winter conditions requiring Mr. Ordinelli to perform winter maintenance. Again, the fact that the wooden stairs were completely bare supports this.

[61] I accept that when Mr. Ordinelli left his property at 6:30 am he did not see anything that required winter maintenance on the steps. I do not find this to be unreasonable or unusual in the circumstances of this case. I am satisfied that there was nothing remarkable about the weather that would cause any heightened concern about walking conditions. Further there was no duty on the Defendants to be in constant surveillance of the stairs, given the weather was cold and no precipitation had fallen. The best evidence of how well the property was maintained is that the driveway was essentially bare to the gravel and the wooden steps were all clear. If ice formed or snow fell on the concrete in the few hours after Mr. Ordinelli left the property, he cannot be found to be responsible as that would equate to a standard of perfection.

[62] Did the Plaintiff make out a *prima facie* case of negligence? The law is clear that the fact of an injury in and of itself does not create a presumption of negligence. The Plaintiff must point to some act or failure to act on the part of the Defendants that resulted in his injury. Mr. Linders has not illustrated that some act or failure to act caused his injury. For the above reasons, I find that Mr. Linders has not made out a *prima facie* case of negligence against the Defendants. The duty imposed on the Defendants was to take reasonable care to ensure that the property was reasonably safe. I find that the stairs were reasonably safe.

[63] In the specific circumstances of this case, the failure to use salt or a similar product does not equate to negligence nor an unreasonable maintenance regime. It would depend on the circumstances. Here Mr. Ordinelli had a comprehensive winter maintenance regime where he would remove any ice and only if he could not remove the ice by all of the other means at his disposal (scraper, ice chipper, etc.) would he use traction materials. It was reasonable that on the morning of January 4th Mr. Ordinelli did not use traction material. He saw nothing that would dictate its use. He left the house having stepped on each step and the cement landing and noted no conditions requiring winter maintenance. Keeping the property reasonably safe does not require constant surveillance with immediate response. The standard of care is reasonableness, not perfection.

[64] As Hunt, J. said in *MacPherson v. Strait Regional Center for Education*, 2023 NSSC 167:

> 82. Under the *Occupiers' Liability Act*, occupiers have an affirmative duty to take reasonable care for the safety of persons of those who are permitted on the premises. Case law is clear however that the duty to make the premises "reasonably safe" does not mean that there must be "constant surveillance and immediate

> response", "constant dedicated supervision", or that the occupier must "remove every possibility of danger". See *Swagar v. Loblaws*, 2014 ABQB 58 at para 58. The standard of care is reasonableness, not perfection.
>
> [Emphasis added]

[65] If Mr. Linders had been able to demonstrate a *prima facie* case of negligence (which he did not), the Defendants could discharge their evidential burden by showing that they had a reasonable regime of inspection, maintenance and monitoring. I am of the view that the Ordinellis had a regular regime of inspection, maintenance and monitoring sufficient to achieve a reasonable balance between what is practical in the circumstances and what is commensurate with reasonably perceived potential risk to those lawfully on the property (*Theriault*, *supra*, at para. 63). I refer to the evidence above from Mr. Ordinelli and Ms. Corkum (although her evidence was somewhat dated) concerning the winter maintenance regime at the property.

[66] In the circumstances, Mr. Ordinelli's regime of inspection and snow and ice removal was reasonable. The property was well maintained with gravel showing through on the driveway and there being only a miniscule amount of snow, the wooden steps being completely clear and there being only a dusting of snow on the bottom step. Mr. Ordinelli said the steps and concrete landing were a priority in his maintenance regime. In short, the Defendants demonstrated that they had a reasonable regime of inspection and maintenance sufficient to discharge their duty.

[67] It is regrettable that Mr. Linders fell and suffered injuries. However, Mr. Linders has not demonstrated negligence on the part of the Defendants. I am not convinced from the evidence presented that Mr. Linders fell on ice nor that the inspection and maintenance regime of the homeowner was unreasonable in the circumstances.

[68] Given my findings on liability, there is no need to address the Defendants' arguments concerning contributory negligence.

Conclusion

[69] In conclusion, Mr. Linders has failed to establish that the Defendants breached the standard of reasonable care. Mr. Linders' claim against the Defendants is dismissed with costs to them.

[70] I ask that the Defendants' counsel prepare a draft order and provide it to Plaintiff's counsel for review. If the parties are unable to resolve the issue of costs, I will receive written submissions within 30 calendar days of the date of this decision.

Jamieson, ACJ