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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 31836-2-III

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

EDWARD HVOLBOLL
Appellants/Plaintiffs,

v.

HSC REAL ESTATE INC.; PERRENOUD ROOFING INC.;
CLOCKTOWER PLACE LLC;
Defendants/Respondents

And

WOLFF COMPANY ; CONSOLIDATED AMERICAN
SERVICES; W-B SUNRISE LLC.
Defendants Below

Brief of Appellants

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Assignments of Error

Assignment of Error No. 1: The Court below erred by granting summary judgment of dismissal against Appellant.

Issues Pertaining to Assignments of Error

Issue No. 1: Is “Primary Implied Assumption of Risk” a bar to liability by a tenant against a landlord in cases of slip and fall on ice and snow in common areas of rental premises.

Issue No. 2: Was there a question of fact as to the voluntariness of Appellant’s decision to encounter the risky condition.

Issue No. 3: Did Appellant have ‘knowledge’ of the condition as that term is used in the context of ‘primary implied assumption of risk.’

STATEMENT OF THE CASE:

FACTS

Edward was a tenant at the Clocktower Apartment complex [CP126] where he slipped and fell on January 7, 2009, injuring himself.

Mr. Hvolball had moved to Spokane from California in August 2008, about 4 months prior to the accident. [CP 127, 130] He rented an apartment in the Clocktower complex, which he understood was a 'high end' property. [CP 134] Part of the reason he rented the property was the representation of the rental agent that the complex management would 'take care of snow removal.' [CP135]

Mr. was not experienced with winter weather. He had never walked on snowy or icy surfaces prior to the winter of 2008. [CP 128] He had been born and raised in warm climates, [CP 128] and except for the time he spent in Spokane before this accident, had never slipped on ice before. [CP 128] He had

never played winter sports. [CP 129]

It began snowing in late November of that year, so he had about a month of experience prior to the accident. [CP 86] Mr. Hvolboll himself had slipped, but had not fallen on snow and ice prior to the accident. [CP 93, 95] His roommate had slipped and fallen near the trash dumpsters. [CP 96]

So Mr. Hvolboll was aware intellectually, before moving, that Spokane would have snow and ice [CP 129] but he had never experienced those conditions in general, and the specific conditions on the day of his injury were unique to him. [129-130]

The winter of 2008 - 2009 brought significant snowfall, and the apartment complex did clear its sidewalks of snow and ice; but did not completely clear the asphalt surfaces of the parking lots and driveways.[CP 133 - 134] There was a significant accumulation of ice and compact snow on the roadway surfaces, as seen in the photos submitted to the court.

[CP 120 - 123]

On the day of the accident there had not been any new accumulations of snow of snow for 1 week prior to accident.

[CP 130] However the snow conditions on the day of his accident were different than they had been during the prior week. On the day of the accident temperatures had gone up above freezing, so the compact snow and ice surfaces had water on top of ice, making them more slippery than before. [CP 129 - 130] Mr. Hvolboll had some limited experience with ice and snow during the time he had been living in Spokane, but never with freshly thawed ice and snow, which can be much more slippery. [CP 130 - 131] As a result Mr. Hvolboll was not able to determine by simply looking, and did not realize that conditions were different, much slipperier than he expected.

[CP 131]

While the sidewalks in the complex were cleared of ice and snow, but they did not go everywhere. Specifically, to get

to the complex business offices from Mr. 's apartment, one had to traverse some part of the uncleared parking areas. [CP 131-132] Many of the common areas of the complex could only be reached by leaving the sidewalks and traversing the roadway surfaces in the complex. [CP 133] Mr. Hvolboll was adamant that, to get to the business office, at some point he would have had to cross the poorly-plowed, unsanded roadway portions of the complex, no matter what route he took. [CP 110, 111] An aerial photo [Attached as Appendix A] shows the layout. [CP 144]

To walk to the business office from Hvolball's apartment in a relatively straight line it was not possible to stay on the cleared sidewalks: pedestrians were forced to walk on the largely uncleared roadways. [CP 133] Any other, less direct route would have exposed Mr. Hvolball to longer distances over similarly dangerous ground. [CP 135-136] The path he chose was the shortest path and, in his estimation at the time,

the safest path because it exposed him to the least distance to travel on icy surfaces. [CP 136, 140] Other paths would have exposed him to even more distance on icy roadway. [CP 136]. In Mr. Hvolboll's testimony, this was equally true of the 'handicap' access to the office. [CP 136]

So Mr. Hvolboll was faced with a choice: walk over the ice or stay home. [CP 137] Mr. Hvolboll had been asked to come to the business office. [CP 138] Part of his reason for the visit was to complain that the complex was not using ice melt or sand on roadway surfaces. [CP 140] He was wearing traction-soled shoes [CP 142] and he believed that he would be reasonably safe.

Finally he could have attempted to drive his car to the office, however, he was not sure if the driveway to his garage was cleared enough for his car to get out, and was afraid the car would become stuck. [142] If he had driven he would still have had to walk on the same icy, slippery ground after he parked

the car and got out, since there may not have been any parking spaces closer to the office than where he was standing when he decided to cross the road. [CP 142-143]

PROCEDURE

This matter was filed January 4, 2012 [CP 1]. Summary Judgment was requested 3/7/2013 [CP54] and granted, dismissing the entire action, on 6/24/2013. [CP 213, 216] A notice of appeal was filed 7/22/2013. [CP 219]

ARGUMENT

I. PRIMARY IMPLIED ASSUMPTION OF RISK DOES NOT APPLY TO TENANT SLIP AND FALL ON ICE CASES

The State Supreme Court has held that a Landlord may be liable for damages to a tenant who slips on ice and snow, even if the danger was obvious, where it was foreseeable that the tenant would believe the benefits of encountering the danger exceed the risks.¹ The Supreme Court has *not* held that the exact same behavior would comprise implied primary assumption of risk that would eliminate the landlord's duty.²

¹ *Mucsi v. Graoch Assocs. Ltd. P'ship No. 12*, 144 Wash.2d 847, 855, 31 P.3d 684 (2001), *Iwai v. State*, 129 Wn.2d 84, 94, 915 P.2d 1089 (1996)

² Appellant has found the term "primary implied assumption of risk" discussed in the following cases. None of them involved slips and falls by tenants on ice or snow in common areas: *Stout v. Warren*, ___ Wn.2d ___, 290 P.3d 972 (2012); *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 244 P.3d 924 (2010); *Beaupre v. Pierce County*, 166 P.3d 712, 161 Wn.2d 568 (2007); *Tincani v. Inland Empire Zoological Soc.*, 66 Wn.App. 852, 837 P.2d 640 (1992) *reversed* 124 Wn.2d 121, 875 P.2d 621 (1994); *Scott By and Through Scott v. Pacific West Mountain Resort*, 119 Wn.2d 484, 834 P.2d 6 (1992); *Kirk v. Washington State University*, 109 Wn.2d 448, 746 P.2d 285 (1987); *Jessee v. City Council of Dayton*, ___ Wn. App ___, 293 P.3d 1290 (2013); *Wirtz v. Gillogly*, 152 Wn.App. 1, 216 P.3d 416 (2009); *Lascheid v. City of Kennewick*, 137 Wn.App. 633, 154

Therefore the assumption of risk doctrine is inconsistent with established law in this area and should be rejected.

A plaintiff must establish (1) the existence of a duty owed to the complaining party, (2) a breach thereof, and (3) a resulting injury.³ The focus in this case is on the Duty of the Landlord.

A. Landlord's Duty as to Ice and Snow Which a Tenant may be Expected to Encounter

Duty is determined in part by the status of the victim as invitee, licensee or trespasser.⁴ A residential tenant is an

P.3d 307 (2007); *Taylor v. Baseball Club of Seattle, L.P.*, 132 Wn.App. 32, 130 P.3d 835 (2006); *Locke v. City of Seattle*, 133 Wn.App. 696, 137 P.3d 52 (2006); *Erie v. White*, 92 Wn.App. 297, 966 P.2d 342 (1998); *Egan v. Cauble*, 92 Wn.App. 372, 966 P.2d 362 (1998); *Home v. North Kitsap School Dist.*, 92 Wn.App. 709, 965 P.2d 1112 (1998); *Johnson v. NEW, Inc.*, 89 Wn.App. 309, 948 P.2d 877 (1997); *Alston v. Blythe*, 88 Wn.App. 26, 943 P.2d 692 (1997); *Dorr v. Big Creek Wood Products, Inc.*, 84 Wn.App. 420, 927 P.2d 1148 (1996); *Boyce v. West*, 71 Wn.App. 657, 862 P.2d 592 (1993); *Leyendecker v. Cousins*, 53 Wn.App. 769, 770 P.2d 675 (1989).

³ *Petersen v. State*, 100 Wash.2d 421, 435, 671 P.2d 230 (1983)

⁴ *Degel v. Majestic Mobile Manor, Inc.*, 129 Wash.2d 43, 48, 914 P.2d 728 (1996)

invitee on common areas.⁵ A landlord has an affirmative obligation to maintain common areas in a reasonably safe condition for a tenant⁶, including dealing with snow and ice.⁷

Generally there is no duty to protect a tenant from dangers that are open and obvious.⁸ However Washington has adopted the RESTATEMENT (SECOND) OF TORTS, § 343A(1) (1965),⁹ which creates a duty to protect tenants even from known or obvious dangers.¹⁰ Then a duty arises if the landlord

⁵ *Mucsi v. Graoch Assocs. Ltd. P'ship No. 12*, 144 Wash.2d 847, 855, 31 P.3d 684 (2001)

⁶ *Degel, supra*, 129 Wash.2d at 49, 914 P.2d 728. The duty also arises under the Residential Landlord Tenant Act: a landlord must keep "any shared or common areas reasonably ... safe from defects increasing the hazards of fire or accident", RCW 59.18.060(3). *McCutcheon v. United Homes Corp.*, 79 Wash.2d 443, 445, 486 P.2d 1093 (1971).

⁷ *Geise v. Lee*, 84 Wash.2d 866, 868, 529 P.2d 1054 (1975).

⁸ *Frobig v. Gordon*, 124 Wash.2d 732, 735, 881 P.2d 226 (1994)

⁹ Section 343A - Known or Obvious Dangers. (1) A possessor of land is not liable to his invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, unless the possessor should anticipate the harm despite such knowledge or obviousness.

¹⁰ *Tincani v. Inland Empire Zoological Soc'y*, 124 Wash.2d 121, 139, 875 P.2d 621 (1994)

'should anticipate the harm despite such knowledge or obviousness.'¹¹

A landowner has a duty to warn of or make safe even an obvious danger if there is reason to expect that the invitee will proceed to encounter the danger because to a reasonable person in that position "the advantages of doing so would outweigh the apparent risk."¹²

Distraction, forgetfulness, or *the foreseeable perception of reasonable advantages from encountering the danger* are factors which trigger a responsibility to warn of, or make safe, known or obvious dangers.¹³

Mucsi v. Graoch Assocs. Ltd. P'ship No. 12,¹⁴ which like this case involved a slip and fall on snow and ice, held that a tenant's knowledge of a hazardous condition does not preclude landowner liability:

¹¹ Id, 124 Wash.2d at 139, 875 P.2d 621.

¹² *Tincani v. Inland Empire Zoological Soc.*, 124 Wash.2d 121, 139, 875 P.2d 621 (1994) (quoting Restatement (Second) of Torts § 343A, comment f (1965))

¹³ Id.

¹⁴ 144 Wn.2d 847, 860, 31 P.3d 684, 690 (2001)

This Court has recognized an invitee's awareness of an unsafe condition does not necessarily preclude a landowner of liability:

A possessor of land is not liable to his [or her] invitees for physical harm caused to them by any activity or condition on the land whose danger is known or obvious to them, **unless the possessor should anticipate the harm despite such knowledge or obviousness.** [emphasis added]

Iwai v. State,¹⁵ also a slip and fall on ice case, observed,

Mrs. Iwai may have known about the ice in the parking lot, but if Employment Security 'c[ould] and should [have] anticipate[d] that the dangerous condition w[ould] cause physical harm to the invitee notwithstanding its known or obvious danger,' then section 343A may impose liability." *Id.* (alterations in original). Liability may manifest where the landowner has **reason to expect the tenant will encounter the known or obvious danger because to a reasonable person in that position the advantages of doing so would outweigh the apparent risk.** *Id.* (citing).[Emphasis added]

The question of whether a landowner should have anticipated that a tenant would encounter a dangerous condition is a

¹⁵ *Iwai v. State*, 129 Wn.2d 84, 94, 915 P.2d 1089 (1996)

question of fact for the jury.¹⁶

So a landlord has a duty to make the common areas safe if it is foreseeable that a tenant will decide it is more important to cross an icy dangerous area, than to avoid it.

B. Implied primary assumption of risk

Implied Primary Assumption of Risk has never been applied in Washington to a slip and fall on ice in a common area. The defense of implied primary assumption of risk requires showing that the plaintiff engaged in conduct that implies his *consent*. The defendant must establish that the plaintiff (1) had knowledge (2) of the presence and nature of the specific risk, and (3) voluntarily chose to encounter the risk.¹⁷ Knowledge and voluntariness are questions of fact for

¹⁶ *Degel v. Majestic Mobile Manor, Inc.*, 129 Wn.2d 43, 54, 914 P.2d 728 (1996)

¹⁷ *Gregoire v. City of Oak Harbor*, 170 Wn.2d 628, 636, 244 P.3d 924 (2010); *Kirk v. Wash. State Univ.*, 109 Wn.2d 448, 453, 746 P.2d 285 (1987).

the jury unless reasonable minds could not differ.¹⁸

The element of voluntariness is similar to the duty issue in common area cases. *Jessee v. City Council of Dayton*¹⁹ recently held,

The question in implied primary assumption of the risk is whether the plaintiff appreciated the risk of injury and, nonetheless, voluntarily chose to encounter that risk. ... The City had to prove implied primary assumption of the risk by showing that Ms. Jessee " (1) had full subjective understanding (2) of the presence and nature of the specific risk, and (3) voluntarily chose to encounter the risk." ... The concept of voluntariness required that the City show that Ms. Jessee elected " to encounter [the risk] despite knowing of a reasonable alternative course of action." ... A plaintiff's actions are voluntary when she feels compelled by outside considerations to take the risk. RESTATEMENT § 496E cmt. b. The Restatement gives two examples of this. In one, a plaintiff knows that a house is dangerous, but rents it anyway because she cannot find or afford another. *Id.* In the second, a plaintiff knows that the defendant's car has faulty brakes, but asks the defendant to drive her to the hospital because she is badly bleeding. RESTATEMENT § 496E cmt. b. illus. 1. In both examples, the plaintiff voluntarily

¹⁸ *Home v. North Kitsap School Dist.*, 92 Wn.App. 709, 720, 965 P.2d 1112 (1998)

¹⁹ *Jessee v. City Council of Dayton*, ___ Wn. App ___, 293 P.3d 1290 (2013)

assumes the risk.

C. Conflict Between Landlord Duty and Implied Assumption of Risk

There is a conflict between the duty owed under *Mucsi* and *Iwai*, which contemplate liability even if a tenant knowingly encounters a dangerous condition because they reasonably believe it makes sense to do so, and the assumption of risk doctrine that says that their motivation to encounter a risk based on outside factors, such as the perceived advantages of crossing a snowy walkway, does not prevent application of assumption of risk.

In this case under a 'Landlord Duty' analysis, Mr. Hvolboll would be expected to consider the advantages of crossing the icy area to get to the rental office, greater than the risks, so the landlord would have a duty not to allow that hazard to exist. Under an 'assumption of risk' analysis the Court might find Mr. Hvolboll had the alternative of not going to the office at all, so he assumed the risk of crossing the icy

area.

Assumption of risk is a doctrine of “no duty.” In Washington we have established duties for landlords with ice and snow that include many situations that would be moved to the “no duty” column were implied primary assumption of risk applied. Since those duties have been clearly defined by the Supreme Court in these cases, and the “no duty” rule has not, the law at this time is that there is a duty and assumption of risk does not apply as a bar to liability.

II. EVEN IF IMPLIED PRIMARY ASSUMPTION OF RISK DOES APPLY THERE ARE FACT QUESTIONS AS TO THE ELEMENTS

A. Voluntariness: no reasonable alternatives

Mr. had alternatives, but not good ones. He needed to get to the office. There was no alternative path that did not involve the same risk. Driving his car would have required him to park, get out, and face the same risk. So his only *safe* alternative was not to go there at all. Certainly it was

foreseeable that he would believe the benefits of going to the office exceeded the risks. But does that mean there were reasonable alternatives that he ignored? In PROSSER & KEETON ON TORTS (5th Ed. 1984) §68 at p. 491 the authors comment:

[A] tenant does not assume the risk of the landlord's negligence in maintaining a common passageway when it is the only exit to the street. In general **the plaintiff is not required to surrender a valuable legal right, such as the use of his own property as he sees fit, merely because the defendant's conduct has threatened him with harm if the right is exercised** ... By placing him in that dilemma the defendant has deprived him of his freedom of choice and so cannot be heard to say that he has voluntarily assumed the risk. ... And where there is a reasonably safe alternative open, the plaintiff's choice of the dangerous way is a free one, and may amount to assumption of risk. [Emphasis added]

There is at minimum a question of fact whether Mr. Hvolboll had other ways to get into the office. He certainly testifies that there were no safer routes, all were equally icy and dangerous. [CP 110, 135, 142] Was he required as a matter of law to not go the office? To stay huddled in his apartment 'til Spring? The obvious answer is that he was entitled to try to go about his

normal business subject to his own understanding of the risks inherent therein.

B. Knowledge

Mr. Hvolboll knew he could slip and fall on snow and ice. But a person can slip and fall on any surface. What Mr. Hvolboll did not know was just how much more likely it was that he would slip and fall on unplowed, compact snow and ice *after a partial melt made it even more slippery.*

Case law requires that a plaintiff have “full subjective understanding” both of the presence and nature of the specific risk, and voluntarily chose to encounter the risk.²⁰ The means the plaintiff must

- have knowledge of the risk,
- appreciate and understand its nature,

²⁰ *Kirk v. Wash. State Univ.*, 109 Wn.2d 448, 453, 746 P.2d 285 (1987).

- and voluntarily choose to incur it.²¹

The test for knowledge is subjective. The plaintiff must have knowledge of the specific defect causing his or her injuries before the assumption of risk doctrine applies.²¹ In his own analysis, Mr. Hvolboll may have accepted and assumed the risk of slippery ice and snow as he had experienced it to the date, but not the way it was that day. The Plaintiff:

must not only be aware of the facts which create the danger, but must also appreciate the danger itself and the nature, character, and extent which make it unreasonable.²²

²¹ *Erie v. White*, 92 Wn.App. 297, 303, 966 P.2d 342 (1998) (quoting *Shorter v. Drury*, 103 Wn.2d 645, 656, 695 P.2d 116 (1985)).

²¹ *Klein v. R.D. Werner Co.*, 98 Wn.2d 316, 319, 654 P.2d 94 (1982).

²² RESTATEMENT (SECOND) OF TORTS § 496 D cmt. b cited in *Egan v. Cauble*, 92 Wn.App. 372, 379 fn. 22, 966 P.2d 362 (1998). The court went on to comment,

Incidentally, this requirement of subjective knowledge is what separates assumption of risk and contributory negligence. Assumption of risk turns on what the plaintiff did know: Did he or she know all facts that a reasonable person in the defendant's shoes would have known? Contributory negligence turns on what the plaintiff should have known, or in alternative terms what a reasonable person in the plaintiff's shoes would have known, irrespective of what the plaintiff actually and subjectively knew.

The significance of the subjectivity requirement is best illustrated by the discussion in *Home v. North Kitsap School Dist.*,²³ which is also set out in *Egan v. Cauble*.²⁴

Two cases illustrate. In *Dorr v. Big Creek Wood Products, Inc.*, [84 Wash.App. 420, 927 P.2d 1148 (1996).] Knecht was logging at a remote site. His friend Dorr, also a logger, came to visit. Before approaching Knecht's position, Dorr looked for "widow-makers" – limbs from felled trees caught high in the branches of standing trees. Failing to see any, he walked toward Knecht. As he walked, he was hit and injured by a falling widow-maker that he had not seen. If he had seen it, realized the danger it posed, and decided to hurry under it, he would have actually and subjectively known all facts that a reasonable person would have known and disclosed (which is the same as to say he would have "appreciated the specific hazard which caused the injury"), and he would also have known of a reasonable alternative course of action (e.g., remaining where he

²³ *Home v. North Kitsap School Dist.*, 92 Wn.App. 709, 722, 965 P.2d 1112 (1998). The Court in *Home* actually based its decision on the lack of alternatives rather than a lack of subjective understanding of the extent of risk. The subjective/objective dichotomy this presents is that the court would measure the information a defendant needs to make an informed choice by an objective standard – 'this is what a person would need to know to decide' – but then determine whether the Plaintiff subjectively, in fact, had that information. If not, his failure to get that information might be the basis for comparative fault, but not consent.

²⁴ 92 Wn.App. 372, 379 - 380, 966 P.2d 362 (1998).

was, or walking around the area into which the widow-maker might fall). Thus, he would have knowingly and voluntarily assumed the risk. As it was, however, he failed to see the particular widow-maker, and he did not have the kind of subjective knowledge that is a prerequisite to assuming a risk. At most, he was contributorily negligent.

In *Alston v. Blythe*, [88 Wn.App. 26, 34, 943 P.2d 692 (1997)] Alston wanted to walk from east to west across an arterial with two northbound and two southbound lanes. A truck driven by McVay stopped in the inside southbound lane, and McVay waved her across in front of him. A car in the outside southbound lane did not stop and struck her as she stepped out from in front of the truck. If Alston had seen the oncoming car, realized the danger, and decided to hurry across in front of it instead of waiting for it to pass, she would have known the facts that a reasonable person would have known and disclosed (which is to say she would have appreciated the specific risk), and she would have assumed the risk. As it was, however, she did not know the car was coming, and she did not have the subjective knowledge required by the doctrine of assumption of risk. At most, she was contributorily negligent.

Home concluded that the test was whether the Plaintiff “knew all the facts that a reasonable person would have wanted to know and consider when deciding whether to position himself

or herself as Home did.”²⁵ In *Dorr* and *Alston* the plaintiffs did not have the information they needed – albeit because they perhaps didn’t look or didn’t see what was there to be seen – and so they did not knowingly assume the specific risks.

Similarly here, Mr. Hvolboll did not have the information of how slippery the ice and snow were that day, due to his lack of experience, and did not knowingly assume the risk. There is at least a question of fact whether Mr. Hvolboll was merely contributorily negligent as opposed to having assumed the risk and impliedly consented to the risk. He could not consent to a risk he did not subjectively appreciate.

III. STANDARD OF REVIEW

As this Court is aware, review of a summary judgment is

²⁵ *Home v. North Kitsap School Dist.*, 92 Wn.App. 709, 723, 965 P.2d 1112 (1998).

de novo.²⁶ Summary judgment is appropriate only if:

[T]he pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.²⁷

The moving party bears the burden of demonstrating that there is no genuine issue of material fact.²⁸ This Court must view all facts in the light most favorable to the nonmoving party.²⁹

Summary judgment is appropriate only if reasonable persons could reach but one conclusion from all the evidence.³⁰

In this case there are numerous factual issues which, when taken in the light most favorable to the Plaintiff, establish that Mr. Hvolboll did not subjectively understand the nature of

²⁶ *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004)

²⁷ CR 56(c)

²⁸ *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)

²⁹ *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005)

³⁰ *Vallandigham*, 154 Wn.2d at 26.

the risk he faced, nor had he a reasonable alternative.

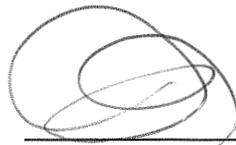
More important, Appellant believes that Respondent is not entitled to judgment as a matter of law, because implied primary assumption of risk is simply not a recognized defense to landlord liability for slips on ice and snow in common areas in Washington.

CONCLUSION

The Court below erred in granting summary judgment. Primary Implied Assumption of Risk does not apply to tenants slipping on ice and snow. If it does apply there are material fact questions whether Mr. Hvolboll understood the risks and voluntarily assumed them absent reasonable alternatives.

Mr. Hvolboll requests that this Court reverse the decision below and remand this matter for trial.

November 1, 2013



Dustin Deissner WSB# 10784
Attorney for Appellant

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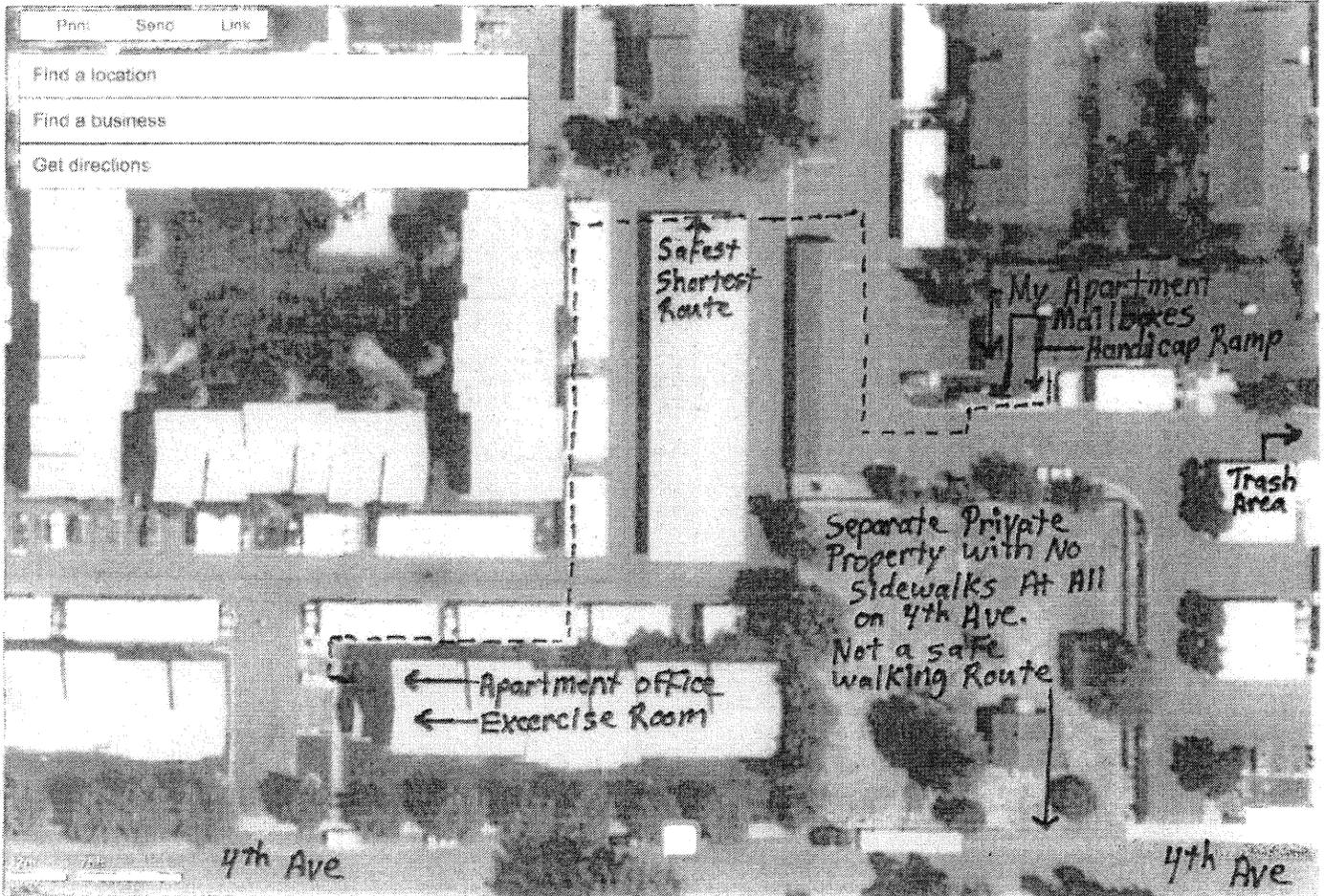
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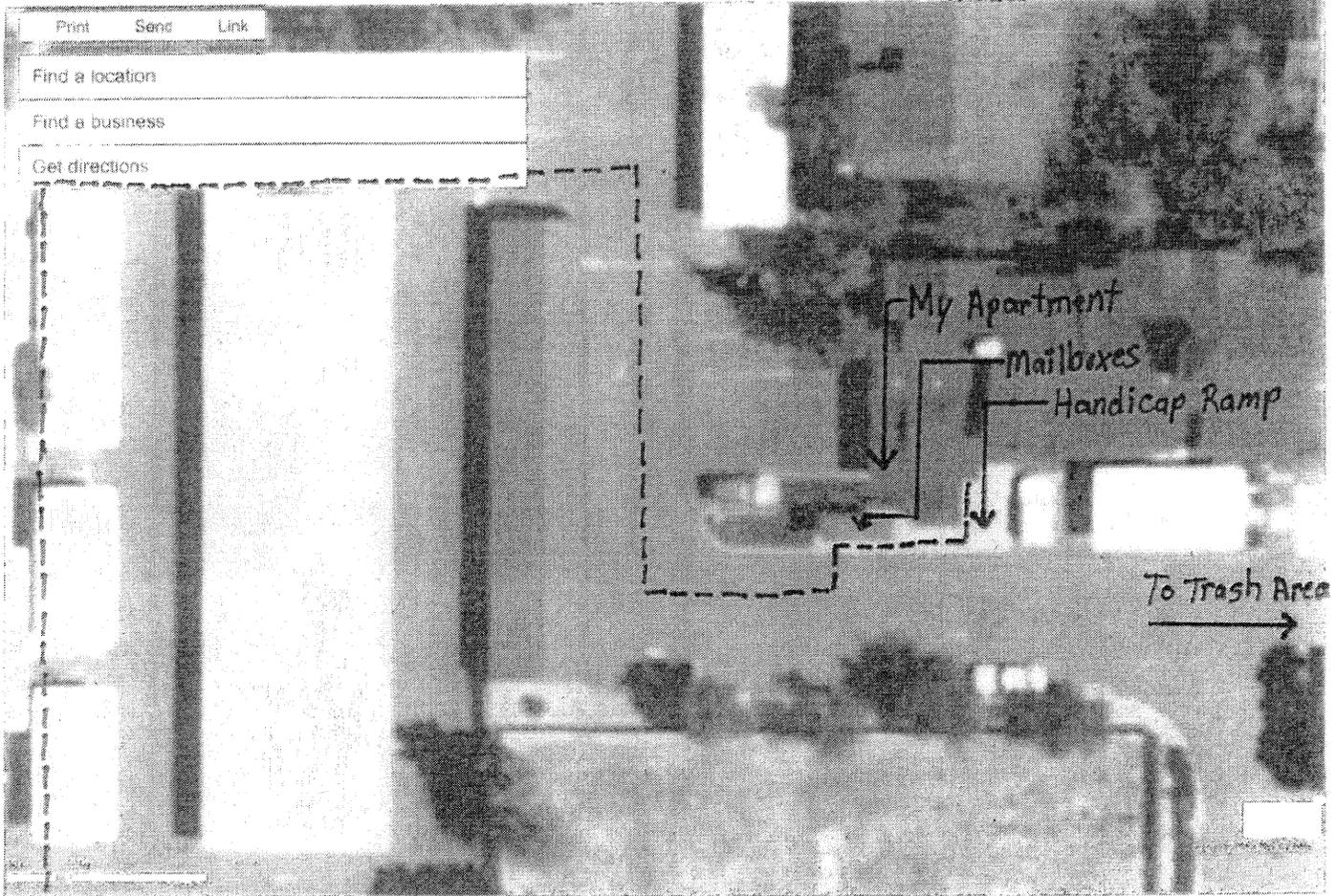
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