In the Missouri Court of Appeals
Eastern District

DIVISION THREE

COLLEEN O'DONNELL,	)	No. ED108986
	)	
Appellant,	)	Appeal from the Circuit Court of
	)	St. Louis County
vs.	)	18SL-CC02101
	)	
PNK (RIVER CITY), LLC, D/B/A RIVER CITY CASINO & HOTEL, AND TOTAL LOT MAINTENANCE ,	)	Honorable Joseph S. Dueker
	)	
Respondents.	)	Filed: March 9, 2021

Angela T. Quigless, P.J., Kurt S. Odenwald, J., and James M. Dowd, J.

In this case arising from a slip and fall on ice on the premises of River City Casino during a winter storm, Colleen O'Donnell appeals the trial court's grant of two summary judgment motions, one in favor of PNK (River City), LLC d/b/a River City Casino & Hotel and the other in favor of Total Lot Maintenance (TLM), alleging the trial court erred by applying the Massachusetts Rule to find as matter of law that Respondents owed no duty to make safe the general condition of naturally occurring precipitation in the community because one or both of the exceptions to the Massachusetts Rule applied here as (1) River City assumed a duty to clear the snow and ice either (a) through its course of conduct or (b) by agreement, and (2) TLM assumed a duty to clear the snow and ice by agreement. O'Donnell further asserts that River City's special status as a hotel operator renders inapplicable the Massachusetts Rule to this case, and, finally, O'Donnell requests this Court abrogate the Massachusetts Rule.

Affirmed in part. Reversed and remanded in part.

DIVISION III HOLDS: Upon review of each motion's summary judgment record developed pursuant to Rule 74.04(c), we find:

(1) Because the undisputed facts demonstrate that at the time of O'Donnell's fall there was in the community a general condition of naturally accumulating frozen precipitation, River City owed no duty as a matter of law and O'Donnell failed to

demonstrate as a matter of disputed fact that either exception to the Massachusetts Rule applied.

(2) The trial court erred in granting summary judgment in favor of TLM, because a genuine issue of material fact exists as to whether TLM assumed a duty by agreement through its contract to perform snow removal services on River City's premises.

(3) River City's status as a hotel operator did not render inapplicable the Massachusetts Rule.

(4) We decline to abrogate the Massachusetts Rule as that is a matter for our Supreme Court.

Opinion by: James M. Dowd, J.

Angela T. Quigless, P.J., and Kurt S. Odenwald, J., concur.

Attorney for Appellant: Joseph M. Weidhaas

Attorney for Respondent: Joseph E. Bant, Robert W. Tormohlen, Elizabeth J. Brown, Robert D. Rowland, and John M. Reeves

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.