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APPELLATE DIVISION HOLDS THAT LIABILITY POLICY OF TENANT DOES NOT PROVIDE COVERAGE FOR LANDLORD AND ITS REAL ESTATE MANAGER

The Appellate Division in Cambria v. Two JFK BLV, LLC, *et. al.* (423 N.J. Super 499) was called upon to determine whether the trial court properly found that the landlord and its real estate manager were additional insured under a liability policy of insurance issued to a tenant. In this matter, plaintiff slipped and fell in the icy parking lot of a strip mall owned by Two JFK Blvd., LLC ("JFK"). JFK in turn utilized the services of David Rubin ("Rubin") as its real estate manager. JFK Food & Deli was a tenant in the strip mall and was insured under a policy of insurance issued by Harleysville Insurance Company of New Jersey ("Harleysville").

Under the lease with JFK Food & Deli, the landlord was to be named as an additional insured. Further, the lease provided that the landlord was responsible for addressing snow and ice issues in the parking lot. While the landlord coordinated snow and ice removal, JFK Food & Deli was to pay a pro rata share of the cost associated with providing those services. The Harleysville policy defined insured as JFK Food & Deli and "any person (other than your employee), or any organization while acting as your real estate manager."

In the underlying matter, JFK Food & Deli failed to name the landlord as an additional insured under its policy. Regardless of this omission, JFK and Rubin argued that they should be deemed a "real estate manger" under the Harleysville policy and afforded coverage. The trial court found that Rubin was JFK Food & Deli's "real estate manager" and was therefore entitled coverage under the Harleysville policy. Additionally, the trial court found that JFK was entitled to coverage under the Harleysville policy.

On appeal, the landlord and Rubin argued that they were acting as the "real estate manager" for JFK Food & Deli as they coordinated snow removal on site. Further, they argued that the fact that the

tenant paid for the snow removal services was evidence that their actions were taken on behalf of JFK Food & Deli. Harleysville argued that Rubin was not JFK Food & Deli's "real estate manager" and as such, the clause referencing such managers was not triggered.

The Appellate Division noted that "the question is whether – with regard to the portion of the premises where the slip and fall occurred – Rubin was acting as the landlord's or the tenant's real estate manager." To answer this question, the Court found that the "question turns on an understanding of whether the incident occurred on the lease premises or some other area of the property for which the tenant was responsible."

In reviewing the lease, the Court found that the parking lot was not a portion of the leased premises. Instead, the parking lot was found to be a common area. Further, in rejecting the argument that paying a pro-rata share of the snow removal imposed a greater obligation on the tenant, the Court noted:

> That a portion of the rent was devoted by the landlord to hire someone to care for the common areas, which were the landlord's responsibility, does not alter the parties rights and obligations regarding the common areas or render that hired person the real estate manager for the tenant. In short, the fact that the lease explains the manner in which the owner disburses a portion of the rent does not render the tenant liable for area outside the leased premises or convert the landlord's real estate manager into the tenant's real estate manager. The obligation to care for the common areas remained with the owner absent a clear and unambiguous declaration to the contrary that cannot be found in the parties' lease.

The Court also questioned the trial court's finding that the landlord was also considered a "real estate manager" under the Harleysville policy.

Ultimately, the trial court's decision finding coverage under the Harleysville policy was reversed and the matter remanded to the trial court to allow the landlord and Rubin to proceed with their breach of contract claim against the tenant for failing to name them as additional insureds.