LANDLORD/TENANT/PREMISES LIABILITY: City alley where Plaintiff fell on ice not "common area" of adjacent apartments under RLTA... City sidewalk ordinance not applicable to alley... *Piedalue/Limberhand* not extended to public alley next to apartments... summary judgment properly granted to Defendants... Fagg affirmed.

Sharon Willden was injured when she slipped on ice in a Billings alley in 1/04. Carole Fishburn owns the apartments on one side of the alley and Gerald Neumann owns the apartments on the other side. Snow had accumulated in the alley and cars had compacted it into ice. Willden was visiting her son who was a tenant in Neumann's building. He and her husband were working on his car in the tenants' parking area which was accessible by the alley. She was walking through the alley toward her son's car when she slipped on the ice. She sued Neumann and Fishburn alleging that they had a duty as landlords to keep safe all common areas pursuant to RLTA 70-24-303(1)(d), a duty as landowners to remove snow & ice from abutting properties pursuant to City Ordinance 22-406, and a duty as landowners to keep adjacent premises reasonably free of dangers, even if clear & foreseeable, that presented a sufficient hazard to guests pursuant to *Limberhand* (Mont. 1985). She claimed that they breached their duties by allowing snow & ice to accumulate in the alley. Judge Fagg granted summary judgment for Defendants. Willden appeals.

Fagg correctly granted summary judgment as to 70-24-303(1)(d). The alley where Willden fell is not, under the RLTA, a common area of the premises and therefore the RLTA does not impose a duty on Defendants. It does not define "common area." *Black's* defines it as "realty that all tenants may use though the landlord retains control and responsibility over it." The alley is City property over which the landlords had no control. It was open to the public and used by the City's waste collection service and some tenants to access the parking area. That tenants, as members of the public, used it to suit their convenience does not make it part of the premises let to tenants or a common area that a landlord must maintain within the meaning of 303(1)(d).

Fagg correctly granted summary judgment as to Ordinance 22-406. Willden argues that the alley should be considered a sidewalk and that 22-406 imposes a duty on Defendants to remove the ice and snow from it. However, alleys are streets, not sidewalks, under the ordinance.

Montana recognizes that a property owner's duty to keep his premises reasonably safe may extend beyond his premises. We decline to extend this principle to a publicly owned alley next to an apartment building. A public alley covered with ice & snow is different from the allegedly hidden & unmarked privately owned ditch in *Piedalue* (Mont. 1984) and the privately owned ditch that was allegedly an attractive nuisance in *Limberhand*. In both of those cases the dangerous instrumentality was only accessible through the landowners' adjacent properties, while the icy alley here was accessible not only to Defendants' tenants and their guests but to the general public via a public street. Rather than a hidden or lurking danger or attractive nuisance, this case involves an open & obvious hazard. Rather than a man-made instrumentality, the danger of which the landowner alone was aware, this case involves a natural condition of winter — the accumulation of ice & snow — the danger of which should be well known to everyone who uses Billings streets & alleys in January. We decline to judicially enact a requirement that adjacent landowners have a legal duty to keep a public way owned by a municipality free from ice & snow or to post a notice warning that it is slippery.

Warner, Gray, Cotter, Nelson, Rice.

***Willden v. Neumann and Fishburn,* DA 06-708, last brief 1/10/07, decided 7/2/08.**

Kenneth Peterson (Peterson & Schofield), Billings, for Willden; James Halverson & Jesse Cook (Halverson & Gilbert), Billings, for Neumann; Calvin Stacey (Stacey & Funyak), Billings, for Fishburn.