

To: New Jersey Law Revision Commission
From: Randy Terhune, Legislative Law Clerk
Re: Sidewalk Tort Liability – *Padilla v. An*, 257 N.J. 540 (2024)
Date: July 8, 2024

MEMORANDUM

Project Summary¹

In New Jersey, sidewalk tort liability has largely been developed through judicial precedent. In 2016, the Commission authorized a project that proposed clarifying the distinction between residential and commercial property in the context of sidewalk tort liability, specifically for hybrid or mixed-use property.²

During the May 2018 Commission Meeting, Staff recommended conclusion of work in the area, given that this area of the law is fact-sensitive and largely addressed and controlled by case law rather than statutes.³ During that meeting, Commissioner Rainone “not[ed] that there has not been any particular upheaval in this area in decades.”⁴ The Commission unanimously agreed to conclude the project without issuing any recommendation for change.⁵

On June 13, 2024, the New Jersey Supreme Court decided in *Padilla v. An* that landowners who purchase property located in an area zoned for commercial use have a duty to reasonably maintain sidewalks abutting their land.⁶ The *Padilla* decision rejected the longstanding “profitability” or “predominant use” test articulated in *Abraham v. Gupta*, which was used to determine whether a commercial landowner should be held liable for sidewalk injuries.⁷ *Gupta* expressly held that commercial zoning was an insufficient basis to impose such liability.⁸

The *Padilla* Court urged the Legislature to reconsider and clarify sidewalk tort liability, explaining that the Court previously urged the Legislature to address the issue forty years ago in *Stewart v. 104 Wallace St., Inc.*, and “once again implore[s] the Legislature to do so.”⁹

¹ This potential project was brought to Staff’s attention by Commissioner Bell, who suggested that a comparison with similar rules in other jurisdictions could “be quite informative to the Legislature and might prompt the legislative reconsideration the Court has urged.” E-Mail from Bernard W. Bell, Commissioner, NJLRC, to Laura C. Tharney, Executive Director, NJLRC (June 14, 2024, 11:14 AM EST) (on file with NJLRC) [hereinafter “Bell Email”].

² See N.J. Law Revision Comm’n, *Memorandum Re: Sidewalk Tort Liability* (June 6, 2016), www.njlrc.org (last visited July 3, 2024) (proposing a project regarding sidewalk tort liability for properties with a hybrid form of ownership or mixed use).

³ See N.J. Law Revision Comm’n, *Minutes of Commission Meeting*, at 7 (May 24, 2018) www.njlrc.org (last visited July 3, 2024).

⁴ *Id.*

⁵ *Id.* at 8.

⁶ *Padilla v. An*, 257 N.J. 540 (2024).

⁷ *Abraham v. Gupta*, 281 N.J. Super. 81 (App. Div. 1995), *overruled by Padilla v. Young II An*, 257 N.J. 540 (2024).

⁸ *Id.* at 85-86.

⁹ *Padilla*, 257 N.J. at 563 (citing *Stewart v. 104 Wallace St., Inc.*, 87 N.J. 146 (1981)).

Background

In *Padilla*, the Court addressed “whether owners of vacant commercial lots have a common law duty to maintain the public sidewalks abutting those lots in reasonably good condition.”¹⁰ The plaintiff, Alejandra Padilla, was allegedly injured “while walking on the public sidewalk abutting a vacant commercial lot” in Camden owned by defendants Young Il An and Myo Soon An.¹¹

The defendants purchased the Camden property in 1992 with the intent of constructing a building, but failed to do so because of economic hardship.¹² The plaintiff sued for negligence, claiming that the defendant’s failure to reasonably maintain the sidewalk caused her fall and sustain injuries.¹³ The defendants moved for summary judgment, arguing they did not owe the plaintiff a duty of care.¹⁴ At trial, the court granted the defendants’ motion.¹⁵

The Appellate Division affirmed, holding that “the owner of a non-income producing vacant commercial lot has no duty to the public to maintain the lot’s abutting sidewalk in a safe condition.”¹⁶ The plaintiff appealed.¹⁷

Analysis

The New Jersey Supreme Court reversed, holding that a duty of care “should be imposed on owners of vacant commercial lots.”¹⁸ The Court found that the profitability/predominant use test developed in *Gupta* was “an unworkable approach” that would confuse this area of law, “lead to inconsistent results, and unfairly harm the public.”¹⁹ Instead, the Court created a bright-line rule that all commercial property owners owe a duty of care to reasonably maintain sidewalks abutting their property, reasoning that property located in a commercial zone “exists and is bought and sold for the purpose of making money.”²⁰

The Court reviewed case law addressing sidewalk tort liability. In 1981, the New Jersey Supreme Court held in *Stewart v. 104 Wallace St., Inc.* that commercial landowners have a duty to maintain sidewalks abutting their property in reasonably good condition and will be liable to pedestrians who are injured because of their negligence to do so.²¹ The Court reasoned that imposing this duty was fair because commercial landowners have a substantial interest in abutting

¹⁰ *Padilla*, 257 N.J. at 542.

¹¹ *Id.*

¹² *Id.* at 543-44.

¹³ *Id.* at 544.

¹⁴ *Id.* at 545.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 557.

¹⁹ *Id.* at 560.

²⁰ *Id.* at 558.

²¹ *Stewart v. 104 Wallace St., Inc.*, 87 N.J. at 149-57.

sidewalks to the extent that they provide easy access to and from their premises and increase property value.²²

The *Stewart* rule was expressly limited to commercial property and not residential property, and the Court advised that “commonly accepted definitions of ‘commercial’ and ‘residential’ property should apply, with difficult cases to be decided as they arise.”²³ The *Stewart* Court recognized that the issue of sidewalk liability is appropriate for the Legislature and unsuccessfully urged the Legislature to reconsider the issue.²⁴

In *Abraham v. Gupta*, the Court held that the liability imposed on commercial property owners to reasonably maintain abutting sidewalks does not apply to sidewalks abutting vacant lots.²⁵ The Court reasoned that the landowners did not have a duty to maintain the sidewalk because it abutted a vacant lot that was not generating income.²⁶ In its analysis, the Court explained that “[i]t is the capacity to generate income which is the key” and not “whether the enterprise is in fact profitable.”²⁷ The Court also held that the lot being in a designated commercial zone was an insufficient basis to impose *Stewart* liability.²⁸

The majority of the Supreme Court in *Padilla* held that all commercial landowners, including owners of vacant commercial lots, have a duty to maintain sidewalks abutting their property in reasonably good condition.²⁹ In determining whether the property is commercial, however, the Court relied on zoning classification, finding that “[t]he moment an individual or an entity purchases a lot in a commercially zoned area, meaning the only use to which that land can be put is commercial, the purchaser has begun a commercial endeavor and intends to make money.”³⁰ The Court relied on the rationale that the “predominant, if not sole purpose” of purchasing property in a commercially zoned area is to generate profit.³¹

By holding that the location of the property in a commercial zone is sufficient to impose sidewalk tort liability, regardless of whether the property is vacant or generating income, the Court overruled *Abraham*.³² The Court echoed the concerns conveyed by the *Stewart* Court, writing:

²² *Id.* at 151-52, 158.

²³ *Id.* at 159-60.

²⁴ *Padilla*, 257 N.J. at 552. (quoting *Stewart*, 87 N.J. at 159 n.6).

²⁵ *Abraham*, 281 N.J. Super. at 85 (explaining that the relevant “policy considerations simply do not apply to defendant’s vacant commercial lot”: “[t]he lot is not owned by or used as part of a contiguous commercial enterprise or business[; t]here is no daily business activity on the lot to which a safe and convenient access is essential[; and t]he lot has no means of generating income to purchase liability insurance or to spread the risk of loss by the increase in cost of goods sold or services rendered”).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 85-86.

²⁹ *Id.* at 557-58.

³⁰ *Id.* at 558.

³¹ *Id.*

³² *Id.* at 563.

“Over forty years ago, this Court urged the Legislature to address the issue of commercial sidewalk liability . . . [w]e once again implore the Legislature to do so.”³³

Two justices joined Justice Solomon in a dissenting opinion, in which he stated that the majority’s decision to overrule *Abraham* “ignores precedent and appropriates the role of the Legislature.”³⁴ The dissent concluded that the common law rule governing sidewalk liability is clear: “commercial property owners with a capacity to generate income are liable for injuries caused by their failure to maintain their adjacent sidewalks.”³⁵ Thus, the dissent would have held that the defendants were not liable for plaintiff’s injuries because defendants “never used the property in any way that could generate income.”³⁶

Further, the dissent emphasized that N.J.S. 40:65-14 delegates to elected municipal officers the authority to impose sidewalk tort liability on property owners.³⁷ In *Padilla*, the city of Camden had a municipal ordinance requiring sidewalks “be kept in repair by the owner or owners of the abutting property at the cost and expense of the owner or owners of the lands in front of which any sidewalk is constructed.”³⁸ The ordinance required that, if the owner failed to maintain the sidewalks, the government could charge the cost of repair with interest to the property owner, but does not grant an injured pedestrian a private right of action against the property owner.³⁹

The dissent agreed with the majority, however, that the Legislature should consider sidewalk liability and “weigh competing interests and determine which property owners have a duty of care.”⁴⁰ The dissent also mentioned in a footnote a New York City ordinance as an example of a “consistent, cohesive, and comprehensive approach to liability.”⁴¹

Pending Bills

A review of the bills introduced in the current legislative session did not reveal any pending bills pertaining to the issue raised in this Memorandum.

Conclusion

Staff seeks authorization to engage in additional research and outreach to determine whether statutory language that provides guidance to property owners regarding liability for the

³³ *Id.*

³⁴ *Id.* at 570 (Solomon, J., dissenting).

³⁵ *Id.* at 569.

³⁶ *Id.* at 563, 570.

³⁷ *Id.* at 564.

³⁸ *Id.* at 571 (Solomon, J., dissenting) (citing City of Camden Code § 735-5).

³⁹ City of Camden Code § 735-8.

⁴⁰ *Padilla*, 257 N.J. at 572 (Solomon, J., dissenting).

⁴¹ *Id.* (citing New York City, N.Y., Code § 7-210 (2024)).

condition of sidewalks abutting their property would be beneficial, or alternatively, whether to bring this issue to the Legislature's attention.⁴²

⁴² See Bell Email, *supra* note 1.