

STATE OF MICHIGAN
IN THE SUPREME COURT

CHARLOTTE HOFFNER,

Plaintiff/Appellee/Cross-Appellant,

and

Lower Court No. G-08-85-NO

BLUE CROSS AND BLUE SHIELD OF MICHIGAN

Third-Party Plaintiff

COA Docket No. 292275

-vs-

SC: Docket No. 142267

RICHARD LANCTOE and LORI LANCTOE,

Defendants/Appellants/Cross-Appellees,

and **PAMELA MACK and TIFFANI K. AHO**
a/k/a TIFFANI K. FONTECCHIO, and
MOUSIE, INC., d/b/a FITNESS XPRESS,

Defendants/Cross-Appellees.

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PLAINTIFF/APPELLEE/CROSS-APPELLANT CHARLOTTE HOFFNER'S
REPLY BRIEF
TO APPLICATION FOR LEAVE TO CROSS-APPEAL

PROOF OF SERVICE

FILED

FEB 8 2011

CORBIN P. DAVIS
CLERK
MICHIGAN SUPREME COURT

142267

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REBUTTAL ARGUMENT

The Defendants/Cross-Appellees Pamela Mack, Tiffani Aho and Mousie, Inc. are proper party defendants because they shared both possession and control over the sidewalk in question.

In the *Schakett v Schwartz* case, 77 Mich App 518; 258 NW2d 543 (1977) as cited by Defendants-Appellants/Cross-Appellees, the lease was silent with respect to the tenant. In the present case, paragraph 19 of the lease makes the sidewalk part of the demised premises. In addition, the facts show that the tenant Defendants-Appellants/Cross-Appellees also salted the sidewalk, and, therefore, is clear that the landlord and tenant shared possession and control of the property, and owed a duty to Plaintiff-Appellee/Cross -Appellant.

The two cases *Divine v Al's Lounge, Inc.* 181 Mich App 117; 448 NW2d 725 (1989) and *Morrow v Boldt*, 203 Mich App 324; 512 NW2d 83 (1994) cited by Defendants-Appellants/Cross Appellees are public property cases which are not the facts of the present case. In the present case, the sidewalk in front of Defendants-Appellants/Cross-Appellees' business is part of the demised premises and is not a public sidewalk. Therefore, both cases do not apply to the present case.

The case cited by Defendants-Appellants/Cross-Appellees, *Ward v Frank's Nursery & Crafts, Inc.*, 186 Mich App 120; 463 NW2d 442 (1990), clearly states that the duty owed by Defendants-Appellants/Cross-Appellees in a premises liability case ends at the boundary of the premises. It is clear pursuant to paragraph 19 of the lease and by the actions of Defendants-Appellants/Cross-Appellees that the sidewalk in question is within the boundary of the leased premises. Therefore, they share control and possession of the leased premises with the landlord.

The facts in this case that are to be reviewed in the light most favorable to Plaintiff-Appellee/Cross-Appellant make it clear that the premises, i.e., the sidewalk in question is part of the

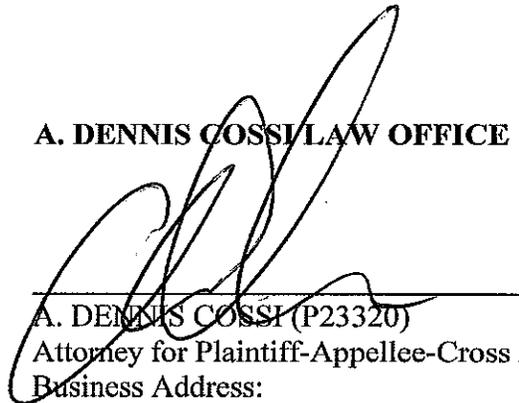
demised premises and the tenant Defendants-Appellants/Cross-Appellees shared possession and control of the same with the landlord and, therefore, owe a duty to Plaintiff-Appellee/Cross Appellant.

RELIEF REQUESTED

Wherefore, Plaintiff-Appellee/Cross-Appellant asks that the Court accept the application for leave to Cross-appeal.

Dated: February 4, 2011

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