

NO. A10-1907

State of Minnesota
In Court of Appeals

IRONWOOD SPRINGS CHRISTIAN RANCH, INC.,
Appellant,

vs.

WALK TO EMMAUS a/k/a WALK FOR EMMAUS,
Respondent.

RESPONDENT'S BRIEF

SANDBERG & SANDBERG, LLC
Peter C. Sandberg (#095515)
40457 – 28th Street N.W.
Suite 300
Rochester, Minnesota 55901
(507) 282-3521

Attorneys for Appellant

BASSFORD REMELE
A Professional Association
Stephen O. Plunkett (#203932)
Matthew J. Mahoney (#390030)
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402
(612) 333-3000

Attorneys for Respondent

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
LEGAL ISSUES	1
1. Did the district court properly hold that Appellant Ironwood Springs Christian Ranch remained in control of its own premises throughout the weekend in which Jackie Larkin fell and that Respondent Minnesota Walk to Emmaus did not exercise sufficient control of Appellant’s premises such that Respondent was not a land possessor?	1
2. Did the district properly hold that Respondent Minnesota Walk to Emmaus did not voluntarily assume a duty to maintain the Appellant Ironwood Springs Christian Ranch’s premises during the weekend retreat?	1
STATEMENT OF THE FACTS	2
ARGUMENT	3
I. STANDARD OF REVIEW	3
II. THE DISTRICT COURT PROPERLY DETERMINED THAT EMMAUS OWED NO DUTY TO JACKIE LARKIN BECAUSE IRONWOOD, AS THE LAND OWNER, REMAINED IN CONTROL OF ITS PREMISES, AND THE DUTIES OF A LAND OWNER WERE NOT SHIFTED TO EMMAUS	4
III. THE DISTRICT COURT PROPERLY DETERMINED THAT EMMAUS DID NOT VOLUNTARILY ASSUME A DUTY OF CARE TO MAINTAIN IRONWOOD’S PREMISES WHEN NO EVIDENCE EXISTED IN THE RECORD DEMONSTRATING THAT THE RETREAT ATTENDEES, OR IRONWOOD’S EMPLOYEES RESPONSIBLE FOR SNOW REMOVAL THROUGHOUT THE WEEKEND RELIED ON JIM ROTTINGER’S WORDS OR ACTIONS	9
CONCLUSION	13
CERTIFICATE OF COMPLIANCE	14

TABLE OF AUTHORITIES

	Page
<u>Cases:</u>	
<i>Day Masonry v. Indep. School Dist.</i> 347, 781 N.W.2d 321 (Minn. 2010)	3, 4
<i>DLH, Inc. v. Russ</i> , 566 N.W.2d 60 (Minn. 1997)	5
<i>Funchess v. Cecil Newman Corp.</i> , 632 N.W.2d 666 (Minn. 2001)	1, 5, 9
<i>Hart v. Cessna Aircraft Co.</i> , 276 N.W.2d 166 (Minn. 1979)	4
<i>Hunt v. IBM Mid America Employees Fed. Credit Union</i> , 384 N.W.2d 853 (Minn. 1986).....	5
<i>Isler v. Burman</i> , 305 Minn. 288, 232 N.W.2d 818 (1975).....	passim
<i>Larkin v. Ironwood Springs Christian Ranch, Inc.</i> , No. A08-0645, 2009 WL 234620 (Minn. Ct. App. Feb. 3, 2009).....	1, 8
<i>Larson v. Larson</i> , 373 N.W.2d 287 (Minn. 1985)	5
<i>Laska v. Anoka County</i> , 696 N.W.2d 133 (Minn. Ct. App. 2005)	5
<i>Lubbers v. Anderson</i> , 539 N.W.2d 398 (Minn. 1995).....	5
<i>Nickelson v. Mall of America Co.</i> , 593 N.W.2d 723 (Minn. Ct. App. 1999).....	1, 10
<i>Nicollet Restoration, Inc. v. City of St. Paul</i> , 533 N.W.2d 845 (Minn. 1995).....	13
<i>Osborne v. Twin Town Bowl, Inc.</i> , 749 N.W.2d 367 (Minn. 2008).....	5
<i>Peterson v. Balach</i> , 294 Minn. 161, 199 N.W.2d 639 (1972)	1, 6
<i>Robb v. Funorama, Inc.</i> , No. A04-1711, 2005 WL 1331265 (Minn. Ct. App. June 7, 2005).....	10
<i>STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.</i> , 644 N.W.2d 72 (Minn. 2002)	3
<i>Urbaniak Implement Co. v. Monsrud</i> , 336 N.W.2d 286 (Minn. 1983).....	12
<i>Williams v. Harris</i> , 518 N.W.2d 864 (Minn. Ct. App. 1994).....	1, 9, 10

Other:

Minn. R. Civ. P. 56.....	5
Restatement (Second) of Torts, Section 323.....	9
Restatement (Second) of Torts, Section 328E.....	6

LEGAL ISSUES

1. **Did the district court properly hold that Appellant Ironwood Springs Christian Ranch remained in control of its own premises throughout the weekend in which Jackie Larkin fell and that Respondent Minnesota Walk to Emmaus did not exercise sufficient control of Appellant's premises such that Respondent was not a land possessor?**

The district court properly held that Appellant Ironwood Springs Christian Ranch remained in control of its own premises throughout the weekend in which Jackie Larkin fell, as evidenced by the significant presence of Appellant's employees, therefore Respondent Minnesota Walk to Emmaus was not a land possessor and owed no duty to Jackie Larkin.

1. *Peterson v. Balach*, 294 Minn. 161, 199 N.W.2d 639 (1972).
2. *Isler v. Burman*, 305 Minn. 288, 232 N.W.2d 818 (1975).
3. *Larkin v. Ironwood Springs Christian Ranch, Inc.*, No. A08-0645, 2009 WL 234620 (Minn. Ct. App. Feb. 3, 2009).

2. **Did the district properly hold that Respondent Minnesota Walk to Emmaus did not voluntarily assume a duty to maintain the Appellant Ironwood Springs Christian Ranch's premises during the weekend retreat?**

The district court correctly determined that Respondent Minnesota Walk to Emmaus did not voluntarily assume the duty to maintain Appellant Ironwood Springs Christian Ranch's premises because there was no evidence in the record indicating that Appellant's employees relied on Respondent.

1. *Isler v. Burman*, 305 Minn. 288, 232 N.W.2d 818 (1975).
2. *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666 (Minn. 2001).
3. *Williams v. Harris*, 518 N.W.2d 864 (Minn. Ct. App. 1994), *rev. denied* (Minn. Sept. 28, 1994).
4. *Nickelson v. Mall of America Co.*, 593 N.W.2d 723 (Minn. Ct. App. 1999).

STATEMENT OF THE FACTS

Appellant Ironwood Springs Christian Ranch (“Ironwood”) owned and operated a retreat center in Olmsted County, Minnesota. (A. 2.)¹ Respondent Minnesota Walk to Emmaus (“Emmaus”) is a non-profit group that organizes spiritual retreats. (A. 10-11.) Emmaus contracted with Ironwood for the use of some of Ironwood’s facilities for a women’s retreat, the weekend of January 28-30, 2005. (A. 11.)

As part of the contract, retreat attendees utilized the walkways between Ironwood’s buildings. (A. 11-12.) On Sunday evening, January 30, 2005, Jackie Larkin (“Larkin”) slipped and fell outside the dining room entrance. (A. 12.) Larkin fell as a result of snow and ice build up along the walkway. (*Id.*)

Also as part of the contract between the parties, Ironwood maintained the premises by clearing snow and ice from walkways and the parking lot. (A. 11.) At all times, Ironwood had employees on-site and on-duty during weekend retreats. (*Id.*) Among these employees generally on duty during retreats were a full time, on-site, maintenance person named Dan Ostergard, the host Josh Christenson, as well as another maintenance worker/host Luke Fannin, and a food service director Kelsey Hrdlichka. (*Id.*, A. 126, 141.) Bob Bardwell, Ironwood’s founder and president, acknowledged that it was Ironwood’s responsibility to provide safe walkways. (A. 12.) Maintenance worker Fannin also testified that Ironwood did not expect Emmaus to do its own sanding, salting or clearing of ice. (*Id.*)

¹ References to Appellant’s Appendix are denoted as “A.” followed by corresponding page number[s]. References to Appellant’s Addendum are denoted as “AD.” followed by corresponding page number[s].

On Friday, January 28, retreat attendees informed Jim Rottinger, (“Rottinger”) a team leader for Emmaus, that ice was building up on the parking lot outside the dining room door. (A. 13.) Rottinger and Ironwood’s host, Josh Christenson had a conversation which led to Rottinger salting and scraping that particular part of the walkway on the parking lot on four or five occasions over the course of the weekend. (A. 13-14.) None of the retreat attendees testified that they saw Rottinger salting or chipping the ice in that area. (A. 14.)

Following the Friday conversation between Christenson and Rottinger, Christenson left work for the weekend, and did not inform his replacement Fannin of the conversation. (A. 13, 107.) Fannin was later seen chipping away at the salt and ice where Larkin would later fall. (A. 141.)

ARGUMENT

I. STANDARD OF REVIEW

The Court applies de novo review to the district court’s grant of summary judgment against Ironwood. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). The Court reviews evidence in the light most favorable to Ironwood, but the judgment will be affirmed, “if no genuine issues of material fact exist and if the court below properly applied the law.” *Day Masonry v. Indep. School Dist.*

347, 781 N.W.2d 321, 325-26 (Minn. 2010). The *de novo* standard of review is used for both of Ironwood's theories of liability.²

II. THE DISTRICT COURT PROPERLY DETERMINED THAT EMMAUS OWED NO DUTY TO JACKIE LARKIN BECAUSE IRONWOOD, AS THE LAND OWNER, REMAINED IN CONTROL OF ITS PREMISES, AND THE DUTIES OF A LAND OWNER WERE NOT SHIFTED TO EMMAUS.

Ironwood asserts that it has a right of contribution from Emmaus because Emmaus was charged with the duties of a land possessor, solely because one member of Emmaus's organization, Jim Rottinger, sporadically salted and scraped a discrete portion of Ironwood's walkway over the course of a weekend.³ See *Hart v. Cessna Aircraft Co.*, 276 N.W.2d 166, 168-69 (Minn. 1979) (holding that common liability remained a fundamental requirement for contribution). This singular fact, however, does not amount to occupation with intent to "control" Ironwood's property, and therefore, Emmaus did not become a possessor of Ironwood's premises, and owed no duty to Larkin.

A. Summary Judgment and Negligence Standards

Ironwood argues that Emmaus "did the work [of removing, sanding and salting ice] and took possession of the place where Jackie Larkin fell." (Ironwood's Appeal Brief, p. 8.) But, to survive summary judgment a party cannot rely on the existence of "evidence" but rather, the evidence must be "legally sufficient" evidence demonstrating

² Because the transcript of the summary judgment hearing was not ordered, this record is comprised of, and all the citations will be made to the papers filed in the trial court, including exhibits. Minn. R. Civ. App. P. 110.01

³ Emmaus will address Appellant's contribution claim based on a premises liability theory because it was discussed in Appellant's Brief, despite Appellant's failure to indicate this theory in its Statement of the Case. (A. 198.)

the existence of a material fact. *See Osborne v. Twin Town Bowl, Inc.*, 749 N.W.2d 367, 371 (Minn. 2008) (quoting *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997) (“substantial evidence refers to legal sufficiency and not quantum of evidence.”)). It is not legally sufficient for Ironwood to rely upon the allegations in the pleadings, general statements of fact, or mere averments. Rather, the Ironwood must come forward with specific facts showing that there are genuine issues for trial. Minn. R. Civ. P. 56.05; *Hunt v. IBM Mid America Employees Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986). If the non-moving party fails to meet its burden of coming forward with admissible evidence showing genuine issues of material fact for trial, summary judgment is mandated. Minn. R. Civ. P. 56.05; *DLH*, 566 N.W.2d at 70-71.

This Court affirms a district court’s summary judgment ruling when the record reflects a lack of proof on any of the four essential elements of a negligence claim: (1) the existence of a duty of care, (2) a breach of that duty, (3) an injury, and (4) the breach of the duty being the proximate cause of the injury. *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn. 2001) (citing *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn. 1995)). The existence of a legal duty is a question of law for the court. *Laska v. Anoka County*, 696 N.W.2d 133, 138 (Minn. Ct. App. 2005), *rev. denied* (Minn. Aug. 16, 2005); *Larson v. Larson*, 373 N.W.2d 287, 289 (Minn. 1985). Ironwood’s contribution claim based upon a premises liability theory fails because of the lack of any facts supporting a duty of care owed by Emmaus to Larkin.

B. Ironwood Remained In Control of Its Premises Throughout the Retreat Weekend, As Evidenced By The Presence and Actions of Its Maintenance and Caretaker Personnel, and There Is No Evidence In the Record Indicating Control of Ironwood's Premises By Emmaus.

Generally, a landowner owes a duty of reasonable care to persons on his or her land. *See Peterson v. Balach*, 294 Minn. 161, 174, 199 N.W.2d 639, 647 (1972) (holding that the duty of a landowner (or the person charged with responsibility for the condition of the land)...is to use reasonable care). In limited situations, courts have found that a third party occupied the owner's land with the intent to control it, such that the third party assumed the duties spelled out in *Peterson v. Balach*. *See Isler v. Burman*, 305 Minn. 288, 232 N.W.2d 818 (1975). This limited exception is grounded in the Restatements (Second) of Torts, Section 328E, titled the "Possessor of Land Defined:"

A possessor of land is (a) a person who is in occupation of the land with intent to control it or (b) a person who has been in occupation of land with intent to control it, if no other person has subsequently occupied it with intent to control it, or (c) a person who is entitled to immediate occupation of the land, if no other person is in possession under Clauses (a) and (b).

Isler, 305 Minn. at 293-94, 232 N.W.2d at 821.

The *Isler* court further noted that an entity to whom the owner or possessor of land turns over the entire charge of the land is subject to the same liability for harm caused to others by the failure to exercise reasonable care as though it were the possessor of the land. (*Id.*)

The Supreme Court of Minnesota's decision in *Isler* to impose duties of a land possessor on a church group that planned, sponsored and organized a snowmobile ride on a third party farmer's land, governs this analysis. *Id.* In *Isler*, the church inspected the

farmer's land prior to the snowmobile ride, made assurances to the attendees about the condition of the trail, and informed the attendees that the ride was supervised and chaperoned by the church. *Id.* at 291-92, 232 N.W.2d at 819-20. In holding that the "possessor of land" jury instruction was appropriate, the Court emphasized the church's role in planning and sponsoring the party, inspecting the land, and making assurances to the participants. *Id.* at 294-95, 232 N.W.2d at 821.

Those same legally sufficient facts found in *Isler*, indicating extensive control on the part of the church, do not exist in this case. Here, Ironwood can only rely on one fact, of no legal significance: that Jim Rottinger agreed to salt and scrape a particular and discrete portion of Ironwood's walkway. In light of the minimal scale of Rottinger's efforts and, more importantly, the substantial presence of Ironwood's maintenance and caretaking personnel, Dan Ostergard and Luke Fannin throughout the weekend, these facts are not legally sufficient to impose on Emmaus the duties of a land possessor. The continued presence of Ironwood's employees further distinguishes this scenario from *Isler*, in which the land owner essentially turned over his land to the church group. *See id.* at 291, 232 N.W.2d at 819.

The undisputed facts indicate that Ironwood remained in control of its premises throughout the weekend retreat. Ironwood had employees, such as Food Services Director Kelsey Hrdlichka, Josh Fannin, and Dan Ostergard providing services, including maintenance and caretaker services to Emmaus retreat attendees. This Court, in addressing Ironwood's previous appeal of the jury verdict in Larkin's personal injury trial, found that "Ironwood's staff members remained on the premises and performed

ongoing general maintenance...[and] Ironwood had not relinquished complete control of the property to Emmaus.” (A. 29.)

This Court also noted, in addressing the appropriate jury instructions given in the underlying trial, that “Larkin fell in an area that remained under Ironwood’s control.” *Id.* These facts demonstrate the legally significant presence and control exercised by Ironwood on its own premises, precluding assigning the status of land possessor to Emmaus, and warranting this Court’s affirming of summary judgment.

In addition to the record being devoid of facts indicating control by Emmaus, Ironwood’s contribution claim based upon a premises liability theory is deficient for the complete lack of Minnesota cases it cites as support for its argument. Aside from the cases noting the controlling law, Ironwood makes no comparisons with *Isler v. Burman* and fails to bring forth another Minnesota case that stands for the proposition that performing ice removal on a discrete portion of a land owner’s walkways, equates to “occupying with the intent to control.” This deficiency was recognized by the district court when it stated that “Emmaus did not, in the past or on the day of Ms. Larkin’s fall, take occupation of the ranch with the intent to control it....[and] Ironwood at all times, had immediate control and occupation.”⁴ (AD. 5) With the record devoid of legally sufficient facts, and Minnesota case law lacking support for such an extreme position, the district court’s ruling should be affirmed.

⁴ Emmaus notes that Appellant’ Brief at page 8, contains only one full paragraph analyzing this issue, before incorporating its voluntary assumption of duty argument into this section.

III. THE DISTRICT COURT PROPERLY DETERMINED THAT EMMAUS DID NOT VOLUNTARILY ASSUME A DUTY OF CARE TO MAINTAIN IRONWOOD'S PREMISES WHEN NO EVIDENCE EXISTED IN THE RECORD DEMONSTRATING THAT THE RETREAT ATTENDEES, OR IRONWOOD'S EMPLOYEES RESPONSIBLE FOR SNOW REMOVAL THROUGHOUT THE WEEKEND RELIED ON JIM ROTTINGER'S WORDS OR ACTIONS.

Ironwood's second theory of liability is that Emmaus, through Jim Rottinger, voluntarily assumed the duty to maintain Ironwood's premises. This theory is grounded in the Restatements (Second) of Torts, § 323:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of the other's person or things, is subject to liability to the other for physical harm resulting from his failure to exercise reasonable care to perform his undertaking, if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of other's reliance upon the undertaking.

See Funchess v. Cecil Newman Corp., 632 N.W.2d 666, 674 (Minn. 2001); *Isler*, 305 Minn. at 295, 232 N.W.2d at 822.

Under the unique circumstances of section 323, one who voluntarily assumes a duty will be liable for damages resulting from failure to use reasonable care. *Funchess*, 632 N.W.2d at 674. Liability can only be established upon one who voluntarily assumed a duty if: (1) this conduct leads others to rely on such assumption of duty, and (2) to refrain from taking other and more direct action to protect themselves. *Williams v. Harris*, 518 N.W.2d 864, 868 (Minn. Ct. App. 1994), *rev. denied* (Minn. Sept. 28, 1994). On review, the record indicates that neither the retreat attendees nor any of Ironwood's employees who were responsible for maintaining the premises, relied on Jim Rottinger.

Further, there is no evidence that anyone refrained from taking other and more direct action to protect themselves.

A. There Is No Evidence In the Record Demonstrating Reliance By Emmaus Retreat Attendees on Jim Rottinger.

Although Ironwood concedes this point by not addressing it in its memorandum of law opposing summary judgment, or its Brief, Emmaus notes that for purposes of *de novo* review, no facts in the record indicate that this claim is viable. None of the retreat attendees testified that they saw Rottinger perform any snow or ice removal.⁵ (A. 14.) *Compare Isler*, 305 Minn. at 295, 232 N.W.2d at 821-22 (noting that the church had assumed the duty to ensure the riders safety and the injured party's father testified that he relied on such assurances in permitting his daughter to participate), *and Williams v. Harris*, 518 N.W.2d at 868 (holding that summary judgment was appropriate in favor of subcontractor who voluntarily assumed duty to inspect traffic control devices along detour route because no evidence provided that any motorist relied on such inspections, despite "implicit reliance" on signs for safe passage), *and Nickelson v. Mall of America Co.*, 593 N.W.2d 723, 726 (Minn. Ct. App. 1999) (holding the owner liable when an employee suffered injuries after security personnel failed to timely assist the employee in confronting a shoplifter because evidence indicated that employee relied on promises that security would assist in such situations), *with Robb v. Funorama, Inc.*, No. A04-1711, 2005 WL 1331265 at *5 (Minn. Ct. App. June 7, 2005) (holding that despite patron's

⁵ The district court emphasized that "in fact, the record is devoid of any evidence that the retreat attendees had any knowledge that Rottinger engaged in removing or chipping the ice." (AD. 6.)

awareness of security at bowling alley, no duty arose because patron did not rely on such measures alone for personal security). (A. 32-36.)

Ironwood provided no evidence of reliance by Emmaus members during the summary judgment hearing, and fails to provide any evidence on appeal.

B. There Is No Evidence In The Record Demonstrating That Ironwood's Employees On Duty The Retreat Weekend Relied On Jim Rottinger.

Ironwood argues that Jim Rottinger's conversation with its employee Josh Christenson, occurring on Friday afternoon, January 28, 2005, led Christenson, and therefore Ironwood, to rely on Rottinger. While there is no question that Rottinger occasionally salted and scraped a portion of one walkway, Ironwood cannot create a fact issue by the mere averment and conclusory statement that Ironwood then relied on Rottinger, when several dispositive, undisputed facts contradict the conclusion Ironwood seeks.

First, the undisputed facts indicate that Christenson had a conversation with Jim Rottinger Friday afternoon, at the beginning of the women's retreat. Even with the facts viewed in the light most favorable to Ironwood, i.e., Rottinger agreed that he would salt and scrape the walkway on which Larkin would fall two days later, what subsequently occurred made reliance on Rottinger impossible. Christenson left work for the weekend without informing Dan Ostergard, the maintenance worker, or Luke Fannin, his replacement, of his conversation with Rottinger. (A. 13, 107.) Thus, absent any evidence to the contrary, Fannin and Ostergard would have performed their snow and ice removal

duties as part of their job description.⁶ The record is devoid of any evidence that Fannin and Ostergard abdicated their duties in reliance on Rottinger. In fact, according to Kelsey Hrdlichka, another employee of Ironwood's, Luke Fannin was during the weekend "chipp[ing] away" and salting the area of the walkway where Larkin would later fall. (A. 141.)

This important fact was noted by the district court when it stated that:

Christenson left work on Friday evening and failed to inform any of the weekend employees of Rottinger's statements regarding snow and ice removal. There is no evidence the weekend replacements, Luke Fannin or Dan Ostergard, knew of Rottinger's alleged statements to Christenson or that Fannin and Ostergard relied on any alleged statements.

In essence, Ironwood's argument is that a brief conversation on Friday afternoon, led two workers, whose duty it was to remove snow, to abdicate that responsibility, despite never knowing about the conversation.⁷ The only conclusion that can be drawn from the facts in the record is that Fannin and Ostergard operated under their normal directive and maintained the walkways, as was Ironwood's duty. Ironwood cannot survive summary judgment, and be successful on this appeal by merely making broad assertions of its reliance on Rottinger. *See Urbaniak Implement Co. v. Monsrud*, 336 N.W.2d 286, 287 (Minn. 1983) (holding that the non-moving party cannot "allege in argumentative and conclusory fashion" that material facts exist). "Speculation [and]

⁶ *See* Emmaus's Motion to Strike the Affidavit of Daniel Ostergard; *see also* (AD. 1-2.) (holding that "Plaintiff's motion to submit Daniel Ostergard's affidavit is denied.>").

⁷ There is no evidence in the record indicating that Fannin or Ostergard saw Rottinger attending to the walkway.

general assertions...are not sufficient to create a genuine issue of material fact for trial.” *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995) (citations omitted). Therefore, Ironwood brings forth no evidence from the record indicating reliance by the employees responsible for snow and ice removal; therefore, Emmaus did not voluntarily assume the duty of maintaining Ironwood’s walkways.

CONCLUSION

Ironwood has made several efforts to shift its liability stemming from Jackie Larkin’s fall on its premises. This Court has previously rejected Ironwood’s attempt to advance a landlord-tenant relationship between Ironwood and Emmaus. Emmaus now respectfully requests that this Court affirm the district court’s grant of summary judgment. Because Ironwood owned and operated the retreat center and maintained its facilities and walkways on its premises, it exercised control over its own premises, and did not share that control with Emmaus. Emmaus, therefore, did not owe a duty to Jackie Larkin and was not a land possessor under Minnesota law. Further, Emmaus never assumed that duty because of the words or acts of Jim Rottinger, when no evidence in the record demonstrates that Ironwood relied on Rottinger. Based on all the evidence in the record, this Court should affirm the district court’s grant of summary judgment.

BASSFORD REMELE
A Professional Association

Dated: December 22, 2010

By Matt Mahoney
Stephen O. Plunkett (License #203932)
Matthew J. Mahoney (License #0390030)
Attorneys for Respondent
33 South Sixth Street, Suite 3800
Minneapolis, Minnesota 55402-3707
Telephone: (612) 333-3000
Facsimile: (612) 333-8829

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to Minn. R. Civ. App. P. 132.01, for a brief produced using the following font: Proportional serif font, 13 point or larger. The length of this brief is 4,124 words. This brief was prepared using Microsoft Word 2000.

By Matt Mahoney
Matthew J. Mahoney (License #0390030)