

STATE OF MICHIGAN
COURT OF APPEALS

DELRICK STOVALL,

Plaintiff–Appellant,

v

BUILDERS SQUARE, INC.,

Defendant–Appellee.

UNPUBLISHED

October 4, 1996

No. 179381

LC No. 93-306418 NO

Before: Corrigan, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the jury verdict finding no cause of action in this premises liability case. We affirm.

The incident occurred on December 13, 1991, when plaintiff went to defendant’s store located on Eight Mile Road in the City of Detroit. Plaintiff went to the kitchen cabinet department where he was told by a salesperson to wait for further assistance. Plaintiff decided to sit in a wooden chair, which was located on the floor for customers to sit on. As plaintiff sat down, the chair broke and plaintiff fell backwards and hit his head. He landed on the floor and was rendered unconscious.

Plaintiff first argues that the trial court erred in denying his request for supplemental jury instructions. At trial, plaintiff requested an instruction on the theory of *res ipsa loquitur*, as well as instructions which stated that defendant did not need prior notice of the defective chair to be held liable. The determination whether supplemental instructions are applicable and accurate is within the trial court’s discretion. *Bordeaux v Celotex Corporation*, 203 Mich App 158, 168-169; 511 NW2d 899 (1993). This discretion is to be exercised in the context of the particular case, with due regard for the adversary’s theories of the case and counsel’s legitimate desire to structure an argument around anticipated instructions. *Jones v Porretta*, 428 Mich 132, 146; 405 NW2d 863 (1987). The trial court has the power to give supplemental instructions on the applicable law not covered by the standard

* Circuit judge, sitting on the Court of Appeals by assignment.

jury instructions and such instructions must be concise, understandable, conversational, unslanted, and nonargumentative. MCR 2.516(D)(4).

We find that the trial court did not abuse its discretion in denying plaintiff's requested *res ipsa loquitur* instruction because it was not factually applicable to the case at bar because plaintiff did not prove the first element: that the event would ordinarily not occur in the absence of negligence. See *Jones, supra*, pp 150-151. The collapse of a chair in a store does not necessarily imply the negligence of the proprietor. Rather, plaintiff had to show that the proprietor breached its duty to exercise reasonable care to provide a reasonably safe place for customers on the premises. *Rose v McMahon*, 10 Mich App 104, 107-108; 158 NW2d 791 (1968). This, plaintiff did not do.

Likewise, we find that plaintiff's requested notice instructions are inaccurate because, where there is no indication that defendant caused the defect, plaintiff has the burden of proving that the defendant had either actual or constructive notice of the defect. See *Singerman v Municipal Service Bureau, Inc.*, 211 Mich App 678, 686; 536 NW2d 547 (1995). Accordingly, the trial court did not abuse its discretion in denying plaintiff's request for supplemental jury instructions.

Plaintiff next argues that the trial court erred in denying his motion for a directed verdict. In reviewing a trial court's decision on a motion for a directed verdict, this Court examines the evidence, and all legitimate inferences which can be drawn from it, in a light most favorable to the non-moving party and determines whether a question of fact existed for the jury. *Rasmussen v Louisville Ladder Inc.*, 211 Mich App 541, 545; 536 NW2d 221 (1995). In this case, several questions of fact existed concerning defendant's negligence, such as whether defendant had notice of the defective chair, whether defendant properly inspected its chairs, and whether the chair was truly defective. Consequently, the trial court did not err in denying plaintiff's motion for a directed verdict.

Last, plaintiff argues that the trial court erred in denying his motion for a new trial. We review the trial court's denial of a motion for new trial for an abuse of discretion. *Bordeaux, supra*, p 170. A new trial may be granted, on some or all of the issues, if the verdict is against the overwhelming weight of the evidence. *Heshelman v Lombardi*, 183 Mich App 72, 76; 454 NW2d 603 (1990). In determining whether the verdict is against the great weight of the evidence or has worked an injustice, unlike in a motion for directed verdict, the trial court may set aside a "perverse verdict" because the court "disbelieves the testimony of witnesses for the prevailing party." *People v Herbert*, 444 Mich 466, 475-477; 551 NW2d 654 (1993). In this case, the evidence for plaintiff was not so overwhelming, nor were the witnesses for defendant so incredible, as to make the verdict unjust or "perverse." Thus, the trial court's denial of plaintiff's motion for new trial was not an abuse of discretion.

Affirmed.

/s/ Maura D. Corrigan
/s/ Kathleen Jansen
/s/ Meyer Warshawsky