STATE OF MICHIGAN

COURT OF APPEALS

ANNA WEST and WILLIAM WEST,

Plaintiffs-Appellants,

v

NOVI EXPO CENTER, INC., and MICHIGAN BOATING INDUSTRIES ASSOCIATION,

Defendants-Cross-Plaintiffs-Appellees,

v

LAKE ST. CLAIR SAVE OUR SOUTH CHANNEL LIGHTS ASSOCIATION, d/b/a S.O.S. CHANNEL LIGHTS,

Defendant-Cross-Defendant-Appellee.

UNPUBLISHED
May 23, 1997

No. 195033
Oakland Circuit Court
LC No. 95-496089-NO

Before: Bandstra, P.J., and Griffin and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's order dismissing their premises liability and breach of contract claims pursuant to MCR 2.116(C)(10). We affirm.

On April 3, 1995, plaintiffs attended the Novi Boating Expo. Defendant Lake St. Clair Save Our South Channel Lights Association ("Channel Lights") was an exhibitor at the boating convention. Channel Lights' exhibit consisted of several tables which were placed on a platform raised one step above a wooden walkway. Anna West had ascended the platform and, while talking with an agent of Channel Lights, stepped backwards and fell off the platform.

Plaintiffs filed suit, claiming negligence on the part of defendants for failing to warn her of a dangerous condition. Plaintiffs also alleged a claim for breach of contact. The trial court dismissed plaintiffs' negligence claim, holding that the step was open and obvious and that the salesperson's "hounding" of Anna West in order to make a sale did not constitute a unique circumstance imposing a duty to warn upon defendants. The trial court also dismissed plaintiffs' breach of contract claim holding that it was the same allegation as their negligence claim.

Plaintiffs first contend that a question of fact exists as to whether the step at issue, coupled with the actions of defendants' agent, constituted an unreasonable risk of harm. We disagree.

On appeal, a trial court's determination concerning a motion for summary disposition is reviewed de novo. *Butler v Ramco-Gershenson, Inc*, 214 Mich App 521, 524; 542 NW2d 912 (1995). A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Id*. The trial court must review the record evidence, make all reasonable inferences therefrom, and determine whether a genuine issue of material fact exists, giving the nonmoving party the benefit of reasonable doubt. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 617-618; 537 NW2d 185 (1995). On appeal, this Court must independently determine, giving the benefit of doubt to the nonmovant, whether the movant is entitled to judgment as a matter of law. *Id*.

Michigan has adopted the Restatement Second of Torts rule imposing upon landowners a duty toward invitees upon their land. This rule, as adopted, holds,

> A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and (c) fails to exercise reasonable care to protect them against the danger. [*Riddle v McLouth Steel Products Corp*, 440 Mich 85, 93; 485 NW2d 676 (1992); *Quinlivan v Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 258-259; 235 NW2d 732 (1975).]

Where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them, an invitor owes no duty to protect or warn the invitee unless he should anticipate the harm despite knowledge of it on behalf of the invitee. *Bertrand, supra* at 613. In negligence actions, the existence of a duty is a question of law for the court. *Baker v Arbor Drugs, Inc*, 215 Mich App 198, 203; 544 NW2d 727 (1996).

The danger of tripping and falling on a step is generally open and obvious and thus, the failure to warn theory cannot establish liability. *Bertrand, supra* at 614; *Spagnuolo v Rudds # 2, Inc*, 221 Mich App 358; ___ NW2d ___ (1997). The Court did pronounce an exception to the rule and stated as follows:

> . . . where there is something unusual about the steps, because of their "character, location or surrounding conditions," then the duty of the possessor of land to exercise reasonable care remains. If the proofs create a question of fact that the risk of harm was unreasonable, the existence of duty as well as breach become questions for the jury to decide. [*Bertrand, supra* at 617.]

We find that the discussion between Anna West and defendants' agent was not so unique or remarkable that defendants should have reasonably anticipated that she would forget the step located directly behind her. Moreover, the nature of the raised platform did not present an unreasonable risk of harm which would also impose a duty upon defendants. Therefore, the trial court did not err in dismissing plaintiffs' negligence claim.

Plaintiffs also argued that the trial court erred in determining that their breach of contract claim was merely a restatement of their tort claim. We disagree. Looking at plaintiffs' claim in its entirety, we find that their breach of contract claim is merely a restatement of their negligence claim. Since plaintiffs' contract claim is premised upon the identical breach of duty as their negligence claim, the breach of contract claim does not constitute a valid independent cause of action. *Squire v General Motors Corp*, 174 Mich App 780, 788; 436 NW2d 739 (1989), vacated in part on other grounds 434 Mich 884; 452 NW2d 210 (1990). Thus, the trial court correctly granted summary disposition as to plaintiffs' breach of contract claim.

Affirmed.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ E. Thomas Fitzgerald