

STATE OF MICHIGAN
COURT OF APPEALS

LINDA K. FATE-WILLIAMS,

Plaintiff-Appellant,

UNPUBLISHED
July 29, 1997

v

MAX & ERMA'S, INC.,

Defendant-Appellee.

No. 191313
Wayne Circuit Court
LC No. 94-411949 NO

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

In this premises liability action, plaintiff appeals as of right from a judgment entered on a directed verdict in favor of defendant. We reverse and remand for a new trial. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court erroneously determined that the critical issue was one of notice. Where the active negligence of a “storekeeper” or his employees creates an unsafe condition, the storekeeper is liable for any injuries caused by the condition regardless of whether the storekeeper had actual knowledge of the condition. *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968); *Berryman v K Mart Corp*, 193 Mich App 88, 92-93; 483 NW2d 642 (1992). From the testimony in the instant case, it can be reasonably inferred that defendant restaurant is a sit-down restaurant, where the transfer of food and drink, back and forth, between the kitchen and the patrons’ tables, is in the exclusive control of defendant’s employees. It also can be reasonably inferred from the testimony that the substance plaintiff discovered on her pant leg after her fall must have been on defendant’s floor as a result of being spilled or dropped by one of defendant’s employees. Accordingly, viewing the evidence in a light most favorable to plaintiff, reasonable jurors could honestly have reached differing conclusions with regard to whether an employee of defendant created the condition that caused plaintiff’s fall. *Hunt v Freeman*, 217 Mich App 92, 98-99; 550 NW2d 817 (1996). Because the evidence leads to an inference that defendant created the condition that caused plaintiff’s fall, proof of notice was unnecessary for plaintiff to sustain her action. *Berryman, supra* at 93. The trial court erroneously granted a directed verdict in defendant’s favor.

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

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn