

STATE OF MICHIGAN  
COURT OF APPEALS

---

MARCIA JOHNSON,

Plaintiff-Appellant,

v

ARBOR DRUGS, INC.,

Defendant-Appellee.

---

UNPUBLISHED

November 25, 1997

No. 199183

Oakland Circuit Court

LC No. 96-513910 NO

Before: Jansen, P.J., and Fitzgerald and Young, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in this slip and fall case, granted under MCR 2.116(C)(10). This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff contends that while shopping in defendant's store, and with her attention naturally attracted to a product display featuring bulk wine at a very low price, she slipped and fell on hair oil that had been spilled from a bottle on one of the lower shelves. An examination of plaintiff's deposition testimony, however, indicates that plaintiff never actually saw the substance on which she slipped, and that her description of the oil as "dirty and sticky" is based on comments made by an unknown third person which are plainly inadmissible hearsay. Summary disposition may not be successfully opposed under subrule (C)(10) by affidavits or deposition testimony which are based on hearsay or other inadmissible forms of evidence. *SSC Associates Ltd Partnership v General Retirement System of the City of Detroit*, 192 Mich App 360; 480 NW2d 275 (1991); *Regualos v Community Hospital*, 140 Mich App 455; 364 NW2d 723 (1985). Accordingly, plaintiff's attempt to bring the facts within the doctrine of constructive notice cases such as *Ritter v Meijer, Inc.*, 128 Mich App 783, 786-787; 341 NW2d 270 (1983), and cases there cited, fails for want of factual support. As plaintiff makes no claim to have evidence that the hazard was either caused by defendant or its agents or that defendant or its agents had actual notice of the existence of the hazard in sufficient time to either warn customers or ameliorate the danger, and no admissible evidence to establish constructive notice, summary disposition was properly granted. *McCune v Meijer, Inc.*, 156 Mich App 561; 402 NW2d 6 (1986).

Affirmed.

/s/ Kathleen Jansen

/s/ E. Thomas Fitzgerald

/s/ Robert P. Young, Jr.