STATE OF MICHIGAN

COURT OF APPEALS

GIUSEPPE BADALAMENTI,

Plaintiff-Appellant,

v

JO ANNE KOCHNEFF, ANGELA TOCCO, individually and d/b/a GIORGIO'S PIZZA, and GARY EDDY, individually and d/b/a EDDY'S SNOWPLOWING SERVICE,

Defendants-Appellees.

UNPUBLISHED
December 19, 1997

No. 201764
Kent Circuit Court
LC No. 95-001638-NO

Before: Corrigan, C.J., and Doctoroff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of defendants. We affirm.

This premises liability case arises from plaintiff's slip and fall on a patch of ice in the parking lot of Giorgio's Pizza in February 1994. Defendant Tocco manages Giorgio's Pizza and rents the half of the strip mall where the pizzeria is located from defendant Kochneff, who owns the entire property. Defendant Kochneff hired defendant Eddy to plow the snow from the parking lot of Giorgio's Pizza. The facts viewed in a light most favorable to plaintiff are that plaintiff visited the pizzeria intending to borrow a drill from his friend who worked there. His friend, who did not have a drill, suggested borrowing a drill from the store next door. After plaintiff did so, he returned to thank his friend and purchased a beverage while they conversed. As plaintiff was leaving the pizzeria and walking back to his car, he realized he left the drill at the pizzeria. He turned to retrieve it and slipped and fell on a patch of ice in the parking lot.

Plaintiff brought this negligence suit against defendants, specifically alleging a third-party beneficiary claim against defendant Eddy. Whether defendants owed plaintiff a duty of care may be a question of fact, *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993), but the nature

of any duty is a question of law, which this Court reviews de novo. *Mason v Royal Dequindre, Inc,* 455 Mich 391, 397; 566 NW2d 199 (1997).

Plaintiff argues that the lower court erred in determining that plaintiff was a licensee when the accident occurred. We disagree. A licensee is one who is on the property of another for a social purpose, whereas an invitee is on the property of another for a purpose beneficial to the owner of the property. *White, supra* at 436. The lower court concluded that plaintiff was a licensee because the dominant purpose of plaintiff's visit was social, despite the incidental business aspect of plaintiff's alleged purchase of a beverage. *Leveque v Leveque*, 41 Mich App 127, 132; 199 NW2d 675 (1972). After de novo review of the record, we conclude that persons of average intelligence could not disagree with this conclusion. *White, supra*. Because plaintiff was a licensee, defendants Kochneff and Tocco did not owe him a duty to remove natural accumulations of snow and ice, *Hall v Detroit Bd of Education*, 186 Mich App 469, 471; 465 NW2d 12 (1990), particularly where plaintiff acknowledged that he was fully aware of the condition of the parking lot. *White, supra* at 437.

Plaintiff also contends that, if plaintiff was an invitee, the lower court erred in granting summary disposition in favor of defendant Eddy because plaintiff was a third party beneficiary of the snow removal contract between defendant Eddy and defendant Kochneff. However, we have already determined as a matter of law that plaintiff was a licensee. Because defendant Kochneff did not owe a duty to licensees to remove natural accumulations of snow and ice, the contract with defendant Eddy did not discharge a duty owed by Kochneff to plaintiff. See, e.g., *Talucci v Archambault*, 20 Mich App 153, 159; 173 NW2d 740 (1969). Simply put, plaintiff was not an intended beneficiary of the contract. MCL 600.1405(1); MSA 27A.1405(1).

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald