STATE OF MICHIGAN

COURT OF APPEALS

DENISE SCOTT,

Plaintiff-Appellant,

v

WINDJAMMERS BAR & GRILL, INC., and CONSUMERS POWER COMPANY,

Defendants-Appellees,

and

LEO BURTON,

Defendant.

UNPUBLISHED
April 21, 1998

No. 201048
Wayne Circuit Court
LC No. 96-614842 NO

Before: Gribbs, P.J., and Cavanagh and Saad, JJ.

PER CURIAM.

In this premises liability, slip and fall case, plaintiff appeals as of right from the circuit court's orders granting summary disposition to defendants. We affirm.

I

FACTS AND PROCEEDINGS

On the evening of February 3, 1996, plaintiff visited Jammers II (a bar/restaurant), and parked her car in the adjoining parking lot of defendant Consumers Power (Consumers). Plaintiff admitted that she was aware of a sign in Consumers' lot stating that the lot was exclusively for use of Consumers' employees, but that she nonetheless regularly parked in Consumers' lot when visiting Jammers II. As plaintiff was returning to her car, she slipped and fell on a patch of ice in Consumers' lot. Plaintiff brought suit, alleging that defendants expressly or impliedly invited patrons of Jammers II to use Consumers' lot, and that defendants were thus responsible for the ice on which plaintiff fell. The trial court granted summary disposition as to both defendants; plaintiff appeals.

Plaintiff argues that factual questions remain regarding the existence and extent of each defendant's duty to plaintiff when she was injured, and that summary disposition was thus inappropriate. We disagree.

II

ANALYSIS

A. Consumers

As to defendant Consumers, plaintiff argues that Consumers knew that its lot was regularly used by patrons of Jammers II, and acquiesced in that usage to the extent that plaintiff was at least a known trespasser, and perhaps a licensee[1] of Consumers. Plaintiff presents evidence that Jammers II had asked Consumers for a license to let the patrons of Jammers II onto Consumers' lot, that two employees of Consumers left their cars in Consumers' lot when patronizing Jammers II, and that various patrons of Jammers II besides plaintiff routinely parked at Consumers.

That Jammers II asked Consumers for a license to allow patrons to use Consumers premises may be evidence that Consumers knew that Jammers II customers *wanted* to park at Consumers, but because Consumers refused the request, it does not imply that Consumers acquiesced in their doing so. Nor could evidence that Consumers' employees parked in Consumers' lot when going to Jammers II establish Consumers' acquiescence in patrons from Jammers II using Consumers' lot. Similarly, plaintiff's evidence that other patrons of Jammers II regularly used Consumers' lot does not indicate that Consumers acquiesced in the practice. This absence of evidence, coupled with Consumers' sign announcing that its lot was exclusively for use of its own employees precludes the "implication" that Consumers actively acquiesced in having Jammers II patrons in its parking lot. Thus, plaintiff's evidence could support a finding of no status greater than that of known trespasser.

A landowner has no duty to a licensee or known trespasser to remove a natural accumulation of ice and snow from any location, unless the landowner has taken affirmative actions that caused, or increased the hazards of, the natural accumulation. See *Zielinski v Szokola*, 167 Mich App 611, 615; 423 NW2d 289 (1988). Although plaintiff complained that defendants negligently and carelessly altered the natural accumulation of ice and snow, plaintiff alleges no specific conduct on Consumers' part to refute the obvious conclusion that any ice on Consumers' parking lot was simply a natural winter accumulation. Thus, plaintiff's failure to offer evidence that defendants had negligently increased the hazards of the natural accumulation is fatal to her claim against Consumers. For these reasons, the circuit court correctly ruled that plaintiff was a trespasser upon the premises of Consumers, and that Consumers accordingly breached no duty to her.

B. Windjammers

As to defendant Windjammers, plaintiff argues that Jammers II impliedly invited its customers to use Consumers' parking lot, or at least knew that its customers did so, and therefore that

Windjammers' duty to its invitees extended to protecting them from hazardous conditions on Consumers' lot. Again, in light of the record, we disagree.

Plaintiff's evidence fails to support a finding that Jammers II *invited* its patrons to use the neighboring lot; at most, Jammers II was aware that some of its customers used Consumers' lot. However, plaintiff fails to cite authority for its belief that a proprietor is obliged to warn its invitees of dangerous conditions existing on nearby private property over which the proprietor has no control and upon which the customers have no right to tread.

The cases upon which plaintiff does rely do not help her. For example, in *Upthegrove v Myers*, 99 Mich App 776; 299 NW2d 29 (1980), the key issue was whether a hotel was responsible to passersby for the behavior of people on its premises. In *Berman v LaRose*, 16 Mich App 55; 167 NW2d 471 (1969), the Court held that a property owner may be liable for injuries sustained on an abutting parking lot if the owner "had a servitude for his private benefit in the parking area." *Id.* at 59. However, in order for *Berman* to assist plaintiff, not only must Windjammers have had a servitude in Consumers' lot, but that servitude, "by a physical intrusion . . . or otherwise," must have "affected the area's safety and thus imposed a duty on defendant to maintain the area in a reasonably safe condition." *Id.* No such evidence exists here. Accordingly, the circuit court correctly ruled that Windjammers had no duty to plaintiff concerning the conditions on Consumers' parking lot.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Henry William Saad

I concur in result only

/s/ Roman S. Gribbs

[1] A licensee is one who "enters on or uses another's premises with the express or implied permission of the owner or person in control thereof. Permission may be implied where the owner acquiesces in the known, customary use of property by the public." *Alvin v Simpson*, 195 Mich App 418, 420; 491 NW2d 604 (1992).