

STATE OF MICHIGAN
COURT OF APPEALS

LIDIA POSTELNICU,

Plaintiff-Appellant,

v

FOOD BASKET, INC. d/b/a
DANNY'S FINE FOODS, and
CONTINENTAL LINEN SERVICES,

Defendants-Appellees.

UNPUBLISHED

March 29, 2002

No. 227395

Monroe Circuit Court

LC No. 98-008133-NO

Before: Jansen, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Plaintiff appeals as of right the lower court's order granting summary disposition, MCR 2.116(C)(10), in favor of defendant Food Basket, Inc., doing business as Danny's Fine Foods, and the subsequent order denying plaintiff's motion for rehearing on the court's decision granting summary disposition, MCR 2.116(C)(10), in favor of defendant Continental Linen Services. We affirm.

This case arose when plaintiff fell at defendant Danny's Fine Foods on a floor mat provided by defendant Continental. Both defendants filed motions for summary disposition pursuant to MCR 2.116(C)(10), arguing that there was no genuine issue of material fact for trial because plaintiff could present no evidence that the mat was dangerous or defective or that defendants had actual or constructive notice that the mat was dangerous or defective. Following a hearing on the motions, the lower court granted both defendants' motions.

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support of a claim. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When deciding the motion, the court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Ritchie-Gamester v Berkley*, 461 Mich 73, 76; 597 NW2d 517 (1999). The moving party has the initial burden of supporting its position with documentary evidence, and the party opposing the motion then has the burden of showing that a genuine issue of fact exists. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The nonmoving party may not rest on mere allegations or denials but must set forth specific facts – through documentary evidence – showing that a genuine issue of fact exists. *Karbel v Comerica Bank*, 247 Mich App 90, 97; 635

NW2d 69 (2001). On appeal, the trial court's decision on a motion for summary disposition is reviewed de novo. *Spiek, supra* at 337.

Plaintiff's claim against Food Basket is a premises liability claim. To establish negligence, a plaintiff must prove: "(1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages." *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). The only proper defendant in a premises liability case is the entity that had possession and control of the property; however, ownership is not dispositive. *Orel v Uni-Rak Sales Co*, 454 Mich 564; 563 NW2d 241 (1997). A premises owner must maintain his property in a reasonably safe condition and must exercise due care to protect invitees from a condition that might result in injury. *Riddle v McLouth Steel Products*, 440 Mich 85, 90; 485 NW2d 676 (1992). A claim of breach of the invitor's duty can be premised on three theories: negligent maintenance, failure to warn, or defective physical structure. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 610; 537 NW2d 185 (1995). A storekeeper's liability in premises liability cases is well established:

"It is the duty of a storekeeper to provide reasonably safe aisles for customers and he is liable for injury resulting from an unsafe condition either caused by the active negligence of himself and his employees or, if otherwise caused, where known to the storekeeper or is of such a character or has existed a sufficient length of time that he should have had knowledge of it." [*Berryman v K mart*, 193 Mich App 88, 92; 483 NW2d 642 (1992), quoting *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968).]

We need not address plaintiff's first argument that there was a question of fact regarding whether a dangerous or defective condition existed on the premises at the time of plaintiff's fall, because we find dispositive the absence of the requisite actual or constructive knowledge on the part of Food Basket of the alleged defective condition. *Berryman, supra*. Although plaintiff claims Food Basket had notice of the alleged defective condition, plaintiff presented no evidence regarding how long the allegedly defective condition had been present or that Food Basket was aware or should have been aware of the condition. Testimony of the employees established that they regularly inspected the premises of the store and never witnessed any defects in the mats. There was no evidence that they ever received any complaints regarding the mats. Although plaintiff argues that the affidavit of Deitrich Bergmann established that the mats used by defendant were defective, this affidavit presented mere speculation that the mat used on the day of plaintiff's fall was defective or dangerous. There is no evidence – not even plaintiff's own testimony – that Food Basket had any knowledge of the potentially defective or dangerous condition. Therefore, summary disposition was appropriate with respect to Food Basket because there was no genuine issue of material fact with respect to the notice element of plaintiff's case.

We likewise find no merit in plaintiff's claim that the lower court abused its discretion in denying plaintiff's motion for rehearing of the grant of summary disposition in favor of Continental Linen Services. The only proper defendant in a premises liability case is the entity that had possession and control of the property. *Orel, supra*. Plaintiff has failed to argue why Continental Linen Services is the proper defendant in this premises liability action. Further, if plaintiff argues that Continental's liability is grounded in products liability or some other form of negligence, plaintiff cites no support to that effect, and this Court will not rationalize a basis for

her claim. *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 705; 609 NW2d 607 (2000).

Affirmed.

/s/ Kathleen Jansen

/s/ Donald E. Holbrook, Jr.

/s/ Richard Allen Griffin