

STATE OF MICHIGAN
COURT OF APPEALS

ANTON MARKEL,

Plaintiff-Appellant,

v

GREAT ATLANTIC & PACIFIC TEA
COMPANY, INC., and BORMAN'S, INC., d/b/a
FARMER JACK,

Defendants-Appellees.

UNPUBLISHED

October 25, 2005

No. 263477

Macomb Circuit Court

LC No. 04-002187-NO

Before: Talbot, P.J., and White and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 8, 2003, plaintiff, then ninety-three years of age, and a friend went shopping at a Farmer Jack Supermarket. Plaintiff's friend successfully pushed a cart through the store's sliding glass exit doors. The doors closed, and then reopened several seconds later, in order to allow plaintiff to exit the store. As plaintiff attempted to exit the store the doors closed and struck him, causing him to fall to the floor and sustain injuries.

Plaintiff filed suit¹ alleging that defendants negligently failed to inspect the doors and to maintain them in a reasonably safe condition, and to warn of the unsafe condition of the doors. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that no evidence showed that the doors were defective, that no evidence showed that the doors caused plaintiff to fall, and that no evidence showed that they had actual or constructive notice of any defect. The trial court granted defendants' motion, finding that while a question of fact existed as to whether the doors had malfunctioned and caused plaintiff to be injured, no evidence created

¹ Plaintiff also named non-participating defendant Besam Automated Entrance Systems, Inc., the company with which defendants contracted for maintenance of the doors, as a party. Plaintiff settled his claim against Besam.

a question of fact regarding whether defendants had actual or constructive notice that the doors were defective or would malfunction when plaintiff attempted to use them.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983).

A storekeeper must provide reasonably safe premises for customers. In a premises liability action, a plaintiff must show either that the defendant caused the unsafe condition, or that the defendant knew or should have known of the unsafe condition. Such knowledge may be inferred from evidence that the condition existed for a sufficient length of time for the storekeeper to have discovered it. *Clark v K-Mart Corp*, 465 Mich 416, 419; 634 NW2d 347 (2001).

We affirm. No evidence showed that defendants had any knowledge that this particular alleged defect, i.e., the doors closing on a person attempting to pass through them, had occurred at any time prior to the incident involving plaintiff. No evidence showed that the store's managers had received any complaints about the doors malfunctioning in the fashion alleged by plaintiff. A Besam employee testified that the doors were not in good condition, but did not state that they had malfunctioned in the manner alleged by plaintiff. Plaintiff's assertion that defendants would have known of the alleged defect had store employees inspected the doors on a daily basis is based on impermissible speculation. *Ritter, supra*. Plaintiff presented no evidence to create a question of fact regarding defendants' knowledge. *Berryman v K-Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992). The trial court properly decided the issue as one of law and granted defendants' motion for summary disposition. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder