

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BERNARD MICHIRINA and  
MARGARET MICHIRINA,

UNPUBLISHED  
July 25, 1997

Plaintiffs-Appellants

v

No. 194314  
Oakland Circuit Court  
LC No. 95-494335 NO

STEVEN JACOB, d/b/a  
BACKWALL FITNESS &  
RACQUET CLUB, d/b/a  
MADISON ATHLETIC CLUB,  
and SEJ ENTERPRISES, INC., d/b/a  
BACKWALL FITNESS & RACQUET  
CLUB and MADISON ATHLETIC  
CLUB, and H.H.J. HOLDINGS, LTD.,  
INC., d/b/a BACKWALL FITNESS &  
RACQUET CLUB and MADISON  
ATHLETIC CLUB,

Defendants-Appellees

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Before: Jansen, P.J., and Wahls and P.R. Joslyn\*, JJ.

MEMORANDUM.

Plaintiffs, while trespassing on defendants' premises during hours of darkness and at a time when defendant was not open for business, tripped over a wire strung between two posts, which defendant had installed to block use of an ancillary pathway which had been used by children for skateboarding and similar activities. In this premises liability action, the Oakland Circuit Court granted defendants' motion for summary disposition based on lack of duty, and plaintiffs appeal by right. This case is being decided without oral argument pursuant to MCR 7.214(E).

Summary disposition was properly granted. The post and wire barrier created by defendants is not of the character of a spring gun, poisoned food, or a pitfall made with the intention of having human

\* Circuit judge, sitting on the Court of Appeals by assignment.

beings encounter it and thereby suffer injury or death. It is simply a potentially dangerous condition on private property, and if its installation and character represent negligence, such negligence is only passive, and thus not of the type that will give rise to liability towards trespassers. Nor are defendants liable on a theory that they failed to warn plaintiffs against trespassing or to drive them from their premises before they encountered this hazard. *Hargreaves v Deacon*, 25 Mich 1, 45 (1872); *Flanagan v Sanders*, 138 Mich 253, 257; 101 NW 581 (1904).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn