

STATE OF MICHIGAN
COURT OF APPEALS

MARILYN SCHER and ERNEST SCHER,

Plaintiffs-Appellants,

v

FISHER THEATRE and J.H. THEATRICAL
CORPORATION,

Defendants-Appellees.

UNPUBLISHED
October 10, 1997

No. 195748
Wayne Circuit Court
LC No. 95-526089 NO

Before: Doctoroff, P.J., and Cavanagh and Saad, J.J.

MEMORANDUM.

In this premises liability action based on plaintiff Marilyn Scher's fall during intermission of a theatrical performance, summary disposition was granted by the Wayne Circuit Court based on MCR 2.116(C)(10), no genuine issue of material fact. Plaintiffs appeal by right. This case is being decided without oral argument pursuant to MCR 7.214(E).

At Marilyn Scher's deposition, she testified that she does not know what caused her to fall. She recalls only walking down a row of seats, a few rows short of her intended destination, while returning to her seat during the intermission, and suddenly finding herself injured on the floor. Ernest Scher's deposition testimony indicated that in coming to his wife's aid, he himself nearly tripped and fell on some kind of bolt protruding from a ventilation grating in the floor. While this provides a possible explanation for plaintiff's injuries, it fails to make such cause more likely than any other possible cause, such as tripping on a seat support or otherwise. Accordingly, other than speculation or conjecture, there is insufficient evidence to raise a genuine issue of material fact and summary disposition was appropriately granted. *Stefan v White*, 76 Mich App 654; 257 NW2d 206 (1977).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh
/s/ Henry W. Saad