

STATE OF MICHIGAN
COURT OF APPEALS

IRMA PALMER,

Plaintiff-Appellant,

v

SAVAYA, INC., d/b/a SAVAYA BROS. PARTY
STORE,

Defendant-Appellee.

UNPUBLISHED

June 16, 1998

No. 199425

Wayne Circuit Court

LC No. 95-529377-NO

Before: McDonald, P.J., and O'Connell and Smolenski, JJ.

MEMORANDUM.

Plaintiff, Irma Palmer, appeals as of right from an order granting defendant, Savaya Inc's., motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

On June 27, 1995, plaintiff went to defendant's convenience store at approximately 10:00 p.m. While plaintiff was waiting at the checkout line, a woman bumped her and gave her a dirty look. After plaintiff moved to a different line, an argument ensued between plaintiff and the woman, with both parties yelling using profane language. Defendant, the store owner, came out from behind the bullet-proof glass counter and tried to address the problem but, as he was speaking to plaintiff, the other woman pulled out a razor blade and defendant immediately ran behind the counter. The woman then attacked plaintiff, injuring plaintiff's hand. The woman then ran out of the store and left in a van.

On appeal, plaintiff argues the trial court erred in granting summary disposition pursuant to MCR 2.116(C)(10) because there was a genuine issue of material fact regarding whether the third-party's assault on plaintiff was foreseeable. We disagree.

Upon careful review of the record, we find no evidence to show defendant knew or should have known the third-party would harm plaintiff. *Perez v KFC Nat'l Mgt Co*, 183 Mich App 265, 268; 454 NW2d 145 (1990). Reasonable minds would agree that, until the woman pulled out a razor blade, defendant had no knowledge or reason to believe the third-party would attack plaintiff. Defendant had approached the women with the hope of trying to resolve the argument. Further, plaintiff was not an innocent bystander but rather was involved in a heated exchange with

the third-party prior to the assault. Viewing these facts in the light most favorable to the non-moving party, it is impossible for plaintiff's claim to be supported at trial because the third-party's act was not reasonably foreseeable.

We also conclude plaintiff's argument that defendant breached his duty to protect her from the third-party by running behind the bullet proof glass is without merit because there is no evidence that he had assumed the duty to protect plaintiff; rather, he was keeping the peace within his store.

Affirmed.

/s/ Gary R. McDonald

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski