

STATE OF MICHIGAN
COURT OF APPEALS

ERVIN JAMES,

Plaintiff-Appellant,

v

HARBORTOWN DEVELOPMENT, ANR
DEVELOPMENT CORP., a/k/a ANR
DEVELOPMENT, INC., MICHCON
DEVELOPMENT CORP., NATION WIDE
SECURITY, INC.,

Defendants-Appellees,

and

DYRIS FRAZIER,

Defendant.

UNPUBLISHED

August 14, 1998

No. 194395

Wayne Circuit Court

LC No. 94-430110-NO

Before: Holbrook, Jr., P.J., and Young, Jr., and J. M. Batzer*, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) and denying plaintiff's motion for rehearing. We affirm in part, reverse in part, and remand.

Plaintiff was a tenant of the Harbortown Apartment Building. His landlord was the Harbortown Development Partnership, whose co-partners are ANR Development Corporation a/k/a ANR Development, Inc., and MichCon Development Corporation (hereinafter collectively referred to as Harbortown). The premises were monitored by Nation Wide Security, Inc. pursuant to a contract with Harbortown. Plaintiff alleged that, while in the lobby of Harbortown's building, he was attacked by a

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

guest of defendant Dyrus Frazier.¹ Plaintiff's complaint contains claims of negligence, nuisance, breach of contract, and breach of express and/or implied warranties.

Plaintiff first contends that the trial court erred in granting defendants' motion for summary disposition with respect to plaintiff's negligence claims. We disagree.

Plaintiff has failed to create a question of fact regarding whether Harbortown created a dangerous condition that enhanced the likelihood of exposure to criminal assaults. *Stanley v Town Square Cooperative*, 203 Mich App 143, 150-151; 512 NW2d 51 (1993). In response to defendants' motion, plaintiff attached an affidavit from an expert stating that the outer lobby "contains many hidden and blind areas that cannot be seen from the inner lobby," and that "since this outer lobby is unsecured, it provides ample, hidden areas for a perpetrator to remain undetected until a victim, such as Plaintiff, is within in [sic] close proximity and the zone of danger." The expert's affidavit also states that "placing furniture in the lobby areas . . . created a natural incentive for possible loitering and criminal activity." However, in light of the restricted access to the Harbortown complex, we are convinced that reasonable minds would agree that the "hidden areas" and the presence of furniture in the lobby did not create a dangerous condition that enhanced the likelihood of a criminal assault. See *Quinto v Cross & Peters Co*, 451 Mich 358, 361-362, 367, 371-372; 547 NW2d 314 (1996); see also *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 398-399; 491 NW2d 208 (1992).

We likewise reject plaintiff's argument that defendants were negligent in performing a voluntarily assumed duty to provide security. Plaintiff relies on *Holland v Liedel*, 197 Mich App 60; 494 NW2d 772 (1992). We note that the cases on which *Holland* relies have been either reversed or criticized. See *Scott v Harper Recreation*, 444 Mich 441, 452; 506 NW2d 857 (1993). Further, *Holland* does not explain how and to what extent the defendant in that case assumed a duty to provide security. Applying by analogy the principles set forth in *Scott*, 444 Mich at 451-452, we find that there is no evidence that would reasonably support the conclusion that defendants negligently performed the narrow security duties which they voluntarily assumed, and thus we refuse to penalize them for deciding to provide some security measures but failing to prevent all criminal activity on the premises. Accordingly, we affirm the trial court's order to the extent that it grants defendants summary disposition on plaintiff's negligence claims.

Plaintiff also contends that the trial court erred by granting summary disposition on his breach of warranty and breach of contract claims. We agree.

Defendants' motion for summary disposition did not address these claims, and neither did the trial court. Although defendants on appeal challenge the viability of the claims, their arguments are unpreserved and therefore must first be submitted to the trial court in the form of a properly supported motion. *McCready v Hoffius*, 222 Mich App 210, 218; 564 NW2d 493 (1997), lv pending. We express no opinion on their merits. The trial court's order is therefore vacated to the extent that it granted summary disposition to defendants on the breach of warranty and breach of contract claims.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald E. Holbrook, Jr

/s/ Robert P. Young, Jr.

/s/ James M. Batzer

¹ Frazier was never served. Plaintiff's claim against her was dismissed without prejudice, and that dismissal is not challenged on appeal.