STATE OF MICHIGAN

COURT OF APPEALS

BARBARA BIDDINGER and RICK BIDDINGER, Plaintiffs-Appellants, v MEDITERRANEAN CATERING, INC. and ST. JOHN'S HELLENIC CULTURAL CENTER, Defendants-Appellees.	UNPUBLISHED February 27, 2001 No. 218521 Macomb Circuit Court LC No. 98-001548-NO

Before: Meter, P.J., and Neff and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis,* 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co,* 460 Mich 446, 455; 597 NW2d 28 (1999).

The plaintiff has the burden of producing evidence sufficient to make out a prima facie case. *Snider v Bob Thibodeau Ford, Inc*, 42 Mich App 708, 712; 202 NW2d 727 (1972). The happening of an accident is not, in and of itself, evidence of negligence. The plaintiff must present some facts that either directly or circumstantially establish negligence. *Whitmore v Sears, Roebuck & Co,* 89 Mich App 3, 9; 279 NW2d 318 (1979). Negligence may be established by circumstantial evidence, and if the circumstances are such as to take the case out of the realm of conjecture and bring it within the field of legitimate inference from established facts, at least a

prima facie case is made. *Shirley v Drackett Products Co*, 26 Mich App 644, 649-650; 182 NW2d 726 (1970).

A business owner is liable to invitees for injuries incurred on his premises if the injury results from an unsafe condition caused by the active negligence of the owner or his employees. If the unsafe condition results from other causes, the business owner is liable if the condition is known to him "or is of such a character or has existed a sufficient length of time that he should have knowledge of it." *Berryman v Kmart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992), quoting *Serinto v Borman Food Stores*, 380 Mich 637, 640-641; 158 NW2d 485 (1968).

Plaintiff attended a wedding reception at defendant St. John's Hellenic Cultural Center, catered by defendant Mediterranean Catering, Inc. Plaintiff fell after stepping in something slippery, but she didn't know what the substance was. Although defendant Mediterranean's wait staff had its bus carts on the floor while clearing the tables, there is no evidence that any substance came from the plates being cleared or that a waiter, as opposed to a diner, spilled or dropped a substance. Although dark stains were found on plaintiff's slacks one day later, it cannot be inferred that the stains came from a spilled substance because no one saw any spilled substance on the floor before or after the fall. Therefore, the evidence does not permit a reasonable inference that defendants or their employees caused the defective condition. *Pete v Iron Co*, 192 Mich App 687, 689; 481 NW2d 731 (1992); *Suci v Mirsky*, 61 Mich App 398, 403; 232 NW2d 415 (1975). Even assuming one could infer that a substance was on the floor and putting aside how it got there, defendants could only be held liable if it had been there for a sufficient length of time to give them actual or constructive notice of its presence. *Clark v Kmart Corp*, 242 Mich App 137, 140-141; 617 NW2d 729 (2000). Here, there was nothing to show how long the substance had been on the floor, and thus there was no evidence to permit a reasonable inference of negligence. *Id*. at 141-143; *Pete*, *supra* at 689-690; *Suci*, *supra* at 403. Therefore, the trial court did not err in granting defendants' motion.

Affirmed.

/s/ Patrick M. Meter
/s/ Janet T. Neff
/s/ Peter D. O'Connell