

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D., 2003

NORMAN ANDERSON and LESLIE **
ANDERSON, his wife, **
 Appellants, **

vs.

CASE NO. 3D02-1464

YELLOWTAILS, INC., a Florida
corporation, d/b/a/
MAMBO CAFÉ,

** LOWER TRIBUNAL: 98-16689

 Appellee. **

Opinion filed December 3, 2003.

An Appeal from the Circuit Court for Miami-Dade County, Amy
Dean, Judge.

Solms & Price, and Max R. Price, for appellants.

Kubicki Draper, and Caryn L. Bellus, for appellee.

Before GERSTEN, FLETCHER, and SHEPHERD, JJ.

PER CURIAM.

Norman and Leslie Anderson ("plaintiffs") appeal the trial
court's order granting final judgment in favor of Yellowtails,

Inc., d/b/a/ Mambo Café in a personal injury action. The plaintiffs allege the trial court erred in granting a partial directed verdict in favor of Mambo Café on Norman Anderson's claim that there was prior damage to the chair from which Anderson fell. We agree and reverse.

An appellate court when reviewing the grant of a directed verdict must view the evidence and all inferences of fact in the light most favorable to the nonmoving party, and can affirm only where no proper view of the evidence could sustain a verdict in favor of the nonmoving party. See Owens v. Publix Supermarkets, Inc., 802 So. 2d 315 (Fla. 2001); Sears, Roebuck & Co. v. McKenzie, 502 So. 2d 940 (Fla. 3d DCA 1987). Here, when viewing the evidence in the light most favorable to the plaintiffs, the jury could have determined that the chair was damaged prior to plaintiff's injuries. Accordingly, the trial court erred in granting a directed verdict on this issue. The final judgment is reversed and the case is remanded for a new trial.

Reversed and remanded.