STATE OF MICHIGAN

COURT OF APPEALS

JACQUELINE WENKEL,

Plaintiff-Appellant,

v

DONALD BENCHLEY and BARBARA BENCHLEY, d/b/a BENCHLEY USED EQUIPMENT,

Defendants-Appellees,

and

DONALD EUGENE WHEAT and CONNIE WHEAT, d/b/a WHEAT TIRE,

Defendants.

UNPUBLISHED
April 22, 1997

No. 186490
Arenac Circuit Court
LC No. 94-004663-NO

Before: Fitzgerald, P.J., and Holbrook, Jr., and E.R. Post*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting the Benchley defendants summary disposition pursuant to MCR 2.116(C)(10). We reverse in part and affirm in part.

Plaintiff first argues that the trial court improperly granted summary disposition on the issue of premises liability because an issue of fact existed whether the Benchley defendants breached their duty to maintain their parking lot in a manner that did not create an unreasonable risk of harm to passing motorists.[1] We agree and reverse. To the extent that the trial court can be interpreted as holding that no duty is imposed on a premises owner to maintain a parking area so that it is reasonably safe for motorists traveling on an adjacent highway, the court erred. In *Langen v Rushton*, 138 Mich App 672, 678; 360 NW2d 270 (1984), this Court imposed such a duty on the owner of a shopping center:

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

> Where the parking lot of a shopping center abuts a public highway, it is entirely foreseeable that a serious accident may occur between a customer entering or exiting from the parking lot and a highway motorist. Under such circumstances, we think it wholly just to impose a burden upon a defendant landowner to design, develop and maintain a parking area so as to prevent an unreasonable risk of harm to motorists traveling on adjacent highways.

The *Langen* Court found such a duty to be "a logical outgrowth of the settled duty of a landowner toward passing-by-foot travelers." *Id.* at 679, citing *Bannigan v Woodbury*, 158 Mich 206, 207; 122 NW 531 (1909).

Here, plaintiff claimed that the Benchleys breached this duty because their parking lot was negligently designed and inadequately lighted, affording no warning to oncoming motorists of vehicles pulling out of the parking lot. Plaintiff alleged that Donald Wheat was pulling out of the Benchleys' parking lot just before he collided with plaintiff. Wheat testified that he was not in the parking lot but on the shoulder of the road prior to the accident. However, Wheat told the investigating officers that he was pulling out of the Benchleys' parking lot just before the accident and did not mention that he was making a U-turn. Thus, an issue of fact existed whether Wheat may have been making a left turn out of the Benchleys' parking lot just prior to the accident. Cf. *Balcer v Forbes*, 188 Mich App 509, 513-514; 470 NW2d 453 (1991) (no actionable negligence where the plaintiff's injuries occurred "a full block" from the defendants' parking lot exit and were precipitated by an unforeseeable superseding cause). Moreover, plaintiff claims that, given time to complete discovery, she could provide the court with expert testimony or documentary evidence to support her version of the facts by establishing that Wheat could not have completed a U-turn from the shoulder. Because a genuine issue of fact was raised whether a condition of the Benchleys' parking lot created an unreasonable risk of harm to motorists, such as plaintiff, traveling on the abutting highway, summary disposition was prematurely granted. *Johnson v Bobbie's Party Store*, 189 Mich App 652, 660-661; 473 NW2d 796 (1991); *Szkodzinski v Griffin*, 171 Mich App 711, 715; 431 NW2d 51 (1988).

Plaintiff next argues that a genuine issue of material fact existed whether the Benchleys could be held liable for Wheat's negligence because they were involved in a joint venture in tire hauling with Wheat. Plaintiff alternatively argues that the Benchleys should have been held liable under an employer/employee relationship. We find it unnecessary to determine whether the tire hauling agreement between the Benchleys and the Wheats was a joint venture or an employer/employee relationship because we find that plaintiff has not raised a genuine issue of material fact whether Wheat was acting within the scope of his agency, which is an element of joint venture liability, *Troutman v Ollis*, 164 Mich App 727, 733; 417 NW2d 589 (1987); *McLean v Wolverine Moving & Storage Co*, 187 Mich App 393, 400; 468 NW2d 230 (1991), and employer/employee liability, *Linebaugh v Sheraton Mich Corp*, 198 Mich App 335, 343; 497 NW2d 585 (1993). Wheat testified that he was at the Benchleys' property to pick up a trailer that they had given him for his own use, unrelated to the tire hauling agreement. Plaintiff presented no

evidence to contradict this testimony. Thus, summary disposition of this claim was properly granted.

Reversed in part and affirmed in part.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Edward R. Post

[1] Although the Benchley defendants apparently conceded the issue of duty on the premises liability claim, the trial court granted the motion pursuant to MCR 2.116(C)(10), finding that "[t]here is nothing to show Benchleys have any liability by premises liability [sic], joint adventure or vicarious liability, such as master-servant. This was an automobile accident on a highway, and it's an imaginative pleading by the plaintiff."