

STATE OF MICHIGAN
COURT OF APPEALS

CINDY BILLIARD WALKER,

Plaintiff-Appellant,

v

VAN DRESSER CORPORATION OF
WESTLAND,

Defendant-Appellee.

UNPUBLISHED

July 29, 1997

No. 190906

Wayne Circuit Court

LC No. 93-328843 NO

Before: Jansen, P.J., and Wahls and P.R. Joslyn*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition entered in the Wayne Circuit Court in this negligence action. This case is being decided without oral argument pursuant to MCR 7.214(E).

Inasmuch as plaintiff's duties as a security guard necessarily exposed her to the kind of risk which she claims led to her injuries, whether or not summary disposition was appropriate under MCR 2.116(C)(10), the basis on which the trial court proceeded, summary disposition could properly have been granted under subrule (C)(8) based on lack of actionable duty on defendant's part, under the primary assumption of the risk doctrine. *Kreski v Modern Wholesale Electric Co*, 429 Mich 347, 363 n 11; 415 NW2d 178 (1987), citing *Carter v Mercury Theater Co*, 146 Mich App 165; 379 NW2d 409 (1985).

Nonetheless, summary disposition was not prematurely granted under subrule (C)(10). Although discovery was incomplete, the trial court's order of summary disposition provides that it is without prejudice for 30 days, during which time plaintiff could conduct further discovery, if within that 30 days plaintiff could provide the court with evidence of negligence on defendant's part. At that point, since lifting of the bankruptcy stay there had been ten months of discovery, and plaintiff makes no contention that the total of 11 months of discovery, or the additional 30 days, was unreasonably short and thus somehow represents an abuse of the trial court's discretion. As much more time has now elapsed and the record contains no such evidence of defendant's negligence, summary disposition was

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

not premature because discovery did not stand a fair chance of uncovering factual support necessary to oppose the motion. *State Treasurer v Sheko*, 218 Mich App 185, 190; 553 NW2d 654 (1996).

Affirmed.

/s/ Kathleen Jansen

/s/ Myron H. Wahls

/s/ Patrick R. Joslyn