

STATE OF MICHIGAN
COURT OF APPEALS

PARRISH REDD,

Plaintiff-Appellant,

v

WILLIAM H. DAVIS, d/b/a BLACK ORCHID
CABARET, NOIR BROTHERS OF MICHIGAN,
LTD, NOIR BROTHERS REALTY CORP,
HERBERT S. BLACK and LYNN D. BLACK,

Defendants-Appellees,

and

RICHTER ENTERTAINMENT OF MICHIGAN,
LTD, MARIA A. HILL and SHARON Y. HALL-
HEARD,

Defendants.

Before: Markey, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Plaintiff is one of several bystanders who suffered gunshot wounds after a gunfight erupted inside the Black Orchid Cabaret. Plaintiff appeals as of right from the summary dismissal of his premises liability and fraud action. We affirm.

A merchant is not ordinarily required to protect customers from criminal acts of third persons. *Scott v Harper Recreation, Inc*, 444 Mich 441, 448; 506 NW2d 857 (1993). Plaintiff seeks to avoid the application of this rule by relying on the principle that an individual who voluntarily undertakes a responsibility can be held liable if the volunteer's negligence is a proximate cause of injury. See, generally, *Smith v Allendale Mutual Ins Co*, 410 Mich 685; 303 NW2d 702 (1981). Specifically, plaintiff argues that the trial court erroneously granted summary disposition because the record

established that defendants voluntarily assumed a duty to ensure that no weapons were carried inside the Cabaret and that defendants failed to act as an ordinarily prudent person would do in carrying out that duty. We disagree.

On the instant record, at most, defendants promised to take action to prevent weapons from being brought into the Cabaret. The record does not support plaintiff's claim that defendants promised to keep the Cabaret weapons-free. In fact, in today's society, no reasonable person could expect a merchant to provide a haven guaranteed to be completely free of all criminal activity. *Scott, supra* at 449, n 8. The essence of plaintiff's claim, like the claim advanced in *Scott*, is that the security measures taken by defendants were less effective than they could have been. Liability does not arise under these circumstances. *Id.* at 452.

For these same reasons, plaintiff's fraud claim must fail. *Id.* at 453.

Plaintiff also argues that the trial court erroneously granted summary disposition because defendants were under a duty to take some action to protect their patrons from the decedent in light of evidence that defendants knew the decedent carried a firearm. Plaintiff relies on *Jackson v White Castle System, Inc.*, 205 Mich App 137; 517 NW2d 286 (1994). *Jackson* is distinguishable, however. The instant record is devoid of any evidence from which it can be inferred that defendants knew the gunman was carrying a handgun on the night in question or that defendants knew the Cabaret's patrons were in peril or faced a known, obvious and imminently dangerous situation. Instead, the gunman's actions were so random and instantaneous that defendants lacked notice of the existence of a situation giving rise to its duty to exercise reasonable care for its patrons. *Mason v Royal Dequindre, Inc.*, 455 Mich 391 566 NW2d 199 (1997); *Jackson, supra* at 141-142.

Affirmed.

/s/ Jane E. Markey

/s/ Janet T. Neff

/s/ Michael R. Smolenski