

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN S. HOUSE,

Plaintiff-Appellant,

v

PINE KNOB, a/k/a ARENA ASSOCIATES, INC,

Defendant-Appellee.

UNPUBLISHED

December 23, 1997

No. 196908

Oakland Circuit Court

LC No. 94-476097 NO

Before: McDonald, P.J., and Wahls and J. R. Weber*, JJ.

MEMORANDUM.

A third party assaulted plaintiff while plaintiff attended a concert on defendant's premises. Plaintiff appeals as of right from the summary dismissal of his premises liability action brought as a consequence of that assault. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

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 this Court's decision in *Jackson v White Castle System, Inc*, 205 Mich App 137; 517 NW2d 286 (1994). We find *Jackson* distinguishable. On the instant record, at the time of the attack defendant did not yet know or have reason to know that plaintiff was in imminent peril. Compare *Id.* at 141-142. Put differently, the criminal act was not foreseeable, and defendant had no duty to prevent the attack. See *Mason v Royal Dequindre, Inc*, 455 Mich 391, 403-404; 566 NW2d 199 (1997).

Indeed, the instant case falls squarely within the parameters of *Scott*. According to plaintiff's complaint, he seeks to recover on theories that defendant failed to adequately train its security staff and that defendant's security personnel mishandled the situation. In other words, plaintiff seeks to impose liability because the security measures employed by defendant were less effective than they could have been. Where a merchant voluntarily undertakes safety measures for the benefit of its patrons, the merchant will not be held responsible for injuries suffered by patrons as a result of criminal acts of third

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

parties because the security measures implemented were less effective than they could have been. *Scott, supra* at 452. See also *Abner v Oakland Mall Ltd*, 209 Mich App 490; 531 NW2d 726 (1995).

Affirmed.

/s/ Gary R. McDonald

/s/ Myron H. Wahls

/s/ John R. Weber