STATE OF MICHIGAN

COURT OF APPEALS

BERNICE A. WITTEN and GEORGE WITTEN,

Plaintiffs-Appellants,

v

HEITMAN PROPERTIES OF MICHIGAN, LTD.,

Defendant-Appellee.

UNPUBLISHED
March 20, 1998

No. 200927
Genesee Circuit Court
LC No. 96-043046-NO

Before: Sawyer, P.J., and Wahls and Reilly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10). We reverse.

Plaintiff[1] went to a mall owned by defendant for the purpose of walking laps inside the mall with a friend. When plaintiff arrived at the mall, only a few coffee shops were open and the rest of the stores were closed. As plaintiff was walking across the parking lot to the mall entrance, she allegedly slipped on a patch of ice and fell, injuring her left ankle. Plaintiff then brought this premises liability action against defendant. In granting defendant's motion for summary disposition, the trial court ruled that plaintiff was a licensee and that her claim was precluded by the natural accumulation doctrine.

On appeal, plaintiff argues that the trial court erred in granting defendant's motion for summary disposition on the basis of plaintiff's status as a licensee. We agree. A trial court's decision to grant a motion for summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995). When reviewing a motion for summary disposition brought pursuant to MCR 2.116(C)(10), this Court must consider the pleadings, affidavits, admissions, depositions, and any other documentary evidence available to it in a light most favorable to the nonmoving party. *Tranker v Figgie Int'l, Inc*, 221 Mich App 7, 11; 561 NW2d 397 (1997). We must then determine whether there exists a genuine issue of material fact on which reasonable minds could differ or whether the moving party is entitled to judgment as a matter of law. *Id.*

The duty an owner of land owes to those who come upon the land turns on the status of the visitor as a trespasser, licensee, or invitee. *Stanley v Town Square Coop*, 203 Mich App 143, 146-

147; 512 NW2d 51 (1993). If the visitor is a licensee, the general rule is that the property owner has no obligation to remove the natural accumulation of ice or snow from any location. *Zielinski v Szokolz*, 167 Mich App 611, 615; 423 Nw2d 289 (1988). The "natural accumulation doctrine" does not apply to invitees injured on private property. *Id.* at 618. As to an invitee, a property owner must take reasonable measures within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury. *Orel v Uni-Rak Sales Co*, 454 Mich 564, 567; 563 NW2d 241 (1997), citing *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 261; 235 NW2d 732 (1975).

In determining whether a visitor is a licensee or an invitee, the distinguishing factor is whether the visitor's presence is related to the pecuniary interests of the possessor of land. *Stanley*, *supra* at 147. The Michigan Supreme Court has adopted the definition of "invitee" contained in the Second Restatement of Torts, which states:

> (1) An invitee is either a public invitee or a business visitor.
>
> (2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.
>
> (3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land. [*Preston v Sleziak*, 383 Mich 442, 450; 175 NW2d 759 (1970), quoting 2 Restatement Torts, 2d, § 332, p 176.]

Thus, an individual is considered an invitee "if the visit may reasonably be said to confer or anticipate a business, commercial, monetary, or other tangible benefit" to the owner. *Socha v Passino*, 105 Mich App 445, 447-448; 306 NW2d 316 (1981). By contrast, a licensee is defined as one who is on the premises of another because of some personal, unshared benefit and is merely tolerated by the owner. *Id.* at 448. Where reasonable minds could differ, the question of whether a visitor is a licensee or an invitee should be left to the trier of fact. *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993).

In this case, plaintiff explained that she had been a regular "mall-walker" for approximately ten years. The trial court determined that walking was plaintiff's sole reason for going to the mall, and that, as such, plaintiff's presence conferred no benefit upon defendant. However, when viewed in a light most favorable to plaintiff, the evidence suggested that mall-walking was not plaintiff's sole reason for going to the mall. Plaintiff testified that, on some days, her "normal routine" after walking in the mall was to leave before the rest of the stores opened. On other days, however, her "normal routine" would be to have coffee, wait for the stores to open, and shop. Although, plaintiff did not have a definite plan to stay and shop on the day of her injury, she explained that she may have stayed to do some shopping, "depending on what [she] saw in the [store] windows." Accordingly, plaintiff's presence in the mall could reasonably be said to anticipate a business benefit to its owner. *Socha*, *supra* at 447-448; cf. *Danaher v Partridge Creek Country Club*, 116 Mich App 305, 312-313; 323 NW2d 376 (1982) (holding that a person injured near a golf course was an invitee because, although he had not yet

purchased the right to play golf, he was viewing the premises prior to a decision to actually play golf). Because reasonable minds could differ, the question of plaintiff's status at the mall should be left for the trier of fact. *White, supra* at 8. Therefore, defendant is not entitled to judgment as a matter of law on the grounds asserted below. *Tranker, supra* at 11.

Reversed.

/s/ David H. Sawyer
/s/ Myron H. Wahls
/s/ Maureen Pulte Reilly

[1] Because plaintiff George Witten's claim of loss of services is derivative, we will refer solely to Bernice Witten as plaintiff.