STATE OF MICHIGAN

COURT OF APPEALS

MAURICIO A. VEAL, Plaintiff-Appellant,	UNPUBLISHED May 7, 2009
v	No. 284334 Wayne Circuit Court
V. VESELI, INC., Defendant-Appellee.	LC No. 06-616734-NO

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was in defendant's restaurant when he was unexpectedly assaulted and robbed by several men who were loitering and allegedly drinking alcohol. Plaintiff alleged that defendant allowed "a dangerous and illegal circumstance to business invitees," and that defendant did not respond reasonably when the restaurant employees failed to call the police. Defendant moved for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact), which the trial court granted.

The trial court noted that there was no dispute about the fact that no one thought that anything was going to happen until it actually happened; even plaintiff's own statements indicated that he did not expect to be attacked. The attack was sudden and there was not much defendant could do to stop it. .The trial court found that even if the police had been called right away, the assault "happened pretty quickly" and so the call would not have helped avoid injury. Moreover, because plaintiff left to chase after the fleeing assailants, he would not have been there for the police to help even if they had arrived only ten or 15 minutes after the attack.

This Court reviews de novo a trial court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the claim. *Id.* When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence submitted in the light most favorable to the nonmoving party, and all reasonable inferences are to be drawn in

favor of the nonmovant. *Id*.; *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

The trial court correctly analyzed this case. "A premises owner's duty is limited to responding reasonably to situations occurring on the premises because, as a matter of public policy, we should not expect invitors to assume that others will disobey the law. A merchant can assume that patrons will obey the criminal law." *MacDonald v PKT, Inc*, 464 Mich 322, 335; 628 NW2d 33 (2001). Defendant had no reason to expect that the group of men would assault and rob plaintiff while they were in the store. Plaintiff's own statements indicated that the attack was unexpected. Thus, defendant's only duty was to reasonably respond. *MacDonald, supra* at 335. A merchant's duty to reasonably respond means it is obliged only to make reasonable efforts to contact the police. *Id*. at 336.

In this case, the evidence, taken in the light most favorable to plaintiff, shows that a question of fact remains regarding whether defendant promptly called the police. While the parties dispute the actual length of the assault and robbery, they agree that the initial assault came without advance warning. Plaintiff offered no testimony regarding the length of the attack. Defendant offered an affidavit describing a very brief episode. Plaintiff's companion's testimony was that the total time that elapsed from the plaintiff's entry onto the subject premises until his arrival at her home was between thirty and forty-five minutes, including time for a pursuit of the assailants in an automobile. Thus even if defendant breached its duty to plaintiff, that breach was not a proximate cause of plaintiff's injuries.

Affirmed.

/s/ David H. Sawyer
/s/ Christopher M. Murray
/s/ Cynthia Diane Stephens