

IN THE COURT OF APPEALS OF IOWA

No. 8-548 / 97-1829

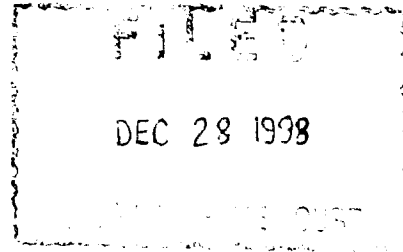
RUSSELL RICHARDSON,

Plaintiff-Appellant,

vs.

**THE COMMODORE, INC., d/b/a
THE COMMODORE TAP, RALPH W.
HAUERWAS and BETTY L. HAUERWAS,**

Defendants-Appellees.



Appeal from the Iowa District Court for Scott County, Bobbi M. Alpers,
Judge.

Plaintiff appeals from a district court ruling granting defendants' motion for
summary judgment in plaintiff's personal injury action. **AFFIRMED.**

Hugh G. Albrecht and Anne Updegraff of Tom Riley Law Firm, P.C., Cedar
Rapids, for appellant.

Roger A. Lathrop and Peter J. Thill of Betty, Neuman & McMahon, L.L.P.,
Davenport, for appellees.

Considered by Sackett, C.J., and Huitink, Streit, Vogel, and Mahan, JJ.

MAHAN, J.

Plaintiff appeals from a district court ruling granting defendants' motion for summary judgment in plaintiff's personal injury action. Plaintiff contends the court erred in ruling no issues of material fact existed supporting his claim defendants were negligent in failing to discover the danger posed by their ceiling which collapsed on him. We affirm.

In 1982, defendants bought the building which houses The Commodore Tap. The building had a plaster ceiling constructed in 1913. In 1985, defendants installed a drop ceiling below the plaster ceiling.

On September 12, 1994, plaintiff was playing pool at The Commodore Tap when a large piece of plaster crashed through the drop ceiling and struck him. It knocked him to the ground, causing injuries.

Plaintiff filed a petition against defendants seeking damages for personal injuries suffered when the ceiling collapsed. Defendants filed a motion for summary judgment claiming the ceiling constituted a hidden defect of which they had no knowledge. Plaintiff filed a resistance, alleging genuine issues of material fact existed whether defendants should have discovered the defective condition or, since they created the danger, should have knowledge of the defect imputed to them.

Following a hearing, the district court granted defendants' motion for summary judgment. The court found there was no evidence they knew or should have known the portion of the ceiling was susceptible to falling. In response to plaintiff's rule 179(b) motion, the court ruled plaintiff also failed to produce any evidence to justify

imputing knowledge of the danger to defendants on the theory they created the danger.

Our standard for reviewing a grant of a motion for summary judgment is well established. We will uphold a grant of summary judgment when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996). An issue of fact is "material" only when the dispute is over facts which might affect the outcome of the litigation, given the applicable governing law. *Id.* The moving party has the burden to demonstrate the nonexistence of a material fact. Iowa R. Civ. P. 237(c); *Engstrom v. State*, 461 N.W.2d 309, 313 (Iowa 1990). In determining whether the movant has met this burden, we review the record in a light most favorable to the party opposing summary judgment. *De Koning v. Mellema*, 534 N.W.2d 391, 394 (Iowa 1995).

Plaintiff appeals, contending the true issue is whether defendants exercised reasonable care to determine the condition of their premises. Plaintiff maintains defendants' failure to inspect the ceiling prior to installing the drop ceiling and failure to inspect and maintain the plaster following installation of the drop ceiling created genuine issues of material fact. Plaintiff bases his argument on section 343 of the Restatement (2d) of Torts and comment *d* on that section.¹ Plaintiff asserts

¹ Section 343 reads:

A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land if, but only if, he

(a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to such invitees, and

defendants' duty of "reasonable care to ascertain the actual condition of the premises" means defendants should have inspected the plaster ceiling periodically to determine whether or not it was safe. He reasons defendants breached that duty by not inspecting the plaster between 1985 and the date of the incident.

The occurrence of an accident does not, in itself, create or imply liability. *Denison v. Wiese*, 102 N.W.2d 671, 674 (Iowa 1960). Plaintiff offers nothing more than speculation to support his argument periodic inspections would have revealed a portion of the plaster was susceptible to falling. No material fact is at issue. We conclude the district court committed no error in granting defendants' motion for summary judgment.

Plaintiff also argues defendants created the danger by installing the drop ceiling. This argument is without merit. Having considered plaintiff's arguments,

-
- (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it, and
 - (c) fails to exercise reasonable care to protect them against the danger.

Comment *d* states:

d. *What invitee entitled to expect.* An invitee is entitled to expect that the possessor will take reasonable care to ascertain the actual condition of the premises and, having discovered it, either to make it reasonably safe by repair or to give warning of the actual condition and the risk involved therein. Therefore an invitee is not required to be on the alert to discover defects which, if he were a mere licensee, entitled to expect nothing but notice of known defects, he might be negligent in not discovering. This is of importance in determining whether the visitor is or is not guilty of contributory negligence in failing to discover a defect, as well as in determining whether the defect is one which the possessor should believe that his visitor would not discover, and as to which, therefore, he must use reasonable care to warn the visitor.

whether or not specifically addressed in this opinion, we affirm the district court's grant of summary judgment in defendants' favor.

AFFIRMED.