

TRIBAL COURT
LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

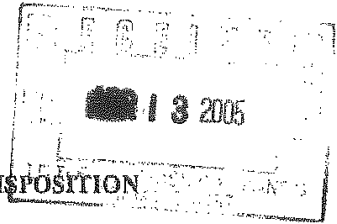
GARY and BARBARA GEYER,
Plaintiffs,

Case No. C-048-1003

v.

*Decision on Cross Motions
For Summary Disposition*

LITTLE TRAVERSE BAY BANDS
OF ODAWA INDIANS,
Defendant.



DECISION ON CROSS MOTIONS FOR SUMMARY DISPOSITION

This matter now comes to this Court on cross *Motions For Summary Disposition*. Oral argument on the cross motions was held on March 18, 2005. Plaintiffs argue in their *Motion* that the Defendant created an unreasonable risk of harm and that Defendant is liable for injuries resulting for that unreasonable risk of harm as a matter of law. On the other hand, Defendant argues that Plaintiffs' claim fails as a matter of law because the rug on which Plaintiff, Barbara Geyer, tripped was open and obvious. Both parties ask the Court to look at the casino video surveillance tape of the accident, arguing that the video tape speaks for itself.

SUMMARY DISPOSITION STANDARD

A trial court considers affidavits, pleadings, depositions, admissions, and other documentary evidence filed in the action or submitted by the parties, in reviewing a motion for summary disposition. A motion should be granted if the affidavits and other documentary evidence show that there is no genuine issue in respect to any material fact and the moving party

is entitled to judgment as a matter of law. In the instant matter, both parties argue that there is no genuine issue of fact and that each is entitled to judgment as a matter of law.

ANALYSIS OF THE CROSS MOTIONS

Plaintiffs argue that Defendant created an unreasonable risk of harm, and thus had a duty to warn Plaintiff, Barbara Geyer, of the risk. Plaintiffs argue that the placement of the rug over which Plaintiff tripped created the unreasonable risk of harm. Plaintiffs further argue that the instant matter has special circumstances which make the "open and obvious" doctrine inapplicable. Defendant argues that the rug over which Plaintiff tripped did not create an unreasonable risk of harm.

Plaintiffs' public nuisance theory of the case requires an **unreasonable** risk of harm. Public nuisance is defined as: "[A]n unreasonable interference with a right common to the general public, such as a condition dangerous to health, offensive to community standards, or unlawfully obstructing the public in the free use of public property." See Black's Law Dictionary, Seventh Edition (1999).

The precise issue is whether the placement of the rug over which plaintiff, Barbara Geyer, tripped created an unreasonable risk of harm. This Court viewed Plaintiffs' *Exhibit A*, the casino surveillance video tape, **numerous times** to carefully and fully consider the characterizations and arguments of both parties. The Court agrees with both parties that it is indeed fortunate that the tape exists. It is very clear from viewing the surveillance tape that the placement of the rug did not create an **unreasonable** risk of harm. There is nothing unreasonable about the rug or its placement. Such rugs and placement in areas of high-traffic entry and exit are commonplace, especially in northern Michigan where the weather is far from always sunny and dry. Thus, this Court must deny both Plaintiffs' *Motion to Amend Complaint* and *Motion For Summary Disposition*.

As to Defendant's *Motion For Summary Disposition*, this Court agrees with Defendant's argument that this is a simple case. It is a simple matter of Plaintiff, Barbara Geyer, was not looking where she was going. The surveillance tape does indeed speak for itself. As Ms. Geyer enters the inner door of the entry-way, she is looking everywhere but where she is going. The showing on the video tape is striking in this regard. There can be no doubt that her inattention caused the accident. Her inattention is particularly surprising to the Court because the video tape also clearly shows that Ms. Geyer walks with a very unsteady gait and precarious balance. It appears that stiff joints cause her walking steps to be labored. There can be no mistake about the viewing. Again, the tape does indeed speak for itself. The rug over which Ms. Geyer tripped was in plain view, open and obvious to all who came and went. Her inattention caused her unfortunate accident. Thus, this Court must grant Defendant's *Motion For Summary Disposition*.

FOR ALL OF THE FOREGOING, THIS COURT DENIES BOTH PLAINTIFFS' *MOTION FOR SUMMARY DISPOSITION* AND *MOTION TO AMEND COMPLAINT*, GRANTS DEFENDANT'S *MOTION FOR SUMMARY DISPOSITION*, AND DISMISSES PLAINTIFFS' *COMPLAINT* AS DEFENDANT IS ENTITLED TO JUDGMENT AS A MATTER OF LAW.

04/13/05

DATED

MICHAEL PETOSKEY
CHIEF JUDGE