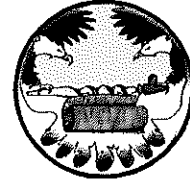


**LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS**

**Tribal Court
Civil Division**



Court Mailing Address: 7500 Odawa Circle, Harbor Springs, MI 49740

Phone: 231-242-1462

JESSICA J. DUYNLAGER,

PLAINTIFF,

v.

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS D/B/A ODAWA
CASINO RESORT

DEFENDANT.

Case No.: C-210-0815

**ORDER GRANTING MOTION FOR SUMMARY
DISPOSITION**

The Little Traverse Bay Bands of Odawa Indians, d/b/a Odawa Casino Resort ("Defendant"), filed a motion for summary disposition regarding the negligence claims filed against it by Jessica Duynslager ("Plaintiff"). Defendant argues that Plaintiff's negligence claims related to breach of duty are untrue. Defendant further contends that even if the allegations are true, Defendant has an affirmative defense of comparative negligence that bars the claims. Finally, the Defendant posits that the Plaintiff's claims are barred by the fact that the Plaintiff had knowledge and was aware of the condition of which she complains and/or it's open and obvious nature and is therefore subject to summary disposition.

This Court finds that there is no interpretation of the evidence presented that would support the Plaintiff's claims. Therefore, Defendant's motion for summary disposition is granted.

JURISDICTION

The Court's jurisdiction to hear this case comes from the Constitution and Waganakising Odawak Statute, Naawchigedaa Statute, Tort Claims 2014 – 012, section 3 ("Tort Statute"). The Constitution provides Tribal Court jurisdiction for any and all people or activities within the Tribe's reservation as defined by the Constitution. *LTBB Constitution, Article IV (B)*. The Tort Statute reads, "The Tribe's jurisdiction extends to persons who are Indians, tribal citizens, or who live or work within the territorial jurisdiction of LTBB and who commit a tort or are injured by the tortious acts of another within the territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians..." The Defendant is domiciled upon Tribal lands within Emmet County. Emmet County is within LTBB's 1855 treaty boundaries and therein this Court has proper jurisdiction over all parties.

FACTS

The facts are stated in conformity with the briefs submitted by the respective parties. Inconsistencies are noted.

Plaintiff's complaint alleges premises liability for an injury she sustained as a result of a slip and fall caused by a spilled beverage on the dance floor of the Ozone, a business owned entirely by the Defendant. Plaintiff was a business invitee the night she fell. Plaintiff alleges and evidence supports that she fell on a spilled beverage. Plaintiff alleges she warned the bartender, an agent of the Defendant, of broken glass on the floor before her fall. The Plaintiff alleges that the fall resulted in the intra-articular fracture of her right wrist. She further alleges that she would not have fallen but for the negligence of the Defendant. Plaintiff alleges that LTBB failed to maintain the premises in a reasonably safe condition and failed to protect the Plaintiff from known dangers. Although both parties agree that the Plaintiff was aware of broken glass in the area wherein she fell, in dispute is whether the Plaintiff was aware of the spill. At deposition, the Plaintiff acknowledged she was aware of the general area in which she found broken pieces of the bottle, picked up the pieces of the bottle and gave them to the staff. [Deposition transcript of Plaintiff, pp.92-94.] She also testified that she believed the broken glass in and of itself could be a hazard. [Deposition transcript of Plaintiff, pp. 94.] Within two minutes of the male patron dropping the bottle on the dance floor and a minute and one half of the Plaintiff taking a piece of glass to the bartender, the club maintenance employee arrived at the scene and cleaned the area. See Exhibit A and Exhibit B, affidavit of Dana Stafford. The Plaintiff filed this suit seeking damages for her injuries.

STANDARD OF REVIEW

The LTBB Rule of Civil Procedure ("LTBBOICR") applies to these proceedings. A motion under LTBBOICR XVI(b)(6) provides for summary disposition if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. The Defendant filed a motion for summary disposition in this case. Therefore, survival of the Plaintiff's complaint is contingent upon whether a genuine issue of material fact exists.

ANALYSIS

Plaintiff argues that the Defendant was negligent, grossly negligent, or engaged in willful and wanton misconduct because the Defendant allegedly breached its duty to the Plaintiff by one or more of the following:

1. Failing to maintain the premises in a reasonably safe condition,
2. Failing to adequately inspect and/or assess the premises for hazards, including the presence of spills,
3. Failing to protect the Plaintiff from known dangers,
4. Failing to make necessary repairs after having actual and or constructive knowledge of the existence of the hazard and the need to take necessary remedial measures,

5. Undertaking some remedial action of the premises, but doing so in a negligent or careless manner thereby increasing the hazard.

Furthermore, the Plaintiff argues that one or more of the Defendant's negligent acts or omissions was the legal and proximate cause of the Plaintiff's injuries. The Plaintiff further alleges that as a result of the Defendant's negligence, Plaintiff has and will suffer injury. The Plaintiff requests that this Court enter a judgment in her favor against the Defendant in an amount in excess of \$25,000, plus interest, costs, and attorney's fees.

The Defendant counters the following:

1. Plaintiff's allegations related to breach of duty are untrue,
2. The Plaintiff has an affirmative defense of comparative negligence,
3. The Plaintiff's claims are barred by the fact that the Plaintiff had knowledge and was aware of the condition of which she complains and/or its open and obvious nature,
4. The Plaintiff's claims may be barred in whole or in part by virtue of her failure to mitigate her claim of damages,
5. The Plaintiff's claims are barred by a lack of jurisdiction due to sovereign immunity,
6. The Plaintiff's claims are barred in whole or in part by virtue of the fact that at all times pertinent to the allegations made in Plaintiff's complaint the Defendant acted reasonably, and
7. Finally, the Defendant states the Plaintiff's claims may be barred in whole or in part by the payment of alleged expenses or damages by collateral sources.

SOVEREIGN IMMUNITY

The Court's analysis must start with the Tribe's sovereign immunity. Without a clear and unequivocal waiver of sovereign immunity, this Court lacks jurisdiction to hear a case. LTBB Tribal Council Resolution 112303-02, November 23, 2003 states the following:

“Whereas LTBB, its officials, agents and subordinate entities possess sovereign immunity from civil suits, including actions brought in Tribal Court, unless the Tribal Council expressly waive such immunity;

Whereas LTBB carries liability insurance to protect LTBB and promote fairness and justice to all persons on insured properties;

Whereas waiving LTBB's immunity to suit in Tribal Court for personal injury actions on insured properties serves to protect LTBB sovereignty, jurisdiction, business interests and members of the Tribe and general public;...

Therefore be it resolved that the Little Traverse Bay Bands of Odawa Indians waives its sovereign immunity only in LTBB Tribal Court for personal injury actions arising on LTBB properties for which it carries liability insurance.”

The Court finds that LTBB Tribal Council Resolution 112303-02 clearly and unequivocally waives the Tribe's sovereign immunity for the personal injury action at hand.

NEGLIGENCE

Waganakising Odawak Statute, Naawchigedaa Statute, Tort Claims 2014 – 012 (“Statute”) governs this action. To persist under a negligence claim, the Plaintiff must prove that the Defendant owed the Plaintiff the duty, the Defendant breached that duty, and the Defendant’s breach was the actual and proximate cause of the Plaintiff’s injury. See WOS 2014-12 VI (F)(1). Under the Statute, the Plaintiff was an invitee and therefore the Defendant owed her a duty of care. The issue is whether the Plaintiff could convince the Court that there is a genuine issue for trial regarding whether the Plaintiff’s injuries were caused by the Defendant’s negligence. The Court viewed the casino surveillance videotape numerous times to carefully and fully consider the characterizations and arguments of both parties. The Court also carefully read the transcripts of the deposition and reviewed all other evidence presented. It is clear from viewing the surveillance tape and reviewing the evidence that no reasonable trier of fact could find the Defendant negligent. From the time the male patron dropped the bottle and caused the spill to the time when the Ozone staff cleaned the spill was less than five minutes. The Plaintiff failed to produce evidence successfully calling into question the evidence provided by the Defendant. Therefore, the Court finds that there is no interpretation of the casino surveillance videotape or the other evidence presented that would support the Plaintiff’s claims. Therefore, based on the evidence in the record, the Court finds that there is no genuine dispute that the Defendant’s response to the spill was reasonable and no reasonable trier of fact could find the Defendant negligent and return a verdict for the Plaintiff.

The Defendant relying on this Court's decision in *Blatz v. Odawa Casino Resort*, makes the argument if the Plaintiff did fall due to a hazard of which she was aware, a fact intensive analysis must be conducted to assess the relative fault of the parties and Plaintiff’s recovery. However, the Defendant is not arguing that the Plaintiff’s claims are barred by the open and obviousness of the spill. The Defendant is arguing that there is no genuine issue for trial as to whether a hazardous condition was hidden to the Plaintiff within the meaning of the Tort Statute. Therefore, the Court finds that the casino surveillance videotape unmistakably shows that not only did the Plaintiff know exactly where the spill was located, she engaged in negligent behavior by repeatedly sweeping her foot over the area of the spill. Furthermore, while the spill may not have been open and obvious to other patrons of the Ozone, the casino surveillance videotape and other evidence leaves the Court with no doubt that the spill was open and obvious to the Plaintiff. As such, there is no cognizable claim for negligence against the Defendant, and the claim is dismissed.

WHEREFORE, THE COURT FINDS:

1. The LTBB Tribal Council Resolution 112303-02 clearly and unequivocally waives the Tribe's sovereign immunity for personal injury,
2. Based on the evidence in the record, there is no genuine dispute that the Defendant's response to the spill was reasonable and no reasonable trier of fact could return a verdict for the Plaintiff,
3. There is no interpretation of the casino surveillance videotape or the other evidence presented that would support the Plaintiff's claims, and
4. The casino surveillance videotape unmistakably shows that not only did the Plaintiff know exactly where the spill was located, she engaged in negligent behavior by repeatedly sweeping her foot over the area of the spill making her own negligence the proximate cause of her injuries.

THEREFORE,

1. The Court grants the Defendant's motion for summary judgment;
2. Dismisses the Plaintiff's claims with prejudice; and
3. Orders this case closed.

IT IS SO ORDERED.

May 10, 2016
Date


Hon. Allie Greenleaf Maldonado, Chief Judge