

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARBARA GALARO,
Appellant,
vs.
HARD ROCK HOTEL, INC., A NEVADA
CORPORATION D/B/A HARD ROCK
HOTEL & CASINO,
Respondent.

No. 42301

FILED

AUG 02 2005

JANE T. M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order granting respondent's motion for summary judgment in a negligent security action. Eighth Judicial District Court, Clark County; Jackie Glass, Judge.

Appellant Barbara Galaro brought suit against respondent Hard Rock Hotel, Inc. d/b/a Hard Rock Hotel & Casino alleging negligent security. Galaro and her traveling companion had parked their vehicle in the Hard Rock's parking lot, entered the hotel to register, and then returned to the vehicle to retrieve their belongings. As the two approached the vehicle, they surprised a man who had broken in. When the man started to escape, Galaro reached for him and they engaged in a struggle. Galaro injured her left thumb and right wrist in the altercation.

Four years into the litigation, Hard Rock moved for summary judgment, arguing that there was no evidence of duty or breach. Galaro opposed the motion, claiming that there was a genuine issue of material fact regarding the extent of Hard Rock's security. Galaro also requested more time, pursuant to NRCP 56(f), to investigate certain evidence that Hard Rock had recently produced. The district court granted Hard Rock's motion for summary judgment.

Galaro then filed a motion for reconsideration. Galaro argued that the district court misapprehended the breach of duty element in a negligent security case. Additionally, Galaro presented new evidence that she discovered after summary judgment had been granted. The district court denied Galaro's motion for reconsideration. Galaro now appeals.

On appeal, Galaro claims that the district court improperly granted summary judgment when issues of fact remained. Galaro argues that she presented evidence that Hard Rock owed her a duty to keep its premises in a reasonably safe condition and that it breached this duty by failing to employ adequate security measures. Specifically, Galaro alleges that the parking lot lighting, the parking lot surveillance cameras, and roving security guards were inadequate on the evening in question, and these facts should have precluded the granting of summary judgment. We agree.

When reviewing a district court's order granting summary judgment, this court applies a de novo standard of review.¹ Summary judgment should be granted only when, based on the pleadings and discovery, no genuine issue of material fact exists.² "A genuine issue of material fact [exists when] a reasonable jury could return a verdict for the non-moving party."³ In determining whether summary judgment is

¹Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 110, 825 P.2d 588, 591 (1992).

²NRCP 56(c).

³Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993).

warranted, the court must view all evidence and reasonable inferences in the light most favorable to the nonmoving party.⁴

“To prevail on a negligence theory, a plaintiff must generally show that: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the legal cause of the plaintiff’s injury; and (4) the plaintiff suffered damages.”⁵ “Where an essential element of a claim for relief is absent, the facts, disputed or otherwise, as to other elements are rendered immaterial and summary judgment is proper.”⁶

“It is the courts and not juries that have the ultimate responsibility of defining duty in relation to particular circumstances and to define the legal standard of reasonable conduct in the light of the apparent risk.”⁷

[A] proprietor owes an invitee a duty to use reasonable care to keep the premises in a reasonably safe condition for use. However, “the proprietor’s duty to protect an invited guest from injury caused by a third person is circumscribed by the reasonable foreseeability of the third person’s actions and the injuries resulting from

⁴Id. at 452, 851 P.2d at 442.

⁵Scialabba v. Brandise Constr. Co., 112 Nev. 965, 968, 921 P.2d 928, 930 (1996).

⁶Bulbman, 108 Nev. at 111, 825 P.2d at 592.

⁷Ashwood v. Clark County, 113 Nev. 80, 84, 930 P.2d 740, 742 (1997) (internal quotations omitted).

the condition or circumstances which facilitated the harm.”⁸

Foreseeability of a violent crime being perpetrated on a patron is determined from the totality of the circumstances, taking into consideration similar prior crimes committed on the premises and the location and character of the business.⁹ “[A] gambling casino where cash and liquor are constantly flowing may provide a fertile environment for criminal conduct such as robbery and assault.”¹⁰

Galaro presented evidence of several crimes that had occurred on the Hard Rock’s premises in the months immediately preceding this incident. The type of business and location of the Hard Rock made it generally foreseeable that crimes of this nature would occur in the parking lot. Accordingly, we conclude that the Hard Rock owed Galaro a duty to use reasonable care to keep its premises in a reasonably safe condition.

“The determination of whether there has been a breach of duty is generally a question for the jury.”¹¹

We conclude that the district court inappropriately granted summary judgment when there were overriding factual issues concerning whether the Hard Rock used reasonable care to make its premises safe on

⁸Doud v. Las Vegas Hilton Corp., 109 Nev. 1096, 1101, 864 P.2d 796, 799 (1993) (internal citation and quotations omitted) (quoting Early v. N.L.V. Casino Corp., 100 Nev. 200, 203, 678 P.2d 683, 684 (1984)).

⁹Scialabba, 112 Nev. at 970, 921 P.2d at 931; Doud, 109 Nev. at 1102, 864 P.2d at 799-800.

¹⁰Doud, 109 Nev. at 1104, 864 P.2d at 800 (quoting Early, 100 Nev. at 204, 678 P.2d at 685).

¹¹Id. at 1104, 864 P.2d at 801.


the evening in question. The Hard Rock was aware that crime on its property was a problem and that there had been several incidents of criminal acts in its parking lot. The record indicates that although there were surveillance cameras in the parking lot, no cameras were directed at Galaro's vehicle at the time of the incident. There was a question of whether the lighting in the area was sufficient. Further, a question remained regarding the number of roving bicycle security guards on duty on the evening of the incident. These facts were sufficient to present factual issues for the trier of fact, and the district court erred by granting summary judgment against Galaro. At the very least, the district court should have given Galaro additional time to answer the summary judgment motion as requested pursuant to NRCP 56(f).¹²


Galaro filed a motion for reconsideration and presented new evidence to further show that an issue of fact existed as to whether Hard Rock took reasonable care to prevent injury to its patrons. Galaro included a crime report from the Las Vegas Metropolitan Police Department showing that there were over 200 incidents of crime in the neighborhood in the two-and-a-half year period prior to the incident in question. Additionally, she attached a deposition transcript from the roving security guard who was on duty on the evening in question. The security guard indicated that there were five or six vehicle break-ins per month on the property; there may have been only one roving bicycle security guard employed on the night in question, even though two are needed on weekends; and the lighting near Galaro's vehicle could have

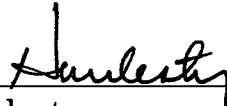
¹²Cf. Ameritrade, Inc. v. First Interstate Bank, 105 Nev. 696, 699, 782 P.2d 1318, 1320 (1989).

been better. Galaro's motion for reconsideration provided additional relevant evidence and gave the district court a second opportunity to recognize that a viable issue of fact existed. While Hard Rock argues that these additional facts should not have been considered, we conclude that consideration of these additional facts would have been appropriate because some of this evidence was belatedly produced, at least in part, due to Hard Rock's late production of the incident reports. For the reasons stated, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Honorable Jackie Glass, District Judge
Patrick J. Murphy
Michael R. Small
Campbell, Volk & Lauter
Clark County Clerk