

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL W. FISCHER,

Plaintiff-Appellant,

v

RIVERWOODS L.D.H.A., also known as
AMURCON CORP, doing business as HICKORY
WOODS APARTMENT COMPLEX,

Defendant-Appellee.

UNPUBLISHED

October 2, 1998

No. 190631

Ingham Circuit Court

LC No. 95-079557 NO

Before: Murphy, P.J., and Gribbs and Gage, JJ.

PER CURIAM.

Plaintiff appeals of right from an order granting defendant's motion for summary disposition, MCR 2.116(C)(10), of plaintiff's negligence claim. Plaintiff alleged that he was injured when he slipped and fell on an icy sidewalk located on defendant's property, and that defendant failed to maintain its property in a safe condition. We reverse and remand for further proceedings.

On appeal, a trial court's decision to grant a summary disposition motion is reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. The court considers the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted or filed in the action to determine whether a genuine issue of any material fact exists to warrant a trial. *Id.* In determining whether the plaintiff has presented a viable cause of action, the entire record is examined in a light most favorable to the nonmoving party. *Donajkowski v Alpena Power Co*, 219 Mich App 441, 446; 556 NW2d 876 (1996). A reviewing court should be liberal in finding a genuine issue of material fact. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992); *SSC Associates Limited Partnership v General Retirement System of Detroit*, 192 Mich App 360, 364; 480 NW2d 275 (1991). A court must be satisfied that it is impossible for the claim to be supported at trial because of some deficiency which cannot be overcome. *Id.* at 365.

Plaintiff argues that the trial court erred in granting summary disposition to defendant because plaintiff, who is legally blind, could not specify precisely where the accident occurred. We agree. Plaintiff testified at his deposition and stated in his answers to defendant's interrogatories that the accident occurred on a sidewalk inside defendant's property. If a trier of fact were to believe plaintiff's testimony, it would find that the accident occurred on property belonging to defendant, and that defendant was therefore required to exercise a duty of reasonable care.

In cases involving questions of credibility, summary judgment is hardly ever appropriate. *Michigan Nat'l Bank-Oakland v Wheeling*, 165 Mich App 738, 744-745; 419 NW2d 746 (1988). Considering plaintiff's sworn deposition testimony and his answers to defendant's interrogatories in a light most favorable to plaintiff, this Court must conclude that a genuine issue of material fact exists with respect to whether the alleged accident occurred on defendant's property.

Defendant has also asserted, however, that the allegedly hazardous condition had existed for at most one hour and defendant could not reasonably have been expected to discover and alleviate this condition in that short period of time. For the purposes of the summary disposition motion, it was assumed that plaintiff came onto defendant's premises as an invitee of a tenant and that defendant (as the landlord) owed plaintiff a duty of reasonable care. An invitor has a duty to exercise reasonable care to diminish the hazards of ice and snow accumulation. *Quinlivan v The Great Atlantic & Pacific Tea Co, Inc*, 395 Mich 244, 260-261; 235 NW2d 732 (1975). In the context of ice and snow accumulations, an invitor is required to take reasonable measures "within a reasonable time after an accumulation of ice and snow to diminish the hazard of injury to the invitee." *Id.* at 261. See also *Lundy v Groty*, 141 Mich App 757; 367 NW2d 448 (1985), *Clink v Steiner*, 162 Mich App 551; 413 NW2d 45 (1987), and *Anderson v Wiegand*, 223 Mich App 549; 567 NW2d 452 (1997).

Here, there was evidence from which a reasonable trier of fact could conclude that the freezing rain had been falling for the better part of the day. Plaintiff's allegations raise questions of fact regarding how long the freezing rain had been falling, the condition of the sidewalks before and at the time of plaintiff's accident, and what reasonable steps could and should have been taken by defendant. These were all material questions of fact to be decided by the trier of fact. Summary disposition in this case was inappropriate.

Reversed and remanded for further proceedings.

/s/ William B. Murphy

/s/ Roman S. Gribbs