STATE OF MICHIGAN

COURT OF APPEALS

CHRISTINA ZALOPANY and WILLIAM ZALOPANY, Plaintiffs-Appellants, v A & O MANAGEMENT COMPANY, d/b/a VILLA RESTAURANT AND PIZZERIA, Defendant-Appellee.	UNPUBLISHED November 9, 2001 No. 225218 Macomb Circuit Court LC No. 98-003909-NI

Before: Doctoroff, P.J., and Wilder and Schmucker*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendant's motion for summary disposition in this premises liability case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Plaintiff Christina Zalopany was an invitee in that she was on defendant's premises which were held open for a commercial purpose. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 604; 614 NW2d 88 (2000). A landowner is subject to liability for physical harm caused to his invitees by a condition on the land only if the owner (a) knows of, or by the exercise of reasonable care would discover, the condition and should realize that it involves an unreasonable risk of harm to his invitees; (b) should expect that his invitees will not discover or realize the danger or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect his invitees against the danger. *Lawrenchuk v Riverside Arena, Inc*, 214 Mich

* Circuit judge, sitting on the Court of Appeals by assignment.

App 431, 432-433; 542 NW2d 612 (1995). This duty is not absolute. *Douglas v Elba, Inc*, 184 Mich App 160, 163; 457 NW2d 117 (1990). It does not extend to conditions from which an unreasonable risk of harm cannot be anticipated or to open and obvious dangers. *Id*.; *Hammack v Lutheran Social Services of Michigan*, 211 Mich App 1, 6; 535 NW2d 215 (1995). An open and obvious danger is one that is known to the invitee or is so obvious that the invitee might reasonably be expected to discover it, i.e., it is something that an average user with ordinary intelligence would be able to discover upon casual inspection. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992); *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). Different floor levels in buildings are such a common occurrence that the landowner does not owe a duty to protect invitees from any harm they present unless special aspects of the condition, i.e., something unusual about the character, location, or surrounding conditions, make the risk of harm unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). However, "only those special aspects that give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided will serve to remove that condition from the open and obvious danger doctrine." *Lugo v Ameritech Corp, Inc*, __ Mich __; __ NW2d __ (Docket No. 112575, filed July 3, 2001), slip op at 6-8 (footnote omitted).

The evidence showed that the ramp between the two floor levels was marked with tape and plaintiff was warned to watch her step. There is no claim or evidence to show that anything blocked plaintiff's view of the ramp or that the lack of adequate lighting obscured it from view. Plaintiff's failure to look where she was walking caused her to misstep and fall. The risk presented by tripping on something and falling to the ground, as opposed to falling into a deep pit, does not give rise to a uniquely high likelihood of severe harm. *Id*. at 8-9. While plaintiff contends that defendant could have done more to draw attention to the ramp, "the analysis whether a danger is open and obvious does not revolve around whether steps could have been taken to make the danger more open and obvious. Rather, the question involved is whether the danger, as presented is open and obvious." *Novotney, supra* at 474-475. The trial court properly concluded that it was.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker