STATE OF MICHIGAN

COURT OF APPEALS

NANCY LIANG, Plaintiff-Appellant,	UNPUBLISHED March 26, 2002
v	No. 206647 Oakland Circuit Court
LUIGI LIASE, Defendant-Appellee.	LC No. 96-517892-NO ON REMAND

Before: White, P.J., and Markey and Wilder, JJ.

PER CURIAM.

In this premises liability action, plaintiff appealed by right the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) based upon the open and obvious danger doctrine. In *Liang v Liase*, unpublished memorandum opinion of the Court of Appeals, issued July 30, 1999 (Docket No. 206647), we reversed and remanded for further proceedings. In lieu of granting defendant's application for leave to appeal, our Supreme Court remanded this matter to us for reconsideration in light of *Lugo v Ameritech Corp, Inc*, 464 Mich 512; 629 NW2d 384 (2001). *Liang v Liase*, 465 Mich 896 (2001). Upon reconsideration in light of *Lugo*, we are compelled to vacate our previous opinion and affirm the trial court's order granting summary disposition in favor of defendant.

In our previous opinion, we relied on the Supreme Court's decision in *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995), and ruled that a genuine issue of fact existed regarding whether defendant breached his duty to protect plaintiff against an unreasonable risk of harm despite the obviousness of the danger or plaintiff's knowledge of it. We based our finding that there was something unusual about the steps on which plaintiff fell on evidence that the stairs in question were narrower than usual, a dryer was located at the foot of the stairs that prevented plaintiff from using approximately one-half of the stairway, the carpeting on the stairs was loose, there was no handrail, and defendant's admission that the steps were dangerous. We must now reconsider our decision in light of *Lugo*.

In *Lugo, supra* at 514, the plaintiff sued the defendant after falling in a pothole in the defendant's parking lot. The trial court granted the defendant summary disposition on the basis of the open and obvious danger doctrine; however, this Court reversed on appeal. *Id*. The Supreme Court granted leave, reversed the decision of this Court and reinstated the trial court's

grant of summary disposition to the defendant. *Id*. The Court in *Lugo* first reiterated the general rule that a landowner has a duty to exercise reasonable care to protect an invitee[1] from an unreasonable risk of harm caused by a dangerous condition on the land. *Id*. at 516. However, the landowner is not required to protect an invitee from an open and obvious danger unless "special aspects" of the condition make it unreasonably dangerous. *Id*. at 517. Special aspects that serve to remove a condition from the open and obvious doctrine are those conditions that "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided." *Id*. at 519. The illustrations of special aspect conditions discussed in *Lugo* were (1) "an unguarded thirty foot deep pit in the middle of a parking lot" resulting in a fall of an extended distance and (2) standing water at the only exit of a commercial building resulting in the condition being unavoidable because no alternative route is available.[2] *Id*. at 518, 520. The Court stated that liability would not be imposed "merely because a particular open and obvious condition has some potential for severe harm." *Id*. at 518, n 2.

In applying *Lugo* to the present case, we conclude that there are no "special aspects" of the stairs in question that create a "uniquely high likelihood of harm or severity of harm." Although the stairs had "some potential for severe harm," *id*., because of the narrowness, the dryer obstruction, the loose carpeting, and the lack of a handrail, these conditions do not "give rise to a uniquely high likelihood of harm or severity of harm if the risk is not avoided." *Id*. at 519. The record in this case indicates that the short set of steps in question had a total elevation of approximately four feet above the ground. Falling several feet to the ground is not the same as falling an extended distance such as into a thirty-foot deep pit. *Id*. at 518, 520. The situation of falling thirty feet presents "such a *substantial risk of death or severe injury* . . . that it would be unreasonably dangerous to maintain the condition . . . ." *Id*. at 518 (emphasis added). "Unlike falling an extended distance, it cannot be expected that a typical person [falling a distance of several feet] would suffer severe injury" or a substantial risk of death. *Id.* at 518, 520.

We affirm.

/s/ Helene N. White
/s/ Jane E. Markey
/s/ Kurtis T. Wilder

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[1] Although defendant on appeal claims that plaintiff was a licensee rather than an invitee, it appears that defendant failed to challenge the invitee status below.

[2] We also note that in his supplemental brief, defendant states that plaintiff could have avoided the stairs in question because there was an alternative route to the garage. In her supplemental brief, plaintiff does not deny that an alternative route existed.