

STATE OF MICHIGAN
COURT OF APPEALS

LAWRENCE J. HOSTE,

Plaintiff-Appellant,

v

CHRYSLER CORPORATION PLYMOUTH
DIVISION, U.S. RECREATIONAL SKI
ASSOCIATION, and SHANTY CREEK
MANAGEMENT,

Defendants,

and

RELIABLE RACING SUPPLY,

Defendant-Appellee.

UNPUBLISHED

July 13, 2004

No. 245804

Antrim Circuit Court

LC No. 93-006013-NO

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

FITZGERALD, P.J., (*dissenting.*)

I respectfully dissent. The trial court granted summary disposition in favor of defendant Reliable Racing Supply on the ground that plaintiff failed to present a genuine issue of fact with regard to the first element of a cause of action for negligent design based on a theory to warn: “actual or constructive knowledge of the claimed danger.” The majority disagrees, and concludes that a genuine issue of fact was presented concerning whether Reliable had actual or constructive knowledge of the danger presented by solid affixation of a banner between gate poles. Nonetheless, the majority affirms the grant of summary disposition on the alternative ground that Shanty Creek was a sophisticated user and, therefore, was in the best position to warn of the dangers associated with solidly affixing a banner between two gate poles.

The majority holds that Shanty Creek is a sophisticated user and that, “Shanty Creek could be presumed by Reliable to be experienced in using and handling its products.” Defendant did not identify this issue as a basis for summary disposition, and it was not considered or addressed by the trial court. The record is not sufficiently developed to allow this Court to conclude as a matter of law that ski resorts, in general, recognize the hazard from solid affixation

of a banner between two gate poles. Thus, I would reverse the order granting summary disposition in favor of Reliable.¹

/s/ E. Thomas Fitzgerald

¹ Reliable is free to raise the issue of the sophisticated user doctrine below in a properly presented motion for summary disposition.