

STATE OF MICHIGAN
COURT OF APPEALS

COLLETTE ABOU-SOUAN,

Plaintiff-Appellant,

v

SOMERSET COLLECTION LIMITED
PARTNERSHIP, d/b/a SOMERSET
COLLECTION,

Defendant-Appellee.

UNPUBLISHED

July 26, 2005

No. 260074

Oakland Circuit Court

LC No. 2004-057479-NO

Before: Cooper, P.J., and Fort Hood and R. S. Gribbs*, JJ.

COOPER, P.J. (*concurring*).

I write separately, as I would find that plaintiff created a question of fact regarding whether the condition causing her fall was open and obvious. The evidence presented shows that the ice cream was the same color as the floor and, therefore, was a hidden danger. However, as noted in the majority opinion, the trial court properly granted defendant's motion for summary disposition based on the issue of notice. Plaintiff admitted in her own deposition that she did not know if the ice cream was melted at the time of her fall. Therefore, there was no evidence that defendant knew or should have known that a dangerous condition existed.

/s/ Jessica R. Cooper

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