STATE OF MICHIGAN

COURT OF APPEALS

FLORENCE MUDRI, Plaintiff-Appellee,	UNPUBLISHED April 6, 2001
v	No. 222477 Livingston Circuit Court
BRINKER RESTAURANT CORPORATION, Defendant-Appellant.	LC No. 99-017118-NO

Before: Talbot, P.J., and Sawyer and F.L. Borchard*, JJ.

PER CURIAM.

Defendant appeals by leave granted the trial court's order denying its motion for summary disposition. We reverse and remand for entry of judgment in favor of defendant on its motion for summary disposition. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff and her daughter went to a restaurant owned by defendant. They were seated in a booth which was raised approximately five inches from the main floor. The edge of the booth seat came to the edge of the platform, and the table top extended over the booth seats. Plaintiff entered the booth without incident, but as she attempted to leave, she fell to the floor.

Plaintiff's complaint alleged that defendant failed to maintain the premises in a safe condition, and to warn of dangerous conditions. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that the booth was not unreasonably dangerous, and that the condition was open and obvious. The trial court denied the motion, finding that issues of fact existed regarding a person's ability to discern and retain the difference in height between the platform and the main floor.

We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff

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

suffered damages. *Berryman v K-Mart Corp*, 193 Mich App 88, 91-92; 483 NW2d 642 (1992). A prima facie case of negligence may be based on legitimate inferences, provided that sufficient evidence is produced to take the inferences "out of the realm of conjecture." *Clark v K-Mart Corp*, 242 Mich App 137, 142-143; 617 NW2d 729 (2000).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-610; 537 NW2d 185 (1995). The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to discover it for himself. *Id*. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Steps are the type of everyday occurrence that people encounter. The risk of harm from steps is presumptively reasonable. Only when there is something "unusual" about the steps due to their "character, location, or surrounding conditions" does the duty of a premises owner to exercise reasonable care come into play. If the invitee is aware of the danger, the premises owner must take reasonable care only if the risk remains unreasonable. *Bertrand, supra* at 611, 616-617.

Defendant argues that the trial court erred by denying its motion for summary disposition. We agree, reverse the trial court's decision, and remand for entry of judgment in favor of defendant on its summary disposition motion. The booth in which plaintiff sat was not unreasonably dangerous. The configuration of the booth prevented a patron from standing on the platform floor. A person leaving the booth could see only the main floor; therefore, any visual similarities between the booth floor and the main floor would not be confusing. The condition of the booth was open and obvious. That plaintiff claims that she did not see the condition is irrelevant. *Novotney, supra* at 476-477. This is not a case in which the location, character, or condition of the booth step was such that even a reasonably prudent person could not protect himself or herself from harm. *Bertrand, supra* at 617. Plaintiff acknowledged that she did not look where she was stepping. Had she done so, she easily could have negotiated the step. Had plaintiff noticed the booth step, any risk of harm could have been obviated. *Milliken v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). The trial court erred by denying defendant's motion for summary disposition.

The trial court's order denying defendant's motion for summary disposition is reversed, and this case is remanded to the trial court for entry of an appropriate order. We do not retain jurisdiction.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Fred L. Borchard