STATE OF MICHIGAN

COURT OF APPEALS

GAIL GOODSTEIN, Personal Representative of the Estate of BETTE GOLDMAN, Deceased,

Plaintiff-Appellant,

v

CROWN LIFE INSURANCE COMPANY,

Defendant/Cross-Defendant-Appellee,

and

FARBMAN MANAGEMENT GROUP,

Defendant/Cross-Plaintiff-Appellee.

UNPUBLISHED
December 18, 2001

No. 224703
Oakland Circuit Court
LC No. 98-008725-NO

Before: White, P.J., and Talbot and E.R. Post*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition in this premises liability action. 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 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

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

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 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,* 464 Mich 512, 519; 629 NW2d 384 (2001) (footnote omitted).

Plaintiff fell off an 11-inch-high loading dock platform. The platform was visible through the glass doors of the building entrance/exit. Although the height of the platform may not have been readily apparent from the doorway, plaintiff knew from the yellow paint around the edge that it was not even with the pavement and she would have to step down to the ground. The edge of the platform was out in the open and clearly visible and plaintiff admitted that she saw it. Plaintiff assumed without looking that there would be a second step between the top of the platform and the ground and fell because the expected step was not there. There was nothing about the platform itself or its surroundings that prevented plaintiff from seeing the distance to the ground or if there was a second step between the top of the platform and the ground. It was only the fact that plaintiff failed to look at the drop-off before she stepped into the void that prevented her from realizing the danger. Had she stopped to look before stepping off the edge, she would have seen how far the drop was and could have taken greater care in stepping down or taken an alternate route. The trial court did not err in granting defendants' motion.

Affirmed.

/s/ Helene N. White
/s/ Michael J. Talbot
/s/ Edward R. Post