STATE OF MICHIGAN

COURT OF APPEALS

JERRY YORK,

Plaintiff-Appellee,

v

EAGLE PARTY STORE SHOP, INC,

Defendant-Appellant,

and

EAGLE, INC.,

Third-Party Defendant,

and

JEHAH G. MANSOUR, d/b/a EAGLE PARTY STORE,

Defendant-Third-Party Plaintiff.

UNPUBLISHED
January 22, 2002

No. 227811
Wayne Circuit Court
LC No. 97-735903-NO

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Following a jury verdict for plaintiff, defendant appeals as of right, challenging the trial court's denial of defendant's motion for summary disposition in this premises liability action. We reverse.

Plaintiff fell and severely injured himself after stepping into a "shallow hole" in defendant's asphalt parking lot. Plaintiff testified that there was nothing "besides a car" covering part of the hole, but that he did not see it because he was trying to get out of the way of the people exiting defendant's party store. Plaintiff further stated that he was watching the people instead of looking at the surface of the parking lot. Defendant moved for summary disposition, pursuant to MCR 2.116(C)(10), arguing that the pothole was open and obvious. After commenting that "Michigan law is so strange to me," the trial court denied defendant's motion and sanctioned defendant for raising the issue.

Our Supreme Court recently addressed the open and obvious nature of parking lot potholes in *Lugo v Ameritech*, 464 Mich 512; 629 NW2d 384 (2001). The Court found that "ordinary potholes in a parking lot" present "typical open and obvious dangers." *Id*. at 520. The Court further stated that "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." *Id.* at 518-519.

Although plaintiff suggests that *Lugo* is inapplicable because it was unavailable to the trial court at the time of the motion, it is clear that our Supreme Court's decision in *Lugo* is not new law. Cf. *Novotney v Burger King Corp (On Remand),* 198 Mich App 470; 499 NW2d 379 (1993). Potholes in pavement are an everyday occurrence that ordinarily should be observed by a reasonably prudent person. Plaintiff failed to show any unique aspects of the pothole or the alleged distractions in defendant's parking lot. As such, plaintiff did not differentiate the risk from the typical parking lot pothole and failed to show that the pothole created an unreasonable risk of harm. *Lugo, supra* at 522-523. Thus, we find that the trial court erred in failing to grant defendant summary disposition on this basis.

In light of our decision, we need not address defendant's remaining issues.

Reversed.

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad