STATE OF MICHIGAN

COURT OF APPEALS

MARY JUNE STRATTON, Plaintiff-Appellant,	UNPUBLISHED December 2, 2003
v	No. 242298 Oakland Circuit Court
SOMERSET PONTIAC-GMC, INC., Defendant-Appellee.	LC No. 00-026501-NO

Before: Cooper, P.J., and Markey and Meter, JJ.

PER CURIAM.

Plaintiff appeals by right from a circuit court order granting defendant's 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. *Joyce v Rubin*, 249 Mich App 231, 234; 642 NW2d 360 (2002). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* The trial court must consider the pleadings, 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 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*.; *Joyce, supra* at 237.

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); *Joyce, supra* at 238. Different floor levels in buildings are such a common occurrence that the landowner does not owe a duty to make ordinary steps foolproof or to protect invitees from any harm they present unless special aspects of the steps make the risk of harm unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614-617; 537 NW2d 185 (1995). For there to be an unreasonable risk of harm, there must be something unusual about the character, condition, or surroundings of the steps. *Id.* 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).

The fact that plaintiff herself did not see the step before she fell is irrelevant because the test for an open and obvious danger is an objective one. *Hughes v PMG Building, Inc*, 227 Mich App 1, 11; 574 NW2d 691 (1997). If the condition creates a risk of harm solely because the plaintiff failed to notice it, the open and obvious doctrine eliminates liability if the plaintiff should have discovered it and realized its danger. *Bertrand, supra* at 611. Ordinary steps do not pose an unreasonable risk of harm despite the absence of warnings or the failure to mark the steps with a contrasting color. *Id.* at 618-621. In this case, the only special aspect of the step was that defendant attempted to make it more noticeable by painting the edge of the step with a contrasting color and posting a warning sign. Plaintiff simply failed to notice the step despite these precautions, which were sufficient to draw the attention of an average person upon casual inspection. Because no special aspects were present in this case, the trial court did not err in granting defendant's motion. *Id.* at 621; *Lugo, supra* at 519 n 3.

We affirm.

/s/ Jessica R. Cooper
/s/ Jane E. Markey
/s/ Patrick M. Meter