STATE OF MICHIGAN

COURT OF APPEALS

JOHN WOLLARD,

Plaintiff-Appellant,

v

RICHARD GIBIAN,

Defendant-Appellee.

UNPUBLISHED
June 16, 2005

No. 252768
Wayne Circuit Court
LC No. 03-303896-NO

Before: O'Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of 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).

This case arose when plaintiff offered to help defendant in his store and defendant accepted. The parties agree that plaintiff was not an employee but only helped defendant on this one occasion. Defendant told plaintiff to remove some pictures from the wall and provided plaintiff with a stepladder. Plaintiff removed a few pictures without incident, but the string on the back of one of the pictures would not come free from its nail. Plaintiff stretched to free the picture and the ladder tipped out from under him, causing him to fall to the floor and injure his wrist. Plaintiff filed suit, claiming that defendant was liable for negligence and as owner of the premises.

Plaintiff argues that defendant's store was held open for a commercial purpose and plaintiff had a commercial purpose for visiting the store, so plaintiff was an invitee to whom defendant owed a duty of care. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 604-607; 614 NW2d 88 (2000). Without extending this principle to the context of employees or independent contractors generally, we will accept plaintiff's argument in this case. "A premises owner owes, in general, a duty to an invitee to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Kenny v Kaatz Funeral Home*, 264 Mich App 99, 105; 689 NW2d 737 (2004). "The care required extends to instrumentalities on the premises that the invitee uses at the invitation of the premises owner." *Eason v Coggins Memorial Christian Methodist Episcopal Church*, 210 Mich App 261, 264; 532 NW2d 882 (1995). However, the duty owed to an invitee does not extend to open and obvious dangers, unless special aspects of the condition make the risk of harm unreasonable despite its open and obvious nature. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 517; 629 NW2d 384

(2001). Furthermore, "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 519.

In this case, plaintiff did not identify any defect in the ladder which made it unreasonably dangerous. There is no evidence that it was broken, unstable, or otherwise failed to function normally. The ladder was high enough for plaintiff to do the work, as was evidenced by the fact that he safely used the ladder to take down four pictures before his fall. Plaintiff could not say whether he would have climbed higher had a longer ladder been provided. Plaintiff did not identify any act on the part of defendant which rendered the ladder unsafe for use. There is no evidence that defendant set the ladder up or directed plaintiff to set it up in some way or place that made it unusually prone to tipping or sliding. Plaintiff showed only that the ladder could tip if the user leaned over too far and no one was holding it steady. That is a hazard inherent in all ladders and one that is open and obvious to all but the youngest of children. *Muscat v Khalil*, 150 Mich App 114, 122; 388 NW2d 267 (1986). Therefore, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ Peter D. O'Connell
/s/ Bill Schuette
/s/ Stephen L. Borrello