Court of Appeals, State of Michigan

ORDER

Jennifer Cullen v Consolidated Road House LLC

Docket No. 258357

LC No. 04-407827-NI

Karen M. Fort Hood
Presiding Judge

Michael J. Talbot

Brian K. Zahra
Judges

The Court orders, pursuant to MCR 7.205(D)(2), that the trial court's September 21, 2004 order denying defendant's motion for summary disposition is REVERSED. A trial court's decision on a motion for summary disposition is reviewed de novo on appeal. See *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Generally speaking, a premises owner owes 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. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). However, this duty does not encompass the removal of open and obvious dangers. *Id.* The test to determine if a danger is open and obvious is whether an average user with ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection. *Id.* In this case, the evidence indicates that the condition would have been visible upon casual inspection, and therefore open and obvious. Further, there were no "special aspects" of the condition which made the condition unreasonably dangerous despite its open and obvious nature. See *Lugo v Ameritech Corp Inc,* 464 Mich 512; 629 NW2d 384 (2001). In addition, even assuming the condition was not open and obvious, plaintiffs failed to present evidence that defendant or its employees actively placed the rocks on the sidewalk, or that defendant knew, or should have known, about the particular rocks which caused the fall. See *Berryman v Kmart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992).

This matter is REMANDED to the trial court for further proceedings consistent with this order. We do not retain jurisdiction.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 08 2005
Date

Sandra Schultz Mengel
Chief Clerk