

Court of Appeals, State of Michigan

ORDER

Mary Hollis v JC Penney Corporation

Docket No. 340343

LC No. 16-010173-NO

Michael J. Riordan
Presiding Judge

Michael J. Talbot

Kirsten Frank Kelly
Judges

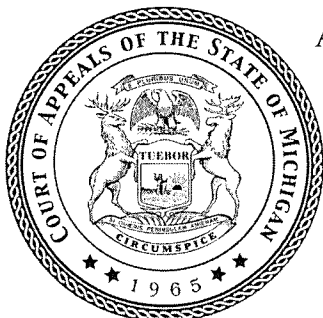
The Court orders that the motion for immediate consideration is GRANTED.

Pursuant to MCR 7.205(E)(2), the September 12, 2017, order of the Wayne Circuit Court denying summary disposition to defendants hereby is REVERSED. Considering the facts in a light most favorable to plaintiff, see *Maiden v Rozwood*, 461 Mich 109, 119-120; 597 NW2d 817 (1999), the record before this Court does not demonstrate that defendants are liable for the condition. Even if defendants were on notice of the condition, the dispositive issue is whether the imperfection in the pavement was an open and obvious condition. Our Supreme Court has ruled that “potholes in pavement are an ‘everyday occurrence’ that ordinarily should be observed by a reasonably prudent person.” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 523; 629 NW2d 384 (2001). The testimony of plaintiff’s daughter confirmed that the loose gravel was discoverable upon casual inspection. Further, plaintiff’s ordinary negligence claims fail, for if the claim arises from a dangerous condition on the land, it is based on premises liability, even where a plaintiff alleges that the owner created the condition that gave rise to the injury. *Buhalis v Trinity Continuing Care Services*, 296 Mich App 685, 692; 822 NW2d 254 (2012). This case is REMANDED for entry of an order of dismissal consistent with this order.

The motion for stay is DENIED.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.

[Handwritten signature]



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

JAN 05 2018

Date

[Handwritten signature of Jerome W. Zimmer Jr.]
Chief Clerk