STATE OF MICHIGAN

COURT OF APPEALS

ESTELLE WILKIE,

Plaintiff-Appellant,

v

ADI REALTY, INC, ARBOR DRUGS, INC, and B. D. DETROIT, L.P.,

Defendants-Appellees
Third Party Plaintiffs,

v

ADAIR-CHARDESCOTT CONSTRUCTION CO., INC.

Third-Party Defendant.

UNPUBLISHED
May 23, 1997

No. 192231
Oakland Circuit Court
LC No. 94-486821 NO

Before: Corrigan, C.J., and Young and M.J. Talbot*, JJ.

MEMORANDUM.

While shopping at defendants' strip mall, plaintiff was returning to her parked car after sunset. The parking lot was unlighted except for ambient light from store windows. Plaintiff tripped over a handicap access ramp, which protruded from the sidewalk into the parking lot. The ramp is made from the same material and is the same color as the sidewalk and parking lot. In this negligence action, defendant's motion for summary disposition was granted on the basis of the open and obvious danger principle. Plaintiff appeals by right. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court erroneously determined that defendants were entitled to summary disposition under *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470; 499 NW2d 379 (1993). *Novotney* is distinguishable from the instant case. In *Novotney*, this Court made it clear that there was

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* Circuit judge, sitting on the Court of Appeals by assignment.

no indication that the plaintiff could not have determined the existence of the handicap access ramp, had she inspected the sidewalk in front of her. *Id*. at 474. In the instant case, plaintiff demonstrated the existence of a genuine issue of material fact with regard to whether the handicap access ramp in this case was readily observable upon casual inspection by an average user of ordinary intelligence in light of the color of the ramp and the available lighting in the area surrounding the ramp. *Baker v Arbor Drugs, Inc*, 215 Mich App 198; 544 NW2d 727 (1996); *Novotney, supra* at 473-476.

Furthermore, even had the trial court correctly determined that defendants owed no duty to plaintiff to warn her of the open and obvious danger posed by the handicap ramp, such a determination would not have warranted the dismissal of plaintiff's complaint in its entirety. In addition to her failure to warn theory, plaintiff also seeks to impose liability under negligent maintenance and defective physical structure theories. The open and obvious nature of a condition's danger does not preclude holding a premises owner liable under these two theories. *Bertrand v Alan Ford, Inc*, 449 Mich 606; 537 NW2d 185 (1995). Where there are special aspects of the condition, because of its character, location, or surrounding conditions, that make the risk of harm unreasonable, then the premises owner's duty to exercise reasonable care remains and, accordingly, a failure to remedy the dangerous condition may be found to constitute a breach of the duty to keep the premises reasonably safe. *Id*. 449 Mich at 614, 617, 623. Here, the documentary evidence created a genuine issue of material fact with regard to whether the color of the ramp and the lighting conditions constituted sufficient surrounding conditions to have preserved to defendants their duty to exercise reasonable care. *Id*.; *Baker, supra* at 202.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Robert P. Young, Jr.
/s/ Michael J. Talbot