STATE OF MICHIGAN

COURT OF APPEALS

DIANA MARCUM and GEORGE MARCUM,

Plaintiffs-Appellants,

v

WILLA, INC., d/b/a COUNTRY CLUB USA, and SEYMOUR BRAY, JR.,

Defendants-Appellees.

UNPUBLISHED
May 27, 1997

No. 184085
Monroe Circuit Court
LC No. 94-002466-NO

Before: Saad, P.J., and Griffin and M. H. Cherry*, JJ.

PER CURIAM.

In this case of alleged negligence, plaintiffs appeal by right from an order granting summary disposition to defendants pursuant to MCR 2.116(C)(10). We reverse.

Plaintiffs assert that, while patroning defendants' club, plaintiff Diana Marcum fell and sustained injury when her heel became caught in a small gap or seam at the boundary between the dance floor and the general carpeted area of defendants' dance club. Her husband, plaintiff George Marcum, asserts a derivative claim for loss of consortium. The trial court granted summary disposition for defendants on the basis that the danger was open and obvious.

We agree with plaintiffs that the trial court erred in granting summary disposition to defendants. As a patron, Mrs. Marcum was clearly a business invitee of defendants. *Stanley v Town Square Coopeative,* 203 Mich App 143, 146-147; 512 NW2d 51 (1993). A business invitor must exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition that the landowner knows or should know invitees will not discover or protect themselves against. *Bertrand v Alan Ford, Inc,* 449 Mich 606, 609; 537 NW2d 185 (1995). However, the possessor's duty is limited where a potentially dangerous condition is open and obvious. *Id.* at 610. A danger is open and obvious if an average user of ordinary intelligence could have discovered the danger and risk presented upon casual inspection. *Novotney v Burger King Corp (On Remand),* 198 Mich App 470, 475; 499 NW2d 379 (1993).

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

In the present case, Mrs. Marcum testified at her deposition that the club was so dark that she could not see the floor and would have been unable to see her feet had she looked down. Furthermore, although Mrs. Marcum visited the location before her fall, there is no evidence that she knew about the allegedly hazardous gap in the floor surface. Indeed, she visited the bar only two or three times after defendant Seymour Bray performed the remodeling that may have created the allegedly dangerous condition. Viewing these facts in a light most favorable to plaintiffs, *Fitch v State Farm Fire & Casualty Co*, 211 Mich App 468, 470-471; 536 NW2d 273 (1995), a reasonable factfinder could conclude that an average user with ordinary intelligence may not have discovered the alleged hazard. Thus, an issue of fact exists and the trial court erred by granting summary disposition to defendants pursuant to MCR 2.116(C)(10).

We reverse the trial court's grant of summary disposition to defendants and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Michael H. Cherry