

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TIMOTHY R. HORNE, Individually and as Next  
of Friend of SARA HORNE and ANDREA  
HORNE, minors,

Plaintiffs-Appellants,

v

STRAWBERRY HILLS CORPORATION, ABS  
PROPERTIES, INC., TRERICE TOSTO  
COMPANY, and COLLIERS INTERNATIONAL  
PROPERTY CONSULTANTS OF MICHIGAN,

Defendants-Appellees.

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UNPUBLISHED  
October 14, 2003

No. 240247  
Oakland Circuit Court  
LC No. 01-028974-NO

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

SMOLENSKI, P.J. (*dissenting*).

I respectfully dissent. As the majority correctly states, the test for determining if a condition is open and obvious is whether an average user of ordinary intelligence, after causal inspection, would have been able to discover the danger and the risk presented. *Joyce v Rubin*, 249 Mich App 231, 238; 642 NW2d 360 (2002). Plaintiff knew the ramp was wet and slippery, having walked up it when he arrived and back down it when he went to his truck to unload merchandise. Plaintiff also noticed that there was a light layer of wet sawdust on the ramp. Ten minutes later, when he returned to the ramp with his loaded dolly, he noticed that a “tremendous amount of sawdust, maybe two inches thick” had been laid on the metal ramp. I would find that a reasonable person would have discerned the danger presented by such a substantial amount of dry sawdust on a metal ramp, regardless of whether he believed that the ramp underneath was still wet or had been dried by a store employee. Therefore, I would conclude that the condition was open and obvious and affirm the trial court’s grant of summary disposition in favor of defendants.

/s/ Michael R. Smolenski