

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT TOCKEN and CARMi TOCKEN,

Plaintiffs-Appellants,

v

CRISSMAN LINCOLN MERCURY,

Defendant-Appellee.

UNPUBLISHED

August 19, 1997

No. 191482

Oakland Circuit Court

LC No. 94-485685-NO

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiffs appeal as of right from the summary dismissal of their premises liability action. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court erroneously determined, as a matter of law, that plaintiff Robert Tocken was a trespasser at the time of his fall. The documentary evidence submitted in support of, and in opposition to, the motion for summary disposition establishes the existence of a genuine issue of material fact with regard to whether plaintiff Robert Tocken ventured into defendant's service garage without permission or invitation. *Wymer v Holmes*, 429 Mich 66, 71 n 1; 412 NW2d 213 (1987); *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993); *Constantineau v DCI Food Equipment, Inc*, 195 Mich App 511, 514-516; 491 NW2d 262 (1992). Nevertheless, reversal is unnecessary. Assuming arguendo that plaintiff Robert Tocken was an invitee at the time of his fall, the trial court properly granted summary disposition where the danger associated with the condition of the floor was open and obvious and where the condition of the floor indicates that the risk of harm was not unreasonable. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614, 617, 623; 537 NW2d 185 (1995); *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993).

Affirmed.

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

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Edward A. Quinnell