

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP W. COHEN,

Plaintiff-Appellant/Cross-Appellee,

v

SLC OPERATING LIMITED PARTNERSHIP,
d/b/a NOVI HILTON,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

April 26, 2002

No. 229313

Oakland Circuit Court

LC No. 00-021405-NO

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10) in this premises liability case. Defendant cross-appeals the circuit court's order denying its motion for sanctions. We affirm.

Plaintiff tripped and fell as a result of his leg getting caught on a leg of a low-lying coffee table, while he was a business invitee of defendant at the Novi Hilton Hotel. The circuit court granted defendant summary disposition on the grounds that the coffee table itself was open and obvious; and there was nothing unusual about the character, location, or surrounding conditions of the coffee table that made it unreasonably dangerous.

We review the circuit court's grant of summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. The circuit court considers the pleadings, depositions, affidavits, admissions and other documentary evidence in the light most favorable to the nonmoving party. *Id.* at 120. "Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law." *Id.*

Generally, an "invitor's legal duty is 'to exercise reasonable care to protect invitees from an unreasonable risk of harm caused by a dangerous condition of the land' that the landowner knows or should know the invitees will not discover, realize, or protect themselves against." *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995), quoting *Williams v Cunningham Drug Stores, Inc*, 429 Mich 495, 499; 418 NW2d 381 (1988). However, this duty does not normally extend to the removal of open and obvious dangers. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). A danger is open and obvious if a person of

average intelligence would be able to discover the danger and appreciate the risk upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 474-475; 499 NW2d 379 (1993). “[I]f special aspects of a condition make even an open and obvious risk unreasonably dangerous, the premises possessor has a duty to undertake reasonable precautions to protect invitees from that risk.” *Lugo, supra* at 517.

I

Plaintiff argues that the coffee table’s protruding leg was not, as a matter of law, open and obvious, and that even if it was open and obvious, it constituted an unreasonably unsafe condition of which defendant had notice.

We agree with plaintiff that the proper focus is on the protruding leg and not the coffee table itself. The photographs plaintiff submitted below show that the table leg, protruding or not, was visible upon casual inspection. That plaintiff did not see the table leg before he fell is irrelevant because the test for an open and obvious danger is an objective one. *Hughes v PMG Building, Inc*, 227 Mich App 1, 11; 574 NW2d 691 (1997). Under the circumstances that plaintiff navigated around the coffee table, sat down, and later got up and tripped on the table leg, despite the table not having been moved or altered, we conclude that no genuine issue of material fact remained whether special aspects of the table rendered it an unreasonable risk of harm.

II

Defendant cross-appeals the circuit court’s denial of its motion for sanctions under MCR 2.114. This Court reviews for clear error the circuit court’s determination whether a party or attorney has violated the signature requirements of MCR 2.114(D). *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 91; 592 NW2d 112 (1999).

Plaintiff’s claim was not “devoid of arguable legal merit,” as defendant asserts. Further, under the circumstances that defendant filed its motion for summary disposition and sanctions before discovery had begun, and supported its motion with documentary evidence which did not depict the accident scene as it was on the evening in question, the circuit court did not clearly err in denying defendant’s motion for sanctions.

Affirmed.

/s/ Helene N. White
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald