

STATE OF MICHIGAN
COURT OF APPEALS

ONALEE LACEY,

Plaintiff-Appellant,

v

PEERLESS MATTRESS AND FURNITURE CO,

Defendant-Appellee.

UNPUBLISHED

January 22, 2004

No. 242906

Genesee Circuit Court

LC No. 2001-071625-NO

Before: O’Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

In this premises liability action, plaintiff appeals as of right from an order granting defendant’s motion for summary disposition. We affirm.

The entrance to defendant’s store consisted of two sets of doors separated by a foyer. As plaintiff entered the store through the foyer, she tripped on a curled-up edge of a large floor mat. She fell forward into the second set of doors, broke her glasses, and suffered a laceration above her eye.

Plaintiff brought suit, alleging premises liability. The trial court granted defendant’s summary disposition motion based on the open and obvious doctrine.

Plaintiff concedes that the curled edge of the floor mat lying across the entrance to defendant’s store constituted an open and obvious hazard, but she asserts that a question of material fact exists regarding whether the curled edge created an unreasonably dangerous situation. We disagree. We review de novo decisions to grant or deny summary disposition. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 159; 645 NW2d 643 (2002).

Landowners must generally use reasonable care to protect invitees from dangerous conditions on their land. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609; 537 NW2d 185 (1995). The “open and obvious doctrine,” however, circumscribes this general duty. *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 516; 629 NW2d 384 (2001). Under most circumstances, a possessor of land “is not required to protect an invitee from open and obvious dangers.” *Id.* at 517. However, “if 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.” *Id.*

Such special aspects exist when the open and obvious condition, if not ameliorated or avoided, would create “a uniquely high likelihood of harm or severity of harm” *Lugo, supra* at 519. A uniquely high likelihood of harm emerges when a person cannot effectively avoid the dangerous condition. *Id.* at 518. *Lugo* illustrates this concept with the example of a shop where standing water covers the only exit and traps customers inside. *Id.*

Plaintiff contends that an unreasonable risk existed here because defendant failed to provide invitees with any safe route into the store. Plaintiff argues that the floor mat in the instant case extended across the entire length of the foyer, so as in the *Lugo* scenario, customers had no choice but to encounter it when entering the store. In the *Lugo* example, however, customers are unable to *leave* a commercial establishment because a dangerous condition blocks the only *exit*. There is a fundamental difference between the creation of a danger deterring entry and a danger barring exit.

We addressed a similar situation in *Joyce v Rubin*, 249 Mich App 231, 242; 642 NW2d 360 (2002). There, the plaintiff slipped on a sidewalk while entering the home of her former employer to remove some of her personal belongings. *Id.* at 233. Although the plaintiff, Joyce, argued that she had no choice but to cross the snowy walkway, we found that “Joyce could have simply removed her personal items another day.” *Id.* at 242. We further held that, “unlike the example in *Lugo*, Joyce was not effectively trapped inside a building so that she *must* encounter the open and obvious condition in order to get out.” *Id.* We concluded that “no reasonable juror could conclude that the aspects of the condition were so unavoidable that Joyce was effectively forced to encounter the condition.” *Id.* at 242-243. Because plaintiff similarly failed to present any material issue of fact regarding whether the mat was unavoidable or otherwise unreasonably dangerous, the trial court correctly granted summary disposition to defendant.

Affirmed.

/s/ Peter D. O’Connell
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray