

STATE OF MICHIGAN
COURT OF APPEALS

SHEILA FEOLE,

Plaintiff-Appellant,

v

RUGGERO'S RESTAURANT,

Defendant-Appellee.

UNPUBLISHED

April 27, 2004

No. 245047

Genesee Circuit Court

LC No. 01-072211-NO

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

In this slip and fall action, plaintiff appeals as of right a trial court order granting summary disposition in favor of defendant, pursuant to MCR 2.116(C)(10). We affirm.

We review a trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10) de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties in the light most favorable to the nonmoving party. *Stevenson v Reese*, 239 Mich App 513, 516; 609 NW2d 195 (2000). The motion should be granted if the affidavits or other documentary evidence demonstrate that there is no genuine issue with respect to any material fact, and the moving party is entitled to judgment as a matter of law. *Id.*

In the instant case, plaintiff entered defendant's restaurant in an attempt to solicit advertising for her employer's newspaper. Plaintiff noticed that the floor was covered with a greasy, dirty substance, but nevertheless walked across the floor and asked to speak to the manager. After the manager declined plaintiff's offer, she walked back across the floor toward the door which she had originally entered. While crossing the floor, plaintiff slipped and fell, sustaining injuries.

Plaintiff sued defendant in premises liability, alleging that the greasy and slippery floor constituted an unreasonably dangerous hazard, and that defendant breached its duty to protect her from the hazard. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that because the condition was open and obvious, it had no duty to warn plaintiff about the condition. Plaintiff conceded that the condition was open and obvious, but argued that because she was unaware of an alternate exit, she was effectively forced to walk across the greasy floor to leave the restaurant, and that this constituted an unreasonable risk of harm,

thereby allowing her to prevail in imposing liability on defendant. The trial court was not persuaded by plaintiff's argument, and granted defendant's motion for summary disposition on the basis that plaintiff could have avoided the condition because alternate exits were available, and that there was no unique likelihood of harm giving rise to a duty on the part of defendant.

On appeal, plaintiff argues that the trial court erred in applying the open and obvious doctrine to bar her claim where her alleged lack of knowledge of an alternate exit from defendant's restaurant made the open and obvious condition effectively unavoidable, thereby allowing her to prevail in imposing liability on defendant. We disagree.

"In general, a premises possessor owes a duty to an invitee¹ to exercise reasonable care to protect the invitee from an unreasonable risk of harm caused by a dangerous condition on the land." *Lugo v Ameritech Corp*, 464 Mich 512, 516; 629 NW2d 384 (2001). "However, this duty does not generally encompass removal of open and obvious dangers," which exist "where the dangers are known to the invitee or are so obvious that the invitee might reasonably be expected to discover them." *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 96; 485 NW2d 676 (1992). Moreover, "a premises possessor is not required to protect an invitee from open and obvious dangers, but, 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." *Lugo, supra* at 517.

Our Supreme Court has stated that "with regard to open and obvious dangers, the critical question is whether there is evidence that creates a genuine issue of material fact regarding whether there are truly 'special aspects' of the open and obvious condition that differentiate the

¹ Our analysis considers plaintiff an invitee, but we note that the same result would apply *a fortiori* if we considered her to be a licensee, because licensees are owed a lesser duty. See *James v Alberts*, 464 Mich 12, 19-20; 626 NW2d 158 (2001).

A "licensee" is a person who is privileged to enter the land of another by virtue of the possessor's consent. A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit. Typically, social guests are licensees who assume the ordinary risks associated with their visit.

An "invitee" is "a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for [the invitee's] reception." The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards. Thus, an invitee is entitled to the highest level of protection under premises liability law. [*Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000).]

risk from typical open and obvious risks so as to create an unreasonable risk of harm, i.e., whether the ‘special aspect’ of the condition should prevail in imposing liability upon the defendant or the openness and obviousness of the condition should prevail in barring liability.” *Lugo, supra* at 517-518. Thus, “special aspects” exist (1) where the open and obvious condition is effectively unavoidable, or (2) where the condition imposes an unreasonably high risk of severe harm. *Id.* at 518.

In the instant case, plaintiff concedes that the greasy substance on the floor of defendant’s restaurant constituted an open and obvious danger, but argues that the obvious condition of the greasy floor was “effectively unavoidable,” because she had to cross the floor to reach the only exit of which she was allegedly aware. Plaintiff argues that the instant case is analogous to our Supreme Court’s example of an unavoidable condition that involved “a commercial building with only one exit for the general public where the floor is covered with standing water.” *Lugo, supra* at 518. Our Supreme Court explained that “while the condition is open and obvious, a customer wishing to exit the store must leave the store through the water.” *Id.*

However, plaintiff’s situation is distinguishable from our Supreme Court’s example in *Lugo, supra* at 518. There, the customer was required to confront an unavoidable condition because the customer was already in the defendant’s store and had to walk through the water in order to leave. Here, plaintiff was not required to confront an unavoidable condition, which she noticed on her way into the building; she simply could have refused to solicit a business that displayed such purported negligence in the maintenance of its floors. See *Joyce v Rubin*, 249 Mich App 231, 242-243; 642 NW2d 360 (2002). Further, unlike our Supreme Court’s example in *Lugo*, plaintiff was not required to confront an unavoidable condition because she did not have to walk across the greasy floor in order to leave. The restaurant had two doors, which were available to the public, from which plaintiff could have exited the premises. The fact that plaintiff claims that she was unaware of the other exit is irrelevant, as plaintiff was not effectively trapped inside the building. Plaintiff made no mention of the alleged greasy floor to the manager, nor did she ask if there was an alternate exit. Accordingly, because there was no special aspect to the condition of the restaurant floor that posed an unreasonable risk of harm, the trial court properly granted summary disposition in favor of defendant.

We affirm.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald