

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

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DIANA SOVIS and M. DOUGLAS SOVIS,

Plaintiffs-Appellants,

v

HYATT CORPORATION,

Defendant-Appellee,

and

JM OLSON CORPORATION, MICHIELUTTI  
BROTHERS, INC., HOLLAND GROUP, L.L.C.,  
d/b/a WORKPLACE INTEGRATORS, and  
ACTION FLOOR COVERING, INC.,

Defendants.

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UNPUBLISHED

January 27, 2005

No. 250859

Wayne Circuit Court

LC No. 01-102222-NO

Before: Zahra, P.J., and Neff and Cooper, JJ.

PER CURIAM.

Plaintiffs<sup>1</sup> appeal as of right an order granting defendant's<sup>2</sup> motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiff contends that the trial court erred in granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10) because issues of material fact existed and defendant was not entitled to judgment as a matter of law. We disagree.

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<sup>1</sup> Given the derivative nature of plaintiff, M. Douglas Sovis', claims, plaintiff, Diana Sovis, will be referred to individually as plaintiff.

<sup>2</sup> Because Hyatt Corporation is the only defendant involved in this appeal, it will be referred to as defendant throughout.

On appeal, a trial court's decision on a motion for summary disposition is reviewed *de novo*. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). On ruling on a summary disposition motion, a trial court must determine whether an issue of material fact existed or whether the moving party was entitled to a judgment as a matter of law. *Meyer v City of Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating such a motion, a trial court considers the entire record in the light most favorable to the party opposing the motion, including affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. 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.* All reasonable inferences must be resolved in favor of the nonmoving party. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 618; 537 NW2d 185 (1995). On review, this Court must determine whether a record could be developed that would leave open an issue upon which reasonable minds could differ. *Id.*

In general, a premises possessor owes a duty to an invitee to exercise reasonable care to warn or 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). The open and obvious doctrine, however, circumscribes this general duty. *Id.* Under most circumstances, a possessor of land is not required to warn or protect an invitee from an open and obvious danger. *Id.* at 517. A condition is open and obvious if it is reasonable to expect that an average person of ordinary intelligence will discover the danger upon casual inspection. *O'Donnell v Garasic*, 259 Mich App 569, 574; 676 NW2d 213 (2003). 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. *Lugo, supra* at 517.

Plaintiffs contend that the defect in the tile was not open and obvious. We disagree. An average person of ordinary intelligence would have been able to discover the "tile lip" upon casual inspection. In *Maurer v Oakland Co Parks & Recreation Dep't (After Remand)*, a companion case to *Bertrand*, *supra* at 618, the plaintiff asserted that the defendant was negligent in failing to mark a six to eight inch step down from a doorway with a contrasting color. The plaintiff tripped over the step and asserted that she did not see the step at the time of the incident. *Id.* The Court affirmed the trial court's holding, granting defendant's motion for summary judgment, holding that the plaintiff had failed to establish anything unusual about the step that would not make it open and obvious. *Id.* at 621.

Similarly, in the instant case, plaintiffs contend that the carpeting and tile were the same or a similar dark color. The analysis whether a danger is open and obvious does not revolve around whether steps could have been taken (i.e., painting contrasting colors) to make the danger more open or more obvious. Rather, the equation involved is whether the danger, as presented, is open and obvious. *Novotney v Burger King Corp* 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Viewing the evidence in a light most favorable to plaintiffs, plaintiff admittedly knew the condition of the floor. Plaintiff acknowledged in her deposition that at check-in, one day prior to the incident, she noticed a piece of "rubber cuff" running from the carpeting up to the tile at the reception desk. Plaintiff noticed that the tile was slightly higher than the carpeting and feared that she may turn her ankle were she to pass over it. On the day of the incident, plaintiff was looking ahead of her as she was walking. Plaintiff acknowledged that after she fell she could see the difference between the tile and carpeting. Plaintiff admitted that the lighting in the hallway was adequate, although the lights were toned down. Plaintiff's colleague, the sole

witness to the incident, also stated that there were lights in the area, although they were more dimly lit than the area from which they came. The colleague also acknowledged that, at the time of the incident, she could see where she was walking. Additionally, the corridor in which the incident occurred was the same corridor that plaintiff and her colleague used on a previous occasion without incident. Given the facts in the instant case, an average person of ordinary intelligence would be able to discover the tile lip upon casual inspection. Therefore, the condition was open and obvious.

Additionally, there were no special aspects of the open and obvious condition in the instant case that would make it unreasonably dangerous. A half-inch to three-quarter inch tile lip does not create an unreasonably dangerous condition, and although the hotel was undergoing renovations, plaintiff acknowledged that there was “absolutely” no construction in the immediate area of her fall. Also, plaintiff could have effectively avoided the alleged dangerous condition; the corridor used was not the exclusive means of egress from the hotel. Plaintiff acknowledged that there were alternate ways to exit the hotel and go to the parking lot. Therefore, there were no special aspects of the open and obvious condition that would impose a duty on defendant to warn or protect plaintiff from the condition.

Plaintiffs contend that the trial court’s decision to grant Hyatt’s renewed motion for summary disposition after previously denying the same motion served as evidence that reasonable minds could differ on whether the condition was open and obvious. However, the trial court found that the testimony of plaintiff’s colleague buttressed defendant’s argument that the condition was open and obvious. It found the testimony established that there was sufficient evidence to grant defendant’s motion. Therefore, plaintiffs’ argument, that the trial court’s previous ruling denying summary disposition evidenced reasonable minds could differ about the condition being open and obvious, is without merit. Subsequent testimony of the sole witness to the incident established the application of the open and obvious doctrine.

Affirmed.

/s/ Brian K. Zahra  
/s/ Janet T. Neff  
/s/ Jessica R. Cooper