

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

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DOROTHY HENSCHEL,

Plaintiff-Appellant,

v

UNITED ARTISTS THEATRE CIRCUIT, INC.,

Defendant-Appellee.

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UNPUBLISHED

April 27, 2006

No. 258834

Oakland Circuit Court

LC No. 2003-052299-NO

Before: White, P.J., and Whitbeck, C.J., and Davis, J.

WHITE, P.J. (*dissenting*).

I agree with the majority that a genuine issue of fact remained regarding the cause of plaintiff's fall. I do not agree that defendant was nonetheless entitled to summary disposition, and therefore respectfully dissent.

First, plaintiff established a genuine issue whether the lighting in the theater was inadequate. Plaintiff presented her own deposition testimony, and that of her son. Both testified that the lighting on the steps was either nonexistent or so dim as to have no effect. Plaintiff cited several cases that support that theaters have a duty to provide adequate lighting to their patrons.

Second, plaintiff established a genuine issue regarding the issue of notice. Plaintiff testified at deposition that there was no one sitting in the entire area where she and her companions chose to sit. From this testimony a reasonable juror could infer that the sticky popcorn-soda-cheese spill that plaintiff could not see on the steps was not spilled immediately before plaintiff arrived at the theater, and that the spill or spills had to have been there at least from the previous movie showing. I disagree with the majority that such an inference is mere speculation or conjecture. Rather, viewing the facts and inferences therefrom in a light most favorable to plaintiff, a reasonable juror could infer that defendant had constructive notice of the spill or spills given that the evidence submitted below supported that the spill or spills occurred during a movie showing prior to the one plaintiff attended.

/s/ Helene N. White