

STATE OF MICHIGAN
COURT OF APPEALS

SHARON GARRISON and WILLIAM
GARRISON,

UNPUBLISHED
January 16, 2007

Plaintiffs-Appellants,

v

No. 271112
Livingston Circuit Court
LC No. 05-021460-NI

DINNERWARE PLUS HOLDINGS, INC., f/k/a
DINNERWARE PLUS, (MI) INC., d/b/a
MIKASA FACTORY STORE, TANGER
PROPERTIES LIMITED PARTNERSHIP,
KENSINGTON VALLEY FACTORY SHOPS,
L.L.C., and TANGER FACTORY OUTLET
CENTERS, INC.,

Defendants-Appellees.

Before: Murray, P.J., and Fitzgerald and Owens, JJ.

PER CURIAM.

Plaintiffs appeal as of right the order granting summary disposition in favor of defendants in this premises liability action. We affirm.

Sharon Garrison tripped and fell on a portion of raised sidewalk outside the Mikasa store in the Tanger Outlet Mall. Mikasa leased the premises from Tanger Properties Limited Partnership. The trial court granted summary disposition in favor of defendants on the ground that the sidewalk's dangerous condition was open and obvious. Plaintiffs argue that the trial court's finding is erroneous and that, even if the condition was open and obvious, it possessed special aspects that rendered it unreasonably dangerous and which required defendants to take precautions to protect Sharon from the dangerous condition.

This Court reviews the trial court's decision on a motion for summary disposition de novo. *Morreale v State, Dept of Community Health*, __ Mich App __; __ NW2d __ (Docket No. 270350, issued October 12, 2006). A motion brought under MCR 2.116(C)(10) should be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Royal Prop Group, LLC v Prime Ins Syndicate, Inc*, 267 Mich App 708, 713; 706 NW2d 426 (2005). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Heckmann v Detroit Chief of Police*, 267 Mich App 480, 486;

705 NW2d 689 (2005). This Court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Royal Prop Group, LLC, supra* at 713. All reasonable inferences are to be drawn in favor of the nonmovant. *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005).

A premises possessor has the duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. *Ghaffari v Turner Construction Co*, 473 Mich 16, 21; 699 NW2d 687 (2005). The invitor's duty to exercise reasonable care to protect an invitee generally does not encompass warning about or removing conditions that are open and obvious. *Teufel v Watkins*, 267 Mich App 425, 427; 705 NW2d 164 (2005). Even if a plaintiff fails to notice a dangerous condition, it may still be an open and obvious danger. *Weakley v Dearborn Heights*, 240 Mich App 382, 385-386; 612 NW2d 428 (2000). Whether a dangerous condition is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger and risk presented upon casual inspection. *Teufel, supra* at 427-428. The determination depends on the characteristics of a reasonably prudent person, not on the characteristics of a particular plaintiff. See *Mann v Shusteric Enterprises, Inc*, 470 Mich 320, 329 n 10; 683 NW2d 573 (2004).

Plaintiffs assert that the rise in the sidewalk was slight and that the concrete slabs were the same color and texture. However, photographs William took the day after Sharon's fall show that the sidewalk's dangerous condition was in plain view and easily discernible. On the evening of Sharon's accident, the weather was clear and the sidewalk was not wet or obstructed. Plaintiffs emphasize that Sharon's trip and fall occurred at dusk and Mikasa did not have its exterior lights on. But plaintiffs also assert that the uneven sidewalk was within six inches of Mikasa's doors, meaning that the accident occurred less than a foot away from a lighted area. Under these circumstances a prudent invitee would have discovered the danger upon casual inspection. Sharon even admitted that, had she looked down at the ground, she would have seen the raised sidewalk.

Plaintiffs argue that it was unreasonable for Sharon to be looking down at the sidewalk as she exited Mikasa because the rise in the sidewalk was located six inches from the swing of the door and she had to look around for other customers entering Mikasa's doors. But Sharon stated that, at the time she was exiting Mikasa, there were no customers or shopping carts near the doors. Further, Sharon stated that she was carrying only a small package and her purse when she exited Mikasa. Merely because a plaintiff fails to notice the condition does not mean that the condition was not open and obvious. *Weakley, supra* at 385-386. The sidewalk's dangerous condition was open and obvious as a matter of law.

Additionally, the sidewalk did not have special aspects that rendered it unreasonably dangerous. First, the raised sidewalk was not "effectively unavoidable." The sidewalk's dangerous condition occurred on one concrete slab located six inches from Mikasa's far left door. Customers need not have used this door because Mikasa had four doors at this exit. Customers could also have avoided the raised sidewalk by stepping over it. Sharon admitted that, had she glanced down and seen the raised sidewalk, she would have avoided it. Second, it is inconceivable that a differential of five-eighths of an inch in the sidewalk would impose a

potential risk of harm tantamount to a “severe risk of harm.” The sidewalk’s dangerous condition did not have special aspects that rendered it unreasonably dangerous.

Affirmed.

/s/ Christopher M. Murray

/s/ E. Thomas Fitzgerald

/s/ Donald S. Owens