

STATE OF MICHIGAN
COURT OF APPEALS

CASSANDRA M. BOWER,

Plaintiff-Appellee,

v

CITY OF PLYMOUTH,

Defendant-Appellant.

UNPUBLISHED

August 2, 2005

No. 253049

Wayne Circuit Court

LC No. 02-236772-NO

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

BORRELLO, J. (*dissenting*).

I respectfully dissent from the majority in this matter and thus would affirm the trial court's denial of defendant's motion for summary disposition for the reasons set forth in this dissent.

The majority rests its decision to reverse the trial court on a footnote addressing the opinion of the dissent contained in our Supreme Court's decision in *Horace v Pontiac*, 456 Mich 744; 575 NW2d 762 (1998). In *Horace, supra*, our Supreme Court granted leave to determine whether the public building exception to governmental immunity applies to slip and fall injuries arising from a dangerous or defective condition existing adjacent to an entrance or exit, but nevertheless still not part of a public building. *Id.* at 746. In *Horace*, our Supreme Court held that because the plaintiff was "between eighteen and twenty-eight feet from the south entrance doors to the Silverdome when she fell," MCL 691.1406 was inapplicable. *Id.* at 757. In the case presented for our review, the plaintiff was descending a metal stairway attached to a parking structure owned by defendant. I therefore find a significant factual distinction between *Horace* and the facts presented in this case. Unlike the plaintiff in *Horace*, the plaintiff in this case was walking on the stairway which was attached to the parking structure and used by patrons for purposes of ingress and egress to the structure itself. While both parties spend a tremendous amount of time arguing over whether a stairway is "of" a building, for purposes of a motion for summary disposition, I agree with the trial court's ruling that the stairway in question is "of" the building and thus under the legal analysis employed by *Horace* the stairway is covered by the public building exception to governmental immunity. Accordingly, I would affirm the trial court and allow the matter to proceed to the finder of fact on all issues.

/s/ Stephen L. Borrello