

Order

Michigan Supreme Court
Lansing, Michigan

April 22, 2022

Bridget M. McCormack,
Chief Justice

163430

RENEE PINSKY and DAVID PINSKY,
Plaintiffs-Appellants,

v

KROGER CO. OF MICHIGAN,
Defendant-Appellee.

SC: 163430
COA: 351025
Washtenaw CC: 19-000208-NO

Brian K. Zahra
David F. Viviano
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh
Elizabeth M. Welch,
Justices

On order of the Court, the application for leave to appeal the May 27, 2021 judgment of the Court of Appeals is considered. We direct the Clerk to schedule oral argument on the application. MCR 7.305(H)(1).

The appellants shall file a supplemental brief within 42 days of the date of this order addressing whether: (1) there is a question of fact concerning whether the cable used to close off the checkout lane was open and obvious; (2) there is a question of fact concerning whether the condition was unreasonably dangerous; (3) under *Estate of Livings v Sage's Investment Group, LLC*, 507 Mich 328 (2021), *Lugo v Ameritech Corp, Inc*, 464 Mich 512 (2001), and 2 Restatement Torts, 2d, § 343A, the open and obvious doctrine does not preclude relief where a land possessor should anticipate the harm; and (4) liability should be precluded in Michigan even if the danger posed by a condition on land is open and obvious without special aspects as defined by *Lugo*, or whether the open and obvious nature of a condition should be a consideration for the jury in assessing the comparative fault of the parties as set forth in the Restatement Torts, 3d. In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellants' brief. A reply, if any, must be filed by the appellants within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

We further direct the Clerk to schedule the oral argument in this case for the same future session of the Court when it will hear oral argument in *Kandil-Elsayed v F & E Oil, Inc* (Docket No. 162907).

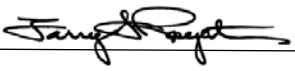
Persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.



m0419

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 22, 2022


Clerk