

# Order

Michigan Supreme Court  
Lansing, Michigan

September 27, 2019

Bridget M. McCormack,  
Chief Justice

159062 & (45)

David F. Viviano,  
Chief Justice Pro Tem

DEAN McMASTER,  
Plaintiff-Appellant/  
Cross-Appellee,

Stephen J. Markman  
Brian K. Zahra  
Richard H. Bernstein  
Elizabeth T. Clement  
Megan K. Cavanagh,  
Justices

v

SC: 159062  
COA: 339271  
Oakland CC: 2015-147414-NO

DTE ELECTRIC COMPANY,  
Defendant-Appellee/  
Cross-Appellant,

and

FERROUS PROCESSING AND TRADING  
COMPANY, d/b/a FERROUS PROCESSING  
& TRADING CO.,  
Defendant.

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On order of the Court, the application for leave to appeal the November 8, 2018 judgment of the Court of Appeals and the application for leave to appeal as cross-appellant are considered and, pursuant to MCR 7.305(H)(1), in lieu of granting the application for leave to appeal, we VACATE Part III of the opinion, titled “Common-Law Duty.” The Court of Appeals erred when it applied the open and obvious doctrine to this ordinary negligence case. The open and obvious doctrine is applicable to a claim that sounds in premises liability: “the question is whether *the condition of the premises* at issue was open and obvious . . . .” *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 523 (2001). Here, the cause of action does not sound in premises liability but rather in ordinary negligence. Accordingly, we REMAND this case to the Court of Appeals for application of the law of ordinary negligence and for consideration of the issues raised by the parties on the question of the defendant’s legal duty. The application for leave to appeal as cross-appellant is DENIED, because we are not persuaded that the question presented should be reviewed by this Court.



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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.

September 27, 2019

Handwritten signature of Larry S. Royster in black ink.

Clerk