

# Order

Michigan Supreme Court  
Lansing, Michigan

July 15, 2011

142821

CHRISTOPHER TUCKER, by his Guardian,  
PAMELA WATSON,  
Plaintiff-Appellee,

v

VINCENT PIPITONE and VINCENT PIPITONE,  
JR., d/b/a PRO BUILT CONSTRUCTION, PRO  
BUILT CUSTOM BUILDING CORPORATION,  
PRO BUILT CUSTOM BUILDING, INC.,  
VINCE PRO BUILT, and IMPROVEMENTS  
UNLIMITED, INC.,  
Defendants,

and

RICHARD CARSON, d/b/a CARSON HOME  
MAINTENANCE,  
Defendant-Appellant.

SC: 142821  
COA: 294754  
Oakland CC: 2008-095097-NO

Robert P. Young, Jr.,  
Chief Justice

Michael F. Cavanagh  
Marilyn Kelly  
Stephen J. Markman  
Diane M. Hathaway  
Mary Beth Kelly  
Brian K. Zahra,  
Justices

On order of the Court, the application for leave to appeal the February 15, 2011 judgment of the Court of Appeals is considered, and it is DENIED. The Court of Appeals did not err in affirming the Oakland Circuit Court's denial of the motion to dismiss the plaintiff's negligence claim against defendant Richard Carson on the defendant's stated basis that the plaintiff had failed to identify a legal duty that was separate and distinct from the defendant's contractual duties pursuant to *Fultz v Union-Commerce Assoc*, 470 Mich 460, 467 (2004). The Court of Appeals correctly held that the plaintiff had alleged a separate and distinct common law duty on the part of the defendant to use ordinary care in order to avoid physical harm to foreseeable persons in the execution of his undertakings. *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157 (2011).

HATHAWAY, J., would deny leave to appeal without the further statements found in the majority's order.



t0712

I, Corbin R. Davis, 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.

July 15, 2011

*Corbin R. Davis*

Clerk