

# Order

Michigan Supreme Court  
Lansing, Michigan

December 8, 2005

128951

NANCY GARRETT,  
Plaintiff-Appellant,

v

SAM H. GOODMAN BUILDING COMPANY,  
INC., and DONALD BRYANT, d/b/a D & B  
CEMENT,  
Defendants-Appellees.

Clifford W. Taylor,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

SC: 128951  
COA: 251793  
Wayne CC: 02-226727-NI

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On order of the Court, the application for leave to appeal the March 17, 2005 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the Court of Appeals affirmance of the trial court's grant of summary disposition in favor of defendant Goodman Building, and we REMAND this case to the Wayne Circuit Court for further proceedings. Summary disposition should not have been granted for defendant Goodman Building because it did not move for summary disposition. Further, summary disposition based on the "open and obvious" doctrine was improper because neither defendant was the premises possessor. *Ghaffari v Turner Constr Co*, 473 Mich 16, 23 (2005). The Court of Appeals erred in applying *Fultz v Union-Commerce Associates*, 470 Mich 460 (2004), to defendant Goodman Building because it and plaintiff were in contractual privity.

In all further respects, leave to appeal is DENIED because we are not persuaded that the questions presented should be reviewed by this Court.



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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.

December 8, 2005

*Corbin R. Davis*

Clerk