

# Order

Michigan Supreme Court  
Lansing, Michigan

January 5, 2007

Clifford W. Taylor,  
Chief Justice

130992

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

LANZO CONSTRUCTION COMPANY,  
Plaintiff-Appellant,

v

SC: 130992  
COA: 264165  
Wayne CC: 04-408824-CK

WAYNE STEEL ERECTORS,  
Defendant-Appellee.

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On December 14, 2006, the Court heard oral argument on the application for leave to appeal the January 26, 2006 judgment of the Court of Appeals. On order of the Court, the application is again considered. MCR 7.302(G)(1). In lieu of granting leave to appeal, we REVERSE that portion of the Court of Appeals judgment that affirmed the circuit court's grant of summary disposition to the defendant. Fernando Agueros, the plaintiff in the underlying injury action on which the plaintiff sought indemnity, had a duty to proceed with reasonable caution for his own safety, *Lugo v Ameritech Corp, Inc*, 464 Mich 512, 522 (2001). Agueros admitted at his deposition that he misjudged the distance to the column when he swung the rebar around that he was carrying and the leading ends of the rebar struck the column, causing his fall. Therefore, Agueros's negligence was at least partially responsible for his accident, so the plaintiff could not have been solely responsible for Agueros's accident, and MCL 691.991 is inapplicable. We REMAND this case to the Wayne Circuit Court for entry of an order granting the plaintiff's motion for summary disposition against the defendant.

KELLY, J., would deny leave to appeal.



s0103

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.

January 5, 2007

*Corbin R. Davis*

Clerk