

Order

Michigan Supreme Court
Lansing, Michigan

May 17, 2006

Clifford W. Taylor,
Chief Justice

130422

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

TRIANGLE EXCAVATING COMPANY, INC.,
Plaintiff-Appellant,

v

SC: 130422
COA: 255507
Van Buren CC: 03-50-596-CK-B

COVERT TOWNSHIP,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the December 20, 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 judgment affirming the Van Buren Circuit Court's grant of summary disposition to defendant. Plaintiff presented sufficient evidence to raise a material issue of fact whether defendant intentionally and voluntarily relinquished its right to enforce the contractual requirement of written notification of unforeseen site conditions. *A J Smith Constr Co v Marine City*, 267 Mich 367 (1934). We REMAND this case to the Van Buren Circuit Court for further proceedings not inconsistent with this order.



s0510

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.

May 17, 2006

Corbin R. Davis

Clerk