

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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NORMAN REZMER and DONALD REZMER,

UNPUBLISHED

Plaintiffs-Appellants,

v

No. 181355

SCOTT ALTMAN,

Midland Circuit Court

LC No. 91-008904-NO

Defendant-Appellee,

and

JON ALTMAN and BROOK ALTMAN,

Defendants.

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Before: O'Connell, P.J., and Smolenski and T.G. Power\*, JJ.

SMOLENSKI, J. (concurring in part and dissenting in part).

I concur with the majority opinion that the trial court's supplemental instruction included an element required for the theory of joint enterprise and, therefore, did not fairly and accurately present plaintiffs' concert of action theory to the jury. I respectfully dissent from the majority's decision to nevertheless affirm. In light of the particular circumstances of this case, I believe that whether each of these defendants acted tortiously pursuant to a common design was a question for the jury. In light of the erroneous supplemental instruction, I would reverse the judgments of no cause of action entered with respect to defendants and remand for a new trial.

/s/ Michael R. Smolenski

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\* Circuit judge, sitting on the Court of Appeals by assignment.