COURT OF APPEALS
DECISION
DATED AND RELEASED

January 16, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2718-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DANIEL A. OLSON,

Plaintiff-Appellant,

v.

CORRELL, INC., and LIBERTY MUTUAL INSURANCE COMPANY,

Defendants-Appellants,

HI-WAY EXPRESS, INC., VANLINER INSURANCE CO.,

Defendants-Respondents,

LUMBERMENS MUTUAL CASUALTY CO., AFFILIATED UNIVERSITY PHYSICIANS,

Third Party Defendants.

APPEAL from an order of the circuit court for Dane County: MARK A. FRANKEL, Judge. *Reversed*.

Before Eich, C.J., Vergeront and Deininger, JJ.

PER CURIAM. Daniel Olson, Correll, Inc. and Correll's insurer, appeal from a summary judgment dismissing Olson's complaint against Hi-Way Express, Inc., and its insurer.[1] Olson was injured while unloading a truck containing tables manufactured and loaded by Correll at its plant 1,148 miles away. Hi-Way Express owned the truck and delivered the tables from Correll's plant to the place of Olson's injury. The issue is whether we can conclude as a matter of law, from the materials submitted on summary judgment, that Hi-Way Express cannot be held liable for Olson's injury. Because the submissions do not allow that conclusion, we reverse.

Olson was injured inside the truck when a stack of the tables fell on him without warning. In deposition testimony, Olson admitted that the Hi-Way Express employee on the scene did nothing at the time of the accident to cause it. Solely on the basis of that testimony, Hi-Way Express moved for and received summary judgment.

We review the trial court's decision on summary judgment using the same procedures and without deference to its decision. ***In re Cherokee Park Plat***, 113 Wis.2d 112, 115-16, 334 N.W.2d 580, 582 (Ct. App. 1983). If, as here, the complaint states a claim and the pleadings place factual issues in dispute, we next determine whether the moving party has made a prima facie case for summary judgment. ***Id***. at 116, 334 N.W.2d at 582-83.

In this case, Hi-Way Express has failed to do so. Its submissions establish only that it was not causally negligent at the time of the accident. Left open is the question whether some earlier negligence in securing or shifting the load of tables during the 1,148 mile trip may have caused it to fall on Olson. It appears undisputed that Hi-Way Express assumed the duty of securing the tables during the trip, and that Hi-Way Express delivered and helped unload tables at several previous stops. Because the issue of Hi-Way Express' prior negligence remains unresolved by summary judgment, the matter must proceed to trial on Olson's claim.

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[1] This is an expedited appeal under RULE 809.17, STATS.

By the Court.—Order reversed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.