STATE OF MICHIGAN

COURT OF APPEALS

TRU-CUT LANDSCAPING, Plaintiff-Appellant,	UNPUBLISHED December 29, 2005
V	No. 263476 Wayne Circuit Court
GREGORY BEAUCHAMP, Defendant-Appellee.	LC No. 04-418774-CZ

Before: Murphy, P.J., and Sawyer and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This issue in this case is whether the sale of stone by defendant to plaintiff for the purpose of building a retaining wall carried with it an implied warranty of fitness under MCL 440.2315, a section of the Uniform Commercial Code (UCC). The trial court ruled that it did not.

We review de novo a trial court's ruling with respect to a motion for summary disposition. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Issues of statutory interpretation are also reviewed de novo on appeal. *Roberts v Mecosta Co General Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002).

Article 2 of the UCC applies to contracts for the sale of goods. MCL 440.2102. Plaintiff has not discussed the preliminary question regarding whether the stone at issue constituted goods as defined by the UCC. See MCL 440.2105(1) and MCL 440.2107(1). Assuming without deciding that the contract did involve the sale of goods, we find that plaintiff failed to establish a prima facie case of breach of warranty.

A contract for the sale of goods may carry an implied warranty of fitness for a particular purpose:

> Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill and judgment to select or furnish suitable goods, there is

> unless excluded or modified . . . an implied warranty that the goods shall be fit for such purpose. [MCL 440.2315.]

The evidence showed that defendant had reason to know the particular purpose for which the stone was required; he admitted at his deposition that plaintiff's president, Michael Storm, said he planned to use it to build a retaining wall. However, for an implied warranty to arise, defendant must also have known that Storm was relying on his skill and judgment to furnish stone suitable for that purpose. See *Ambassador Steel Co v Ewald Steel Co,* 33 Mich App 495, 501; 190 NW2d 275 (1971).

The evidence showed that Storm told defendant that he planned to use the stone to build a retaining wall but did not mention any particular attributes it required. Moreover, although there is a question of fact regarding whether defendant represented that the stone was suitable for use in a retaining wall, there is no evidence that Storm, a landscaper by profession, *relied on defendant*, who is not a landscaper, for selecting the type of stone with which the wall would be built. Indeed, Storm admitted that he went to the quarry from which defendant planned to buy the stone to examine the stone produced there. Despite noticing flaking stones at the site, Storm believed the stone to be suitable for his needs and placed the order with defendant. Because plaintiff did not rely on defendant's skill and judgment to furnish suitable goods, the trial court did not err in granting defendant's motion for summary disposition.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Patrick M. Meter