

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD R. ROBERTS and STACEY D.
ROBERTS,

Plaintiffs-Appellees,

v

ROBERT L. SAFFELL and JOANNE O.
SAFFELL,

Defendants-Appellants.

FOR PUBLICATION
August 21, 2008

No. 275458
Leelanau Circuit Court
LC No. 05-007063-CK

Advance Sheets Version

Before: Markey, P.J., and White and Wilder, JJ.

WHITE, J. (*dissenting*).

I respectfully dissent. The majority reverses on the basis that there can be no claim for innocent misrepresentation under the Seller Disclosure Act (SDA), MCL 565.951 *et seq.* Nowhere in defendants' brief or reply brief, however, is this argument made. Although defendants raised the issue below,¹ it is not raised on appeal because the case defendants lost at the trial in this matter was not an innocent misrepresentation case. Rather, the issue presented to the jury was whether defendants knew of the termite infestation and intentionally withheld the information from plaintiffs. Notwithstanding the terms used at trial, this is not innocent misrepresentation. On appeal, defendants challenge whether the evidence was sufficient to support these findings and whether the court wrongly barred evidence that would have supported defendants' position that they had no knowledge. Even during argument in this court, defendants conceded that these are the issues.

The unpublished cases the majority relies on are factually and procedurally different from the instant case. This case was litigated and tried with the jury being informed of the limitations on potential liability under the SDA. The issues of defendants' knowledge and their credibility in denying such knowledge, as well as their good faith, were properly submitted to the jury, and there was ample evidence from which the jury could have concluded that defendants had

¹ Before trial, the trial court stated on the record that defendants could again raise the issue in a motion for a directed verdict.

knowledge of the infestation and did not act in good faith in completing their seller's disclosure statement under the SDA.

I would affirm.

/s/ Helene N. White