

STATE OF MICHIGAN
COURT OF APPEALS

HERITAGE RESOURCES, INC.,

Plaintiff-Appellant/Cross-Appellee,

v

CATERPILLAR FINANCIAL SERVICES
CORPORATION, a/k/a CAT FINANCIAL and
MICHIGAN TRACTOR & MACHINERY
COMPANY, a/k/a MICHIGAN CAT,

Defendants,

and

GENCOR INDUSTRIES, INC.,

Defendant-Appellee/Cross-
Appellant.

FOR PUBLICATION
June 30, 2009

No. 284036
Kent Circuit Court
LC No. 03-001720-CK

Advance Sheets Version

Before: Jansen, P.J., and Hoekstra and Markey, JJ.

HOEKSTRA, J. (*concurring*).

Because MCR 7.215(J) requires me to follow *Romska v Oppen*, 234 Mich App 512; 594 NW2d 853 (1999), in which this Court adopted the flat-bar rule, I concur with the result reached by the majority. For the reasons stated in my dissent in *Romska*, I am convinced that the intent rule is the better-reasoned rule and the rule most consistent with Michigan caselaw and statutes. Here, it is apparent from the circumstances that Heritage did not intend for its settlement agreement with Michigan Tractor & Machinery Company to release and discharge its implied warranty claims against Gencor Industries, Inc. In all other aspects, I agree and join with the majority.

/s/ Joel P. Hoekstra