

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT ALAN CURRY and CARRIE ANN
CURRY,

Plaintiffs-Appellants,

v

MEIJER, INC.,

Defendant/Cross-Plaintiff-Appellee,

and

FABER BROTHERS, INC., and STREAM &
LAKE TACKLE, INC.,

Defendants/Cross-Defendants-
Appellees,

and

LOGGY BAYOU ENTERPRISES OF
ARKANSAS AND STREAM & LAKE
WHOLESALE, INC.,

Defendants/Cross-Defendants,

and

DEER DARLIN' ENTERPRISES LTD.,

Defendant.

FOR PUBLICATION
December 29, 2009

No. 288187
Calhoun Circuit Court
LC No. 2004-001207-NP

Advance Sheets Version

Before: MARKEY, P.J., and BANDSTRA and MURRAY, JJ.

BANDSTRA, J. (*concurring*).

I concur with the majority that the statute applicable here, MCL 600.2947(6)(a), protects Meijer from liability because plaintiffs have no proof that Meijer “failed to exercise reasonable care” in selling the tree stand to them. However, I write separately to note that the statute is not

as clear or unambiguous as the majority portrays it to be. As plaintiffs' argument demonstrates, the statute's reference to a "breach of any implied warranty" when, historically, it was not always necessary to establish any failure to exercise reasonable care to pursue such a breach, introduces some question and confusion about the statute's meaning. Notwithstanding that, I agree that the statute, properly interpreted, protects a nonmanufacturing seller of a product from liability unless that seller failed to exercise reasonable care regarding the sale, regardless of the theory of liability advanced.

/s/ Richard A. Bandstra