

STATE OF MICHIGAN  
COURT OF APPEALS

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ROBERT ALAN CURRY and CARRIE ANN  
CURRY,

FOR PUBLICATION  
December 29, 2009

Plaintiffs-Appellants,

v

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

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.

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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 as 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 non-manufacturing 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