

STATE OF MICHIGAN
COURT OF APPEALS

GORDON F. LARAMIE & SONS and LARAMIE
LEASING CORPORATION,

UNPUBLISHED
May 13, 1997

Plaintiffs-Appellees,

v

No. 186799
Wayne Circuit Court
LC No. 92-229682-NZ

MALCOLM CRANE, INC., SUPERIOR
EQUIPMENT REPAIR, MARK E. MALCOLM,
KIP D. ANDERSON, GNT LUCAS CORP.,
OLDHAM CRANE SERVICE, CLEMMONS
EQUIPMENT, INC., NATIONAL BANK OF
DETROIT, and JOHN DOE,

Defendants,

and

ESSEX CRANE RENTAL CORPORATION,

Defendant-Appellant,

and

NEIL F. LAMPSON, INC.,

Defendant-Appellee.

Before: Taylor, P.J., and Gribbs and R. D. Gotham,* JJ.

PER CURIAM.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant Essex Crane Rental Corporation (Essex) appeals as of right from the March 10, 1995 orders of the trial court following a bench trial which held that, pursuant to MCL 440.2403(2); MSA 19.2403(2), plaintiffs were the owners of the subject matter of this declaratory judgment action (to wit: a construction crane known as the Manitowoc 4100 Crawler Crane). We affirm.

The trial court did not clearly err in finding that Mark Malcolm was a merchant who dealt in goods of that kind. The finding was supported by the evidence and is in accord with the purposes of MCL 440.2104(1); MSA 19.2104(1). MCL 440.2403(2); MSA 19.2403(2); *Mich Residential Care Ass'n v Dept of Social Services*, 207 Mich App 373, 375; 526 NW2d 9 (1994); *Simonds-Shields-Theis Grain Co v Far-Mar-Co, Inc*, 575 F Supp 290, 293 (WD Mo, 1983); *American Nat'l Bank & Trust Co of Chicago v Mar-K-Z Motors & Leasing Co, Inc*, 57 Ill 2d 29; 309 NE2d 567 (1974).

The trial court's findings that (1) plaintiffs were "buyers" within the meaning of MCL 440.1201(9); MSA 19.1201(9), (2) the crane was sold in the ordinary course of business, and (3) plaintiffs and defendant Lampson purchased the crane in good faith and without notice of adverse claims, are supported by the evidence and are not clearly erroneous. MCL 440.1201(9); MSA 19.1201(9); MCL 440.2103(1)(b); MSA 19.2103(1)(b); *Foy v First Nat'l Bank of Elkhart*, 868 F2d 251, 254-255 (CA 7, 1989); *Townsend v Brown Corp*, 206 Mich App 257, 263; 521 NW2d 16 (1994); *Karibian v Paletta*, 122 Mich App 353, 359; 332 NW2d 484 (1983).

The trial court did not abuse its discretion in granting plaintiffs' motion in limine to preclude William McNally from testifying as an expert witness. Essex failed to comply with the court's scheduling order. *Grubor v Kortidis*, 201 Mich App 625, 629; 506 NW2d 614 (1993).

Affirmed.

/s/ Clifford W. Taylor
/s/ Roman S. Gibbs
/s/ Roy D. Gotham