# STATE OF MICHIGAN

# COURT OF APPEALS

LOUIS S. JUREK and PATSY L. JUREK,

Plaintiffs-Appellants,

v

MACK TRUCKS, INC.,

Defendant-Appellee, and

ROGER ROBERTS, ROBERTS TRUCKING COMPANY, GUARDO COMPANY, BILL KETTLEWELL EXCAVATING COMPANY, DELKAMP TRUCK CENTER, MV DISPOSAL, GAYLORD MOTORS, MJL TRUCK SALES, and M & B ENTERPRISES,

Defendants.

UNPUBLISHED
November 22, 1996

No. 182843
LC No. 91-4828-NP

Before: Gribbs, P.J., and Markey and T. G. Kavanagh,* JJ.

PER CURIAM.

Plaintiffs appeal the circuit court order granting defendant Mack Trucks, Inc's, motion for summary disposition. Plaintiffs raise several issues on appeal, contending that summary disposition was precluded by questions of material fact as to whether defendant acted as a reasonably prudent seller in this case. We affirm.

The essential facts are concisely set out in the trial court's written opinion:

> In short, Plaintiff was injured [in 1988] while in the process of loading a container onto a 1977 Ford LT 9000 truck. [Defendant] Mack Trucks had repossessed the truck and sold it to a third-party wholesale dealer in 1986. The truck had been modified into a roll-off configuration by another party prior to [defendant] Mack acquiring and selling it.

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

> Plaintiff claims that [defendant] Mack negligently placed the vehicle into the stream of commerce when they knew or should have known that the lift, the hydraulic system and hydraulic controls of the modified roll-off system were defective.

A defendant seller owes a general duty of care to a plaintiff user. However, as the trial court noted, the defendant in this case sold to a wholesaler, and it was the wholesaler that sold the truck to the plaintiff user. Even assuming arguendo that defendant had a duty to exercise the care of a reasonably prudent seller on the facts of this case, there was insufficient evidence that defendant breached the general standard of care. Defendant was not the manufacturer of the truck, and defendant did not modify the vehicle. Plaintiff's expert testified that the alleged defect was a modification of the truck and that the defect was latent A manufacturer or seller owes a duty to warn or inspect a product if he has reason to know or can readily ascertain that it is defective. *Stachurski v K Mart*,180 Mich App 564; 567;447 NW2d 830 (1989). There is no evidence here that defendant had reason to know or could readily have ascertained the alleged defect. The trial court properly granted summary disposition.

Affirmed.

/s/ Roman S. Gribbs
/s/ Jane E. Markey
/s/ Thomas Giles Kavanagh