

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT DAVID, SR., and DONNA DAVID,

Plaintiffs-Appellants,

v

MACHINERY DISTRIBUTION, INC.,
MITSUBISHI CATERPILLAR FORKLIFT
AMERICA, INC., MDI, and MCFA,

Defendants-Appellees,

and

GB SALES & SERVICE, INC., a/k/a G & B LIFT
TRUCK SALES & SERVICE,

Defendant.

UNPUBLISHED

August 12, 2003

No. 239231

Oakland Circuit Court

LC No. 99-015054-NP

Before: Hoekstra, P.J., and Fitzgerald and White, JJ.

WHITE, J. (*concurring*).

I agree that the manufacturing defect claim was properly dismissed because plaintiff presented no evidence that the forklift deviated from a production standard and was not made in its intended condition. See *Lagalo v Allied Corp*, 218 Mich App 490, 495; 554 NW2d 352 (1996), rev'd on other grounds 457 Mich 278; 577 NW2d 462 (1998). Because plaintiff did not present evidence regarding the magnitude of the risk of backup injuries arising from the alleged design defect, that claim was properly dismissed. *Owens v Allis-Chalmers Corp*, 414 Mich 413, 429-432; 326 NW2d 372 (1982). I also agree that under the circumstances presented here, plaintiff's employer was a sophisticated user of forklifts, and that the circuit court thus properly determined there was no duty to warn. I would note that, although the safety devices plaintiffs urge should have been in place were clearly available and widely used in 1991 when the instant forklift was manufactured by MHI Forklift America, Inc., and distributed by MDI, the ASME/ANSI safety standards for lift trucks in effect at the time provided that the decision whether to equip a forklift with safety devices beyond a horn-like instrument was left to the user, i.e., in this case, plaintiff's employer: "Every truck shall be equipped with an operator-controlled horn, whistle, gong, or other sound-producing device(s)," and "The user shall determine if operating conditions require the truck to be equipped with additional sound-producing or visual (such as lights or blinkers) devices, and be responsible for providing and maintaining such

devices.” OSHA regulations provide that only trained and authorized operators be permitted to operate lift trucks. Employers are responsible for complying with OSHA regulations. There was testimony that plaintiff’s employer relied on the seller of the forklift, former defendant GB Sales, for the forklift being equipped with proper safety devices and for maintenance of the forklift. However, GB Sales was dismissed by stipulation of the parties and its liability is not at issue in this appeal.

/s/ Helene N. White