Summary of SC90258, *Renaissance Leasing, LLC, et al. v. Vermeer Manufacturing Company, Vermeer Great Plains, Inc.*
Appeal from the Jackson County circuit court, Judge Kelly Jean Moorhouse
Argued and submitted Feb. 24, 2010; opinion issued Aug. 31, 2010

Attorneys: Renaissance Leasing and the other plaintiffs/appellants were represented by Kirk T. May and William D. Beil of Rouse Hendricks German May PC in Kansas City, (816) 471-7700; and Vermeer and Great Plains were represented by W. Perry Brandt and Fred L. Sgroi of Bryan Cave LLP in Kansas City, (816) 374-3200, and Gary J. Willnauer and Ryan R. Cox of Morrow, Willnauer & Klosterman LLC in Kansas City, (816) 382-1382.

Overview: A man and two of his companies appeal summary judgment in favor of the manufacturer and dealer they sued for claims related to the sale of a piece of heavy mining equipment to a non-party. In a unanimous decision written by Chief Justice William Ray Price Jr., the Supreme Court of Missouri holds the evidence is sufficient to demonstrate a genuine issue of material fact about the transfer of the equipment and assignment of related warranty rights to the man's companies. The grant of summary judgment in favor of the manufacturer on one of the companies' breach of express warranty claims is reversed. The grant of summary judgment in favor of the manufacturer on the man's negligent misrepresentation claim also is reversed. All other grants of summary judgment are affirmed. The case is remanded (sent back) for further proceedings.

Facts: Crush Technology LLC, which was formed to quarry limestone near Springfield, acquired a Vermeer T1055 terrain leveler from Vermeer Great Plains (Great Plains), an independent dealer and regional distributor for Vermeer Manufacturing Company (Vermeer). Crush obtained loans to do so from John Uhlmann and from the Uhlmann Company, a Kansas City firm consisting of members of the Uhlmann family. The T1055 was designed and marketed for surface mining, overburden removal, road construction and soil remediation. Before any sales contract or payment was made, the leveler was transported to the quarry for a two-month demonstration period, during which Crush tested it under various conditions. It performed well on the overburden (or scrap) rock but experienced problems in excavating hard limestone. In September 2002, Crush executed a sales contract with Great Plains to buy the T1055, which was warranted against manufacturer defects for one year or 1,000 operating hours. Before making its final payment near the end of October 2002, Crush members and Uhlmann met with Vermeer representatives at Vermeer's headquarters, where they sought and received assurance that the T1055 would be repaired or redesigned to function in the limestone quarrying as represented.

Two months later, Uhlmann took a 92.5-percent ownership interest in Crush after the Crush members amended their operating agreement, purportedly in consideration for the money Uhlmann personally had loaned to Crush. At the same time, Uhlmann formed Renaissance Leasing Company LLC, with himself as the sole member, for the purpose of owning and leasing Crush's mining equipment. Soon afterward, the T1055 allegedly was transferred to Renaissance

as security for Uhlmann's investment and then leased back to Crush, although no records document the transfer or indicate whether the written limited warranty also was transferred to Uhlmann. Beginning in October 2002, Great Plains and Vermeer performed warranty repairs on the machine, which was moved in January 2003 from the quarry to a highway location, where it continued to be operated. By April 2003, Uhlmann had fired three of the founding members of Crush and renamed the company Mo-Kan Rock & Gravel Company LLC. In August 2003, Renaissance notified Mo-Kan that Mo-Kan had defaulted on its rental payments. At the same time, Uhlmann formed TEAM Excavating LLC with himself as the sole member. The next month, Uhlmann dissolved Mo-Kan and, as the only remaining member with a positive capital account balance, received distribution of the liquidation proceeds. In June 2004, Uhlmann assigned these liquidation proceeds to TEAM, which executed a lease agreement with Renaissance for the same equipment that previously had been leased back to Crush/Mo-Kan. Between September 2003 and June 2004, TEAM used the T1055 and other Renaissance-owned equipment without any lease agreement in place.

After first attempting to pursue claims in federal court, Uhlmann, Renaissance and TEAM sued Vermeer and Great Plains in August 2006 in a state circuit court for fraud, negligent misrepresentation, breach of express and implied warranty, and breach of contract. Vermeer and Great Plains moved separately for summary judgment. The trial court granted summary judgment in favor of Vermeer in June 2007 and in favor of great Plains in September 2007. Uhlmann and his companies appeal.

AFFIRMED IN PART; REVERSED IN PART; VACATED IN PART; REMANDED.

Court en banc holds: (1) Although the plaintiffs' petition attempts to establish a collective identify for the separate business entities and individuals involved, Missouri law does not recognize a "collective" corporate identity. Uhlmann's position as sole or majority member of various companies does not equate to an identity of interests among them. Each company is a distinct legal entity with the right to own property, sue and be sued, contract, and acquire and transfer property. Accordingly, each entity must plead and prove its claims individually to be entitled to relief. This Court will interpret strictly the allegations and interests of each individual entity without deference to the claims of collective identity.

(2) As to Renaissance's claim against Vermeer and Great Plains for breach of express warranty that the T1055 would be free from defects in material and workmanship after normal use for one year or 1,000 hours after purchase, the trial court erred in granting summary judgment to Vermeer and Great Plains because Renaissance provided sufficient evidence to support its claim. It is undisputed such a warranty was made in the sale to Crush of the T1055, which is non-titled personal property. In Missouri, written documentation is not required for a limited liability company to transfer non-titled property, and any competent evidence may be introduced to establish the fact of ownership of personal property. There is sufficient evidence – from the testimony of Uhlmann and Crush's former vice president and chief financial officer, as well as the master lease agreement between Renaissance and Crush – to allow a jury to find the T1055 was transferred to Renaissance. There also is sufficient evidence to allow a jury to find the warranty was assigned to Renaissance. Although Missouri has not addressed specifically the assignment of express warranties at the time of transfer, the majority view in other states is that

an express warranty of fixed duration in a sale of personal property runs with the property on resale unless the warranty clearly limits coverage to the first purchaser. Here, no express terms in the warranty either restrict its coverage to the original retail purchaser or prohibit its assignment to a subsequent purchaser. Further, the uniform commercial code permits all of a buyer's rights to be reassigned in a sale of goods, and Missouri case law holds that no particular form of words is necessary to accomplish an assignment so long as the circumstances show an intention on the one side to assign and on the other side to receive. Here, the evidence – including that of the parties' behavior after the purported transfer – supports Crush's intention to assign the warranty and Renaissance's intention to receive it. In addition, Renaissance has provided sufficient evidence of injury for its claims to be tried by a jury. Although Renaissance did not show either that it lost business or business opportunities by being unable to rent the T1055 or that it ever received any rent from Crush or TEAM, the record supports an inference that Renaissance lost rental income due to Mo-Kan's failure to pay rent because of the malfunctioning T1055.

(3) As to TEAM's similar claim for breach of express warranty, the trial court properly granted summary judgment to Vermeer and Great Plains because TEAM failed to show the harm Crash suffered as a result of the T1055's alleged failure to function as warranted. Giving the plaintiffs the benefit of all reasonable inferences, there is evidence to support Uhlmann's contention that he had authority to assign Crush's warranty claims to TEAM. Section 400.2-210.2, RSMo, allows a right to damages for breach of a contract to be assigned, and assignments are encouraged unless the parties expressly provide otherwise. Although Missouri courts have not addressed specifically whether this right to damages for contractual breach contemplates express warranties, the case law in other states is persuasive that it is. Here, giving TEAM the benefit of all reasonable inferences, the evidence is sufficient to allow a jury to find a valid assignment of Crush's warranty claims to TEAM. This assignment, however, only would extend to the rights or interests Crush had at the time of the assignment, and TEAM fails to plead and prove that Crush suffered harm due to Vermeer's breach of the warranty. It merely cites Uhlmann's testimony about how he was injured, which is insufficient to show injury to Crush.

(4) As to Renaissance's claim against Great Plains for breach of the implied warranties of the T1055's merchantability and fitness for a particular purpose, the trial court properly granted summary judgment to Great Plains because Renaissance's claims fail as a matter of law. Renaissance was not in privity with (did not contract directly with) Great Plains, and under Missouri law, although a remote (subsequent or second-hand) purchaser such as Renaissance may sue the manufacturer for breach of implied warranties, it may not sue the seller in the original sale, to which the subsequent purchaser was not a party, for such a breach. It would be unreasonable to imply a warranty against a dealer such as Great Plains, which would be incapable of warranting the T1055's fitness at the time of its subsequent sale to an unrelated party not in existence when Great Plains executed the sales contract with Crush. Any claim Renaissance has for breach of implied warranty would be against Crush, from which it purchased or received the T1055, not against Great Plains.

(5) As to TEAM's similar claims for breach of implied warranty, the trial court properly granted summary judgment to Great Plains because TEAM fails either to plead or to prove that Crush was injured by the T1055's defective nature. Crush was in privity with Great Plains, and the evidence is sufficient for a jury to find a valid assignment of Crush's warranty claims to TEAM.

To prevail on its claims, TEAM must allege facts showing that Crush – as the immediate buyer – would have been entitled to relief. It failed to do so.

(6) As to Renaissance's and TEAM's claims against Great Plains for breach of contract arising out of damage to Crush, the trial court properly granted summary judgment to Great Plains because Renaissance's and TEAM's claims fail as a matter of law. Under Missouri law, remedies for economic loss sustained by reason of damage to or defects in products sold are limited to those under the warranty provisions of the uniform commercial code. Under this code and section 400.2-711.1, RSMo, remedies for breach of contract are available to a buyer when the seller fails to make delivery or repudiates or when the buyer rightfully rejects or justifiably revokes acceptance of delivery. Here, there is no dispute that Crush accepted delivery of the T1055 and notified Great Plains about the machine's inability to perform terrain leveling adequately. Accordingly, Renaissance and TEAM cannot recover under section 400.2-711 for breach of contract.

(7) As to Uhlmann's claims against Vermeer for fraudulent misrepresentation, the trial court properly granted summary judgment to Vermeer because Uhlmann failed to establish one of the essential elements of fraud for each of two alleged misrepresentations, precluding his recovery on either.

> (a) As to the first alleged representation – that the T1055 would perform terrain leveling and surface mining – Uhlmann fails to show he relied on the representation being true. Despite the general rule that reliance is a fact issue for the jury, a party who undertakes an independent investigation does not have the right to rely on the misrepresentations of another. Here, Crush conducted its own evaluation of the T1055 during the two-month demonstration period at the quarry, and none of the three exceptions to the investigation rule applies. As such, Uhlmann cannot show he relied on the truth of the first representation prior to purchase.
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> (b) As to the second alleged misrepresentation – that the T1055 could be repaired so that it could perform terrain leveling as represented prior to sale and in the advertising – Uhlmann fails to show the representation was false. The truth or falsity of a representation is determined as of the time it is made. Here, Vermeer's alleged statement that it would repair or redesign the machine is a statement of intent, and evidence shows Vermeer continuously attempted to fix the terrain leveler over the course of the warranty period; the failure of performance does not establish intent. Even giving Uhlmann the benefit of all reasonable inferences, there is insufficient evidence to allow a jury to find that Vermeer's alleged misrepresentation about repairing the T1055 was false when it was made.

(8) As to TEAM's similar claims for fraudulent misrepresentation, the trial court properly granted summary judgment to Vermeer because for the same reasons as described for Uhlmann's claims above in Paragraph 7.

(9) As to Uhlmann's claims against Vermeer for negligent misrepresentation, the trial court erred in granting summary judgment for Vermeer because Uhlmann has provided sufficient evidence

to establish each of the challenged elements for his claim. He bases his negligent misrepresentation claims on the same two representations as his fraudulent misrepresentation claims.

> (a) As to the first representation, for the same reasons discussed in Paragraph 7(a) above, Uhlmann cannot satisfy that he relied on the alleged misrepresentation.
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> (b) As to the second representation – that the T1055 could be repaired or redesigned to perform terrain leveling – Uhlmann has provided sufficient evidence to establish each of the challenged elements. Unlike fraudulent misrepresentation, a claim for negligent misrepresentation does not involve a question of intent but instead is premised on the theory that the speaker believed the information supplied was correct but was negligent in so believing. Here, if believed, the evidence is sufficient to show Vermeer's statement that the T1055 could be repaired or redesigned to perform terrain leveling was false because of Vermeer's negligence. Despite work done over the course of the warranty period, Vermeer did not repair or redesign the T1055 successfully, and an expert testified that Vermeer failed to conduct adequate testing of the machine's design before selling it. The evidence also is sufficient to show that Vermeer made representations to Uhlmann and Crush about the T1055's capabilities in the context of the "particular business transaction" of the machine's sale, even if the sales order was executed with Great Plains alone. Privity is not necessary under the circumstances here, which show Vermeer representatives met with a group including Uhlmann and Crush members before the sales contract was executed and before the final payment was made. As to Uhlmann's reliance on Vermeer's statement, two exceptions to the inspection rule apply. There is sufficient evidence for a jury to find that: first, the demonstration in the quarry was only a partial inspection because it failed to reveal conclusively whether the T1055 could be repaired or redesigned to perform terrain leveling; and second, Uhlmann and Crush lacked equal footing for learning whether the T1055 could be repaired or redesigned to perform terrain leveling. As such, a genuine dispute exists about whether Uhlmann relied on the truth of Vermeer's second representation.

(10) As to TEAM's claims against Vermeer for negligent misrepresentation, the trial court properly granted summary judgment to Vermeer because, as with its warranty claims (as discussed above in Paragraphs 3 and 5), it fails either to plead or to prove that Crush was injured by its reliance on Vermeer's second representation (as described above in Paragraph 7(b)) and, therefore, cannot establish all essential elements of negligent misrepresentation.

(11) As to the plaintiffs' argument that the trial court's grant of costs to the defendants was excessive, because the case is remanded, there is no final grant of costs.