MISSOURI COURT OF APPEALS
WESTERN DISTRICT

B & P EXCAVATING, LLC, Respondent,
v.
MID-MO EQUIPMENT, LLC, ET AL, Appellants.

Docket Number WD88554

DATE: November 17, 2026

Appeal From:

Pettis County Circuit Court
The Honorable Jeff A. Mittelhauser, Judge

Appellate Judges:

Special Division Lisa White Hardwick, Presiding Judge, Cynthia L. Martin, Judge, and Gary D. Witt, Judge

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Attorneys:

Laurie Ward, James Spangler, Cale Spangler, Sedalia, MO, for respondent.

Jose Cladera, Allison Hazen, Phebe LaMar, Daniel Beckett, Columbia, MO, for appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

B & P EXCAVATING, LLC, Respondent,
v.
MID-MO EQUIPMENT, LLC, ET AL, Appellants.

WD88554 Pettis County

Before Special Division: Lisa White Hardwick, Presiding Judge, Cynthia L. Martin, Judge, and Gary D. Witt, Judge

Mid-MO Equipment, LLC and Top Shelf Hauling, LLC appeal the trial court's judgment in favor of B & P Excavating, LLC on a claim for breach of the implied warranty of merchantability. On appeal, Mid-MO Equipment, LLC and Top Shelf Hauling, LLC argue that the trial court erred in finding there was a breach of the implied warranty of merchantability because B & P Excavating, LLC signed and acknowledged the terms and conditions of the sale that explicitly modified and disclaimed the implied warranty of merchantability. Mid-MO Equipment, LLC and Top Shelf Hauling, LLC further contend that the trial court misapplied the law when it calculated the damages for the breach of the implied warranty of merchantability claim.

AFFIRMED.

Special Division holds:

1. The trial court did not err in finding that there was a breach of the implied warranty of merchantability with respect to the emissions control system on the dump truck despite the "as is, where is" language in the terms and conditions of the sale because the circumstances in this case indicated the "as is, where is" condition of the dump truck included an intact emissions control system, in that the dump truck had a label indicating it had an emissions control system and a pre-purchase inspection could not have revealed that the emissions control system had been deleted.

2. The trial court did not misapply the law in calculating the damages of B & P Excavating, LLC for breach of the implied warranty of merchantability, as it correctly applied the appropriate measurement of damages based upon values offered into evidence.

Opinion by: Cynthia L. Martin, Judge November 17, 2026

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