

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

1
2 THE COURT: I think that the next case up is
3 19-CP-10-6567, Hamilton vs. 301 Auto Parts, LLC. I think
4 Defendant 301 --

5 MR. NISTAD: That's the only Defendant.

6 THE COURT: That's the only Defendant we've got, all
7 right. Is the body shop out of this or were they ever in
8 it?

9 MR. NISTAD: They were never in it.

10 THE COURT: Okay. This is the Defendant's motion for
11 summary judgment relating to a Kia. Apparently, two
12 engines, two different engines were put in it. Purportedly,
13 based on the Defendant's theory, after the replacement
14 engine was put in it, shortly, therefore, the Kia caught
15 fire, destroyed the car. This centers around the
16 Defendant's motion for summary judgment because the
17 Plaintiff hasn't named an expert witness.

18 The floor is yours.

19 MR. NISTAD: Thank you, Your Honor. My name is Gunnar
20 Nistad. I represent the Defendant, 301. Your summary was
21 excellent.

22 What we have here is two engines were supplied to the
23 Plaintiffs. The first engine did not work for some reason,
24 we don't know why. We never asked to inspect that engine or
25 why it didn't work. 301 just sent a replacement engine

1 without charge to the Plaintiffs. That engine was then
2 installed in the Kia, which was not new. It had over
3 160,000 miles on it. It had been damaged, that's why the
4 replacement engine was necessary.

5 THE COURT: The replacement engine was not new or it
6 was new?

7 MR. NISTAD: The replacement engine was not new, the
8 car itself was not new.

9 THE COURT: Okay, right. And the replacement engine
10 was a used engine?

11 MR. NISTAD: Yes.

12 THE COURT: Okay. I had the same thing happen with a
13 Chevy Traverse. Go right ahead.

14 MR. NISTAD: So the second engine allegedly caught
15 fire. What happened was there was a fire in the engine
16 compartment. That we know is true. The question is, did
17 the engine that was supplied by 301 cause that fire or some
18 other component in the car? Or did the mechanic who
19 installed the engine, who was not an employee of 301, do
20 something wrong in his installation of the engine that would
21 cause the fire?

22 So it's a complicated piece of machinery. I have an
23 expert, Mr. Durden (ph), who submitted an affidavit who
24 identifies that there are several possible causes of that
25 fire unrelated to the engine. There are two different fuel

1 line issues that preexisted in the Kia. The fuel lines were
2 not supplied by Defendant 301.

3 One of those fuel line issues dealt with an issue where
4 if the mechanic installs an engine wrong, he can damage a
5 fuel line and that would cause a fire and not the
6 replacement of the engine -- not the engine that's being
7 replaced, but it's the installation process by a mechanic.

8 There is also a hydraulic problem that could cause a
9 short that is also a potential fire hazard. So Mr. Durden
10 identifies these fire hazards, inspects the car and,
11 basically, says I can't tell you what caused the fire and he
12 doesn't think anyone can.

13 But unless the Plaintiffs can show that there is --
14 that they have evidence through an expert that the fire was
15 caused by the engine sold by 301, they cannot prevail on
16 their causes of action. The cause of the fire is essential
17 to all the causes of action the Plaintiffs have alleged.

18 So that's our argument in a nutshell. I think you've
19 read what I have submitted.

20 THE COURT: I did. The --

21 MR. NISTAD: I would point out the South Carolina
22 courts have addressed a similar issue in the Harris vs.
23 Roses case. In that case, the Plaintiffs had an expert.
24 They went one step farther than the Plaintiffs here. But
25 that expert could only say that the fan that was bought at

1 Roses possibly caused the fire and that wasn't enough to
2 carry the day.

3 The Plaintiffs have the burden of proof. We don't
4 follow res ispa loquitur in South Carolina. Plaintiffs have
5 to have some evidence of causation.

6 THE COURT: I'm hearing the mechanic that installed it,
7 they're not a party to this action in any way. Were they
8 deposed?

9 MR. NISTAD: We've asked for that deposition. We were
10 unable to find the mechanic.

11 MR. TISDALE: Your Honor, neither party has been able
12 to locate the installer of the engines after diligent
13 searches.

14 THE COURT: Mr. Tisdale, let me hear from you on your
15 take.

16 MR. TISDALE: Your Honor, what this case involves is
17 the purchase of two engines from 301 Auto Parts. Just a
18 little background on 301, the company. And all this is
19 based on the testimony of Mr. Brian Ard, which we included
20 in our motion to responses. He's the owner of 301.

21 They buy wrecked cars from insurance companies who paid
22 the losses for the wrecked cars, totaled, I presume, and
23 they sell the engines from the wrecked cars, perhaps, other
24 parts, too, but in this case, the engines.

25 One thing very clear is that they don't inspect the

1 engines in any way before they sell them except to determine
2 whether or not it will, in their words, crank. And if it
3 cranks, they put it on a shelf and sell it.

4 In this case, they sold two engines. One didn't work
5 at all. They replaced it, no charge. The second engine,
6 likewise, not inspected in any way was to sold to our
7 clients, Lonnie Hamilton and his niece, Zoe Culbreath, who
8 lives in Greenwood, Ms. Culbreath does. And that engine
9 caught on fire and totaled the car. And the fire department
10 report says that when they arrived, the engine compartment
11 was, quote, engulfed in flames.

12 So our claim is not on what caused the fire because the
13 fire happened and that can't be disputed in any way, shape
14 or form. So we have sued for negligence in not inspecting
15 the engine and giving it to someone to purchase who have no
16 idea what the condition of the engine was.

17 We've also sued on a claim for breach of warranty. In
18 our case, breach of warranty for an intended purpose because
19 it clearly was not suitable for the purpose.

20 And the third thing is we've sued for unfair trade
21 practices. Because they -- Kia, the engine -- the
22 automobile has got a horrible reputation for fires in the
23 engine. We did not know about it, of course. The company,
24 301, did nothing to find out about the recalls of these
25 engines, recalls of the automobiles. So we think it's an

1 unfair trade practice to be selling these engines without
2 telling anybody that they're hazardous.

3 So we don't need an expert witness for any of those
4 three causes of action, breach of contract -- I mean,
5 negligence, breach of warranty or unfair trade practice
6 requires no scientific testimony.

7 So we think the case is clear that the summary judgment
8 motion should be denied for those reasons. We just don't
9 need that evidence. And the lawyers, as I'm certain Your
10 Honor knows, I think it was Justice Toal in the Hancock case
11 said that only a scintilla of evidence is necessary to get
12 around a summary judgment motion. That's especially true in
13 this case because we don't even get to the necessity of
14 proving the causation of a fire. It occurred.

15 And then as Watson vs. Ford Motor Company says, the
16 expert evidence is necessary only when scientific or
17 technical evidence is needed, and that is not necessary to
18 support any of our three causes of action.

19 THE COURT: Okay. You want to respond, Mr. Nistad?

20 MR. NISTAD: Yes, sir. So points that Mr. Tisdale
21 bring up are interesting, but I think they all deal with
22 whether there's a duty. You know, Plaintiffs have the
23 burden of proving all the elements. One of the things they
24 have to prove is that there is causation. And I think Mr.
25 Tisdale said it himself, we know that the fire happened.

1 That's all he can tell us. Yes, the fire happened, but what
2 caused that fire? If the engine is not faulty and something
3 else caused the fire, 301 shouldn't be held responsible for
4 it.

5 And as Mr. Durden pointed out, there are several
6 different explanations of why that fire could have been
7 caused that aren't related to the sale of the engine by 301.
8 It's the mechanic maybe installed the fuel line the wrong
9 way. Maybe it's the original accident that harmed the
10 original Kia engine and components that caused the fire.
11 The allegation of a defective engine or a negligent
12 inspection of the engine is just one of the possible
13 explanations for why this fire occurred.

14 It's up to the Plaintiff to satisfy their burden of
15 proof and give some evidence, an expert who can say it's my
16 opinion to a reasonable degree of certainty engineering-wise
17 that the engine supplied by 301 caused the fire and not any
18 of these other explanations that would exonerate 301.

19 So the Plaintiffs just haven't gone far enough with
20 their evidence to get to a scintilla of evidence. They have
21 to have that expert testimony because the car itself and the
22 engine are complicated pieces of machinery that a lay person
23 just won't understand. I just think saying the engine
24 caused the fire simplifies it beyond the facts that are
25 present.

1 THE COURT: Let's try going down this road. I'm
2 hearing that your own expert cannot definitively say what
3 the source of the fire was, what the cause of the fire was?

4 MR. NISTAD: Right.

5 THE COURT: Now, I understand that South Carolina
6 doesn't -- we don't do res ispa where rule of circumstance
7 evidence state, but -- and at best, I'm a poor mechanic
8 myself, but I know what makes a car run, you've got to have
9 the gas combined with air combined with fire. And the only
10 place that's supposed to happen is in the engine. You know,
11 that's the only place --

12 MR. NISTAD: So -- but with the fuel delivery systems,
13 I mean, what's happening is if the fuel leaks and that fire
14 doesn't occur in the engine, it occurs somewhere else, you
15 know, the heat and the combustible material, which is either
16 oil or gasoline, ends up outside of that engine, that can
17 catch fire.

18 THE COURT: You know, I've got a Model T with a bad
19 floater, so I know exactly what you're talking about.

20 MR. NISTAD: So I think it's -- it has to be an expert,
21 I think, because he has to pinpoint what caused -- not
22 pinpoint necessarily, but he has to have evidence that the
23 engine that was sold caused the fire. He doesn't have to
24 prove it without a doubt, just has to have evidence that
25 more likely than not it was the engine.

1 THE COURT: If that's the standard, then, you know, the
2 car is burnt up and, apparently, it was damaged so badly
3 that your expert couldn't say well, this was the fuel line,
4 this was the engine, this was --

5 MR. NISTAD: Well, he got to that car and somebody had
6 already tampered with it -- I don't want to say tampered,
7 that's not the right word. Someone had modified the
8 wreckage, taken things off and done things that there was
9 evidence missing.

10 THE COURT: It had already been cannibalized?

11 MR. NISTAD: I don't know. I mean, maybe that's one of
12 the explanations. If you read his expert report -- his
13 affidavit, I mean, it says there were parts that had been
14 taken off the engine and placed in other -- you know, on the
15 ground or on top of the engine and he concluded that someone
16 had definitely made modifications to the engine after the
17 fire, whether it was taking parts to sell or someone trying
18 to figure out what the fire was, I don't know. It doesn't
19 matter. I mean, there's no explanation for why that fire
20 occurred that they have in evidence. All they said is it
21 happened.

22 THE COURT: What about their argument that 301 is,
23 essentially -- they're buying wrecked vehicles, they're
24 cannibalizing the engines, they're making sure that they
25 simply crank and, perhaps, before they put these things back

1 into the stream of commerce they've got an affirmative duty
2 to make sure that they do more than just turn over? They're
3 not a hazard before they put them back out there for
4 somebody to stick in their own car?

5 MR. NISTAD: I think there still has to be a damage and
6 that damage, in this case, would be the fire. We don't know
7 if there's anything wrong with that engine. It worked. You
8 know, they ran it. They made sure it worked. They did it
9 with the previous engine, too. You know, is it the mechanic
10 who installs it wrong and causes the fire?

11 You know, if you read closely these recalls and most of
12 that -- the important language Mr. Durden's affidavit is one
13 recall is related to potential problems with the
14 installation of an engine that had been replaced. Kia had
15 already had a recall on engines and it replaced engines.

16 After that recall, there was a subsequent recall saying
17 oh, we found that we're having fires because these mechanics
18 who put the engines in were doing it wrong and they're
19 damaging one of the fuel lines. I can't remember if it's
20 the high pressure one or the low pressure one, but it's one.
21 That's not the engine component installed by 301 that has
22 the problem, it's a fuel line problem. It's still a Kia
23 issue.

24 And Plaintiff, as the owner, presumably, had notice of
25 those recalls because they're the owner and they're the

1 original owner. So Kia would have, you know, have
2 information about who the owner was and be able to send them
3 those recalls, and did. We're not installing the engine,
4 we're selling a part.

5 THE COURT: I understand. The mechanic who put this
6 in, is he just a shade tree mechanic or --

7 MR. TISDALE: He's a certified mechanic, Your Honor, we
8 just can't find him.

9 THE COURT: Interesting.

10 MR. TISDALE: Yes.

11 THE COURT: Mr. Tisdale, is discovery complete or are
12 y'all still trying to find this mechanic or have y'all given
13 up?

14 MR. TISDALE: Well, we would like to find him, but we
15 can't. We did a serious search, so did they -- so did the
16 Defendants' attorney. We just can't find him. He
17 disappeared.

18 THE COURT: Mr. Tisdale, let me give you last word on
19 this thing. Was there anything else you wanted to add, Mr.
20 Tisdale?

21 MR. TISDALE: I just wanted to say that all of our
22 complaints are connected to the transaction of the purchase
23 and sell of the engine, not the fire.

24 THE COURT: Well, your damages flow from the fire.

25 MR. TISDALE: They do.

1 THE COURT: Okay. Y'all have completed discovery and
2 this is on the trial docket or not?

3 MR. TISDALE: Well, it's 200 and something on the trial
4 docket.

5 MR. NISTAD: It's not on the trial docket yet, but it
6 could show up on one soon, I think.

7 MR. TISDALE: It's 218 or something like that.

8 THE COURT: Let me do this, let me take it under
9 advisement. I want to take a second look at this. I found
10 the deposition --

11 MR. TISDALE: It's in there.

12 THE COURT: Yeah. I want to take a second and look at
13 this and reflect on the Harris V. Roses and the Hancock case
14 and maybe take a look at those a little bit harder. I'll
15 have this under advisement. I'll try and have y'all
16 something in the coming days by way of Form 4.

17 MR. TISDALE: Your Honor, if you need anything else
18 from either one of us, please let us know.

19 THE COURT: I'll shout out if I do. I appreciate it.

20 MR. NISTAD: Thank you, Your Honor.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

July 2, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III