

**EXHIBIT
C**

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Lonnie Hamilton, III, and Zoe`Lia L.)
Culbreath,)
)
Plaintiffs,)
)
vs.)
)
301 Auto Parts, LLC,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CIVIL CASE NO. 2019-CP-10-06567

ORDER

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SC Court of Appeals

Addy, J.

This matter came before the Court via WebEx on March 28, 2022 on Defendant’s motion for summary judgment. The Plaintiffs were represented by Thomas S. Tisdale Jr., Esq. The Defendant was represented by Peter Gunnar Nistad, Esq. After hearing oral arguments, reviewing the filings of both parties, and considering the applicable law, the Court grants Defendant’s motion for summary judgment.

Plaintiffs owned a 2013 Kia Optima automobile that required replacement of the original engine due to an oil leak caused by a collision. In June of 2019, Plaintiff Lonnie Hamilton III purchased a replacement engine (hereinafter, “First Engine”) from Defendant 301 Auto Parts, LLC. For some unknown reason, the First Engine did not operate after installation. On July 15, 2019, Defendant 301 shipped a replacement engine (hereinafter, “Second Engine”) to Plaintiff for installation. The First Engine and Second Engine were installed by the same mechanic, but neither party has been able to produce proof of any certifications, and the parties have been unable to locate the mechanic who installed the engines. These engines were essentially salvage

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engines, and Plaintiffs maintains that Defendant only made sure that the engines would crank and never inspected the engines further prior to sale.

On September 10, 2019, the Kia caught fire while being driven by Plaintiff Zoe`Lia L. Culbreath. The Fire Department issued a report stating the “Fire appears to be electrical in nature and not suspicious.” The Police Department’s report was silent as to the cause of fire. Thereafter, Plaintiffs sued Defendant 301 alleging causes of action for (1) negligence and gross negligence, (2) breach of warranty and (3) violation of the South Carolina Unfair Trade Practices Act. Plaintiffs’ claims rely on the allegation that the Second Engine sold to them by Defendant 301 was defective and caused the fire.

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857 (2002) (citing Rule 56(c), SCRCF). Summary judgment is mandated by Rule 56 “against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case, and on which that party will bear the burden of proof at trial.” *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554 (1986)). Here, Plaintiff failed to make such a showing.

To recover under a negligence cause of action, a plaintiff must show the defendant’s actions caused its damages. *The Winthrop Univ. Trustees for the State v. Pickens Roofing & Sheet Metals, Inc.*, 418 S.C. 142, 161, 791 S.E.2d 152, 162 (Ct. App. 2016). “Proximate cause requires proof of both causation in fact and legal cause.” *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 146, 638 S.E.2d 650, 662 (2006). “Causation in fact is proved by establishing the injury would not have occurred ‘but for’ the defendant’s negligence. Legal cause is proved by



establishing foreseeability.” *Id.* at 147, 638 S.E.2d at 662. “Where circumstantial evidence is relied upon to establish liability, the plaintiff must show such circumstances as would justify the inference that his injuries were due to the negligent act of the defendant, and not leave the question to mere conjecture or speculation.” *McQuillen v. Dobbs*, 262 S.C. 386, 392, 204 S.E.2d 732, 735 (1974) (quoting *Chaney v. Burgess*, 246 S.C. 261, 143 S.E.2d 521 (1965)).

Here, the Plaintiffs have not produced evidence tending to show that the fire would not have occurred but for the fact that the engine was defective. The key issue driving this Court’s decision is the inability of the parties to locate the mechanic who installed the Second Engine. Had the mechanic been located and deposed, and had he testified that he followed all industry standards when installing the Second Engine, the Court would likely conclude that sufficient circumstantial evidence exists to warrant this case proceeding. However, under the facts of this case, negligent installation of the Second Engine is just as likely the cause of the fire as any negligence on the part of Defendant 301. Neither of the reports Plaintiffs produced from the local fire department and police department contain evidence that the fire was caused by a defect specific to the Second Engine. Nor have Plaintiffs provided expert testimony showing that the fire was more likely than not caused by the Second Engine. Defendant 301’s expert concluded that the cause of the fire cannot be determined and noted that parts of the engine were missing upon his inspection. Therefore, other potential causes of the fire exist which are unrelated to the Second Engine, such as defects in the fuel delivery system or an electrical short.

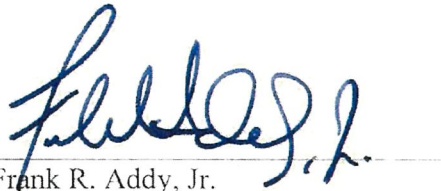
The South Carolina Court of Appeals reached a similar conclusion in *Harris v. Rose’s Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (1993). In that case, the plaintiffs brought an action under a products liability theory against Rose’s based upon the allegation that a fan sold by Rose’s caused a fire. *Id.* In that case, plaintiffs’ expert acknowledged during his deposition “that



there was a possibility the fan caused the fire; however, he also conceded it was equally as likely that other factors may have started the fire.” *Id.* at 907. The Court held the deposition testimony of plaintiff’s expert failed to meet plaintiff’s burden of proof that her injuries were proximately caused by the negligence of Rose’s, as the most the expert could say was that there was a possibility the fan caused the fire. *Id.* In the case before this Court, Plaintiffs have not provided an expert and are relying on an inference that the fire was caused by the Second Engine simply because it had recently been replaced.

This Court finds Plaintiff has failed to provide the necessary direct and circumstantial evidence to establish causation of the fire damages. Therefore, the Court grants Defendant’s motion for summary judgment.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge

April 11, 2022
Greenwood, South Carolina

Lonnie Hamilton, III, et al.

301 Auto Parts

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: COURT

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order attached) Statement of Judgment by the Court:

See attached order granting summary judgment.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
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| | | \$ |
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If applicable, describe the property, including tax map information and address, referenced in the order:

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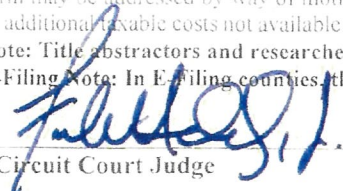
Jun 09 2022

SC Court of Appeals

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2159
Judge Code

4/11/2022
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Thomas S. Tisdale, Jr.

Peter G. Nistad

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: WebEx

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.