

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF JASPER)	CIVIL ACTION NO.: 2020-CP-27-00017
)	
BEN A. BARONE,)	
)	
Plaintiff,)	
)	
v.)	
)	
JAGUAR LAND ROVER NORTH)	
AMERICA, LLC, PEACOCK)	
AUTOMOTIVE, LLC d/b/a JAGUAR)	
LAND ROVER HILTON HEAD, and)	
COASTAL STATES AUTOMOTIVE)	
GROUP, LLC d/b/a LAND ROVER)	
HILTON HEAD,)	
)	
Defendants.)	
)	

ORDER



These matters came before the Court on November 1, 2022, regarding a Notice of Intent to Rely on Foreign Law and two Motions for Summary Judgment filed by Defendants Jaguar Land Rover North America, LLC, Peacock Automotive, LLC d/b/a Jaguar Land Rover Hilton Head, and Coastal States Automotive Group, LLC d/b/a Land Rover Hilton Head. Present at the hearing and arguing on behalf of Defendants was Carmelo B. Sammataro. Appearing and arguing on behalf of Plaintiff were Austin H. Crosby and John E. Parker, Jr. After reviewing the record, the pleadings, and hearing the arguments of counsel, the Court declines to apply Georgia law to this action and denies both of Defendant(s)' Motions for Summary Judgment.

Defendant Jaguar Land Rover North America, LLC ("JLRNA") has noticed the Court that it intends to rely on Georgia law under the doctrine of *lex loci delicti*. First, the Court will decline to permit JLRNA to rely on Georgia law because the underlying sales agreements concerning the subject vehicle contain provisions indicating that the Jaguar Land Rover Hilton Head Defendants intended for South Carolina law to apply to controversies arising from the sale of the subject

vehicle, and Plaintiff's product liability claims are predicated on the sale of the vehicle, which he alleges was defective at the time of sale. As an independent, alternative basis for the Court's decision, the Court finds Plaintiff's arguments regarding the public policy exception to *lex loci delicti* compelling and believes that applying Georgia products liability law to this case would violate the public policy of South Carolina.

The fact that the General Assembly, in codifying section 402A of the Restatement (Second) of Torts, chose to explicitly adopt the Restatement's comments section as the legislative intent behind South Carolina's strict liability statute, strongly indicates a mandated public policy within this State of allocating the cost of injuries caused by defective products sold within this State to all sellers, without requiring the injured parties to prove a negligence-based standard of fault. *See* S.C. Code Ann. §§ 15-73-10 and -30. Georgia law only permits strict liability claims against the manufacturer of a defective product, and not the importer, distributors, or retailers. OCGA §§ 51-1-11(b)(1), 51-1-11.1.

Because Georgia law in this instance would put Plaintiff in the exact position that section 15-73-10 was intended to protect him from, the Court declines to permit Defendants to rely on Georgia law under the factual circumstances of this action. The fact that the General Assembly has incorporated the extensive public policy considerations described by section 402A into South Carolina's strict liability statute as its legislative intent distinguishes the present facts from prior precedents declining to find a public policy exception to *lex loci delicti* in tort actions. *See Dawkins v. State*, 306 S.C. 391, 412 S.E.2d 407 (1991); *Rogers v. Lee*, 414 S.C. 225, 777 S.E.2d 402 (Ct. App. 2015); *Nash v. Tindall Corp.*, 375 S.C. 36, 650 S.E.2d 81 (Ct. App. 2007). Instead, the present facts closely resemble those before the Supreme Court of South Carolina in *Boone v. Boone*, 345 S.C. 8, 546 S.E.2d 193 (2001), in which the court found that the public policy exception would

apply where the public policy considerations involved were clear and overriding, despite the fact that negligence action in *Boone* was “a tort action for money damages.” *Contra Dawkins*, 306 S.C. at 393, 412 S.E.2d at 408.

JLRNA has also moved the Court for summary judgment on the grounds that (1) Plaintiff has not established the existence of a design defect or offered competent expert testimony in support of his negligent failure to warn claim and (2) JLRNA did not design or manufacture the subject vehicle. The facts of this case indicate that JLRNA was the importer of the subject vehicle. Since the Court declines to permit JLRNA to rely on Georgia law, the fact that JLRNA was the importer, and not the manufacturer, is no longer of any significance to Plaintiff’s strict liability and warranty claims. Further, the Court finds that JLRNA’s arguments concerning design defect, feasible alternative designs, and/or failure to warn claims are issues best left for cross-examination and go to the weight of Plaintiff’s expert’s testimony, not its competence or admissibility. Plaintiff’s experts, through their testimony, have given sufficient evidence to survive JLRNA’s Motion for Summary Judgment.

Lastly, all Defendants have moved for summary judgment on the basis that South Carolina’s Door Closing Statute, S.C. Code Ann. § 15-5-150, would preclude Plaintiff’s claims because he is a Georgia citizen and resident, Defendants are incorporated under the laws of foreign states, and Plaintiff’s physical injury manifested itself in Georgia, not South Carolina. The Court finds that the facts presented by this action, a products liability case alleging a latent defect, do not preclude Plaintiff from bringing his claims before a South Carolina court. The policy considerations behind the Door Closing Statute are not offended by Plaintiff’s action, as it is clearly connected to South Carolina and Defendants’ in-state activities in marketing and selling the subject vehicle within South Carolina. The Court specifically relies on *Murphy v. Owens-Corning*

Fiberglas Corp., 356 S.C. 592, 590 S.E.2d 479 (2003), and its rationale that “[t]he fact that the legal wrong did not result in injury and/or damages until the plaintiff had left the State does not foreclose a suit under the Door Closing Statute.” *Id.* at 598-99, 590 S.E.2d at 482. Based on the foregoing authorities and findings, the Court denies Defendants’ Motions for Summary Judgment and declines to permit Defendants to rely on Georgia law.

THEREFORE, it is ORDERED that the Defendants’ Motions for Summary Judgment are DENIED, and Defendants are not permitted to rely on Georgia law.

IT IS SO ORDERED.

The Honorable Bentley Price
Chief Administrative Judge
Fourteenth Circuit

, 2022
Charleston, South Carolina



Jasper Common Pleas

Case Caption: Ben A Barone VS Jaguar Land Rover North America, Llc , defendant,
et al
Case Number: 2020CP2700017
Type: Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766