

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**Dec 08 2022**

**SC Court of Appeals**

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APPEAL FROM THE CHARLESTON COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Appellate Case No. 2022-000805

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301 Auto Parts, LLC, Respondent,

v.

Lonnie Hamilton, III and  
Zoe'Lia L. Culbreath, Appellants.

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APPELLANTS' REPLY TO RESPONDENT'S INITIAL BRIEF

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December 8, 2022

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**STATEMENT OF AUTHORITIES**

**CASES**

Harris v. Rose Stores, Inc., 315 SC 344, 433 SE 2d 905, (SC. App. 1993)

**STATUTES**

South Carolina Unfair Trade Practices Act  
(SC Code Ann. §39-5-10 et seq.)

SC Code Ann. §15-36-100(c)(2)

## STATEMENT OF ISSUES

1. The Circuit Court ruled that Summary Judgment should have been granted because the cause of the fire that began in the engine compartment of the automobile was not determined.
2. There are many and substantial issues of material facts for a jury to decide, and Summary Judgment should not have been granted.
3. The disputed facts concerning a violation of the South Carolina Unfair Trade Practices Act and other causes of action require a jury to decide what they establish.
4. The causes of action for Breach of Warranty and negligence require no expert witness.

## ARGUMENTS

### **1. FACTUAL ISSUES IN DISPUTE PROHIBIT THE GRANTING OF A SUMMARY JUDGMENT**

There are multiple issues of disputed material facts that prohibit the granting of a Summary Judgment in this matter. This conclusion is reached by considering the evidence that will be presented on each of the alleged causes of action of the Complaint which are (1) Negligence and Gross Negligence, (2) Breach of Warranty, and (3) The Violation of the Unfair Trade Practice Act.

The Respondent contends that the Appellant must establish the causation of the engine fire that damaged the Appellant's automobile in order to be entitled to recover damages for the loss of the vehicle. The Appellant contends that the facts to prove by substantial evidence, some circumstantial, some direct, that the fire was caused by a defective engine sold to the Appellant by the Respondent. There are disputed facts to be considered by a jury to make this determination and such a Summary Judgment should not have been granted.

**2. DID THE RESPONDENT, BASED UPON THE FACTS ALLEGED, VIOLATE  
THE UNFAIR TRADE PRACTICE ACT.**

There exists a factual dispute between the parties as to whether or not there are facts to support a claim for a violation of the South Carolina Unfair Trade Practices Act. Such a dispute prohibits the granting of a Summary Judgment

The law of South Carolina is well settled that Summary Judgment cannot be granted if “a genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law”. The Respondent denies the facts alleged to support such a claim. *Harris v. Rose’s Stores, Inc. §315 SC 422, 422S E2d 905 CSC Appeals, 1993*

There are, as presented, several material and substantial factual issues to be decided by a jury on all of the causes of action asserted in this matter including the consideration of violation of the South Carolina Unfair Trade Practices Act and the Appellant requests this Honorable Court reverse the Circuit Court’s decision granting of the Summary Judgment.

Another question for a jury in this matter would be to determine if the disputed facts met the requirements of establishing a violation of the South Carolina Unfair Trade Practices Act.

As to the presence of factual disputes, the Respondent has denied almost all of the factual allegations made in the Amended Complaint and has pled a general denial of everything not admitted. (See Answer to Amended Complaint paragraphs 1, 2, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 15).

**3. AN EXPERT WITNESS IS UNNECESSARY**

No expert witness is required for the Appellants to maintain this action. Why not? The Appellant does not need to rely upon the testimony of an expert witness to prove it’s case in this matter. The reason is that no expert testimony is required at all to establish negligence, at the time

of purchase or a violation of the Unfair Trade Practice Act, at the time of purchase or a Breach of Warranty, at the time of purchase all of which have been pled in Appellant's Complaint all such claims are based on evidence before the engine compartment fire. There is no technical expert testimony required to establish the Respondents liability for such claims. Moreover, if proof of the causation of the vehicle engine fire is somehow required, the circumstantial evidence for a jury to consider is substantial.

South Carolina statutory and case law, as argued allows a Plaintiff to proceed without an expert witness to submit evidence which rises above speculation or conjecture and to establish the proximate cause of the asserted wrongdoing and the damage claimed. SC Code Ann. §15-36-100CC(2). This statute provides that expert testimony is unnecessary where common the knowledge and experience decides the facts which can lead to understanding the presence or absence of due care in a negligence claim or to decide whether a warranty has been breached, or have sufficient facts been presented to support a finding of a breach of the Unfair Trade Practices Act. The same statutory standard applies to a determination by a jury whether an unfair trade practice has been committed. There is no speculation in the claims made which are supported by the evidence that will be presented to a jury in this matter

### **CONCLUSION**

As a basis for Summary Judgment the Circuit Court ruled that "Plaintiff has failed to provide the necessary direct and circumstantial evidence to establish causation of the fire damages".

All of the Appellants allegations are based on facts that occurred before the engine compartment fire. The Respondent contends of the fire that causation is not an element necessary to establish a Breach of Warranty because in such case a claimant must establish that the product

that was sold was not suitable for the intended purpose. The issue of what caused the fire is not relevant. The engine, in this instance, failed to perform as intended. Moreover, there is substantial evidence that such an engine was prone to catch fire.

The Respondents claims of negligence does not require establishing a cause of the vehicular fire because the negligence was part of the sales process. But even if it did, there is substantial circumstantial evidence that a fire in engine compartment of the automobile caused the claimed damages. The facts at least established such circumstances.

The Kia Company (the automobile was a Kia brand model) notified the public that these models of the Kia were prone to engine fires. This was a warning that such fires can occur. Secondly, the owner of the Respondent's company testified at his deposition that, before selling a Kia vehicle, they did no inspection to determine the engines quality and defects except to see if it would "crank" or to determine its fitness for use. The Respondent's company, the owner so testified, only sold cars that had been severely damaged in accidents making an inspection before a sale highly desirable and the purpose, necessary, and most certainly is evidence of negligence which had been pled in this matter.

The car engine in this case was sold by the Respondent which failed to do anything to inform the purchaser that its engine was prone to catch fire and that it had not been inspected by the seller for such purpose.

A jury should certainly be empaneled to consider the substantial evidence in this matter concerning the Respondent's failure to even inform the purchase of an engine that had been removed from a wrecked automobile, for lack of inspection, and that its condition was unknown except that it would, at the time of its arrival for prospective sale, "crank".

Almost all of the factual allegations have been denied. It is fair, in these circumstances, to suggest with certainty that there are material factual allegations in dispute which compels that a denial of Summary Judgment is proper thus requiring a reversal of the grant of a Summary Judgment herein and allowing these claims to be submitted to a jury for its consideration of the facts and the law and to render a verdict accordingly.

Respectfully submitted,

December 8, 2022

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PROOF OF SERVICE

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I certify that I have served the Appellants' Reply to Respondent's Initial Brief unto the Respondent 301 Auto Parts, LLC by way of electronic mail to the Respondent's attorney of record, Peter Gunnar Nistad, whose email address as listed in the South Carolina Attorney Information System is [gnistad@seibelsfirm.com](mailto:gnistad@seibelsfirm.com), on December 8, 2022.

December 8, 2022  
Charleston, South Carolina

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