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**May 24 2023**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
Appellate Case No. 2022-00805

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Case No. 2019-CP-10-06567

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

v.

301 Auto Parts, LLC, Respondent.

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FINAL BRIEF OF RESPONDENT

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May 24, 2023

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**STATEMENT OF ISSUES ON APPEAL**

1. DID THE CIRCUIT COURT HOLD THAT APPELLANTS FAILED TO PROVE A DEFECT?
  
2. DID APPELLANTS PRODUCE SUFFICIENT EVIDENCE THAT THE ENGINE SOLD BY RESPONDENT WAS THE CAUSE OF THE FIRE?
  
3. IS AN EXPERT WITNESS NECESSARY FOR APPELLANTS TO SATISFY THE BURDEN OF PROOF FOR CAUSATION?
  
4. IS PROOF OF CAUSATION NECESSARY FOR THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT CLAIM?
  
5. IS PROOF OF CAUSATION NECESSARY FOR A BREACH OF WARRANTY CLAIM?

**STATEMENT OF THE CASE**

On December 20, 2019, the Appellants, Lonnie Hamilton, III ("Hamilton") and Zoe'Lia L. Culbreath ("Culbreath")(collectively, "Appellants") brought this action in the Charleston County Court of Common Pleas against 301 Auto Parts, LLC ("Respondent") alleging (1) negligence and gross negligence and (2) breach of warranty. (R. p. 001.) Respondent filed its Answer on February 14, 2020. (R. p. 007.) On December 22, 2020, the Appellants filed a motion to amend the Complaint which was granted. (R. p. 113.) On May 10, 2021, Appellants filed an Amended Complaint adding a cause of action for a violation of the South Carolina Unfair Trade Practices Act ("SCUPTA")(S.C. Code Ann. §§39-5-10, et seq.). (R. p. 016.) Respondent filed its Answer on May 12, 2021 (R. p. 022.) On February 22, 2022, Respondent filed a Motion for Summary Judgment (R. p. 056.) A hearing on the Motion for Summary Judgment was held on March 28, 2022. The Order Granting Summary

Judgment was filed on April 11, 2022. (R. p. 145.) Appellants filed a Motion to Alter or Amend the Order Granting Summary Judgment on April 11, 2022. (R. p. 114.) The trial court denied the Motion to Alter or Amend by a Form 4 Order dated May 12, 2022. (R. p. 151.) Appellants served Respondent with the Notice of Appeal on June 2, 2022. (R. p. 139.)

### **STANDARD OF REVIEW**

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rife v. Hitachi Const. Machinery Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (S.C. App. 2005). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (S.C.App. 2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (S.C. App. 2003). Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (S.C. App. 2004). "The trial court should grant summary judgment against a party who has failed to establish the existence of an essential element of that party's case." Harris v. Rose's Stores, Inc., 315 S.C. 344, 422 S.E.2d 905 (S.C. App. 1993).

### **FACTS**

Appellants owned a 2013 Kia Optima automobile (hereinafter, "the Kia") with vehicle

identification number 5XXGN4A72DG188737. (R. p. 002, ¶5.) The car was operational until November of 2018 when it was towed to a service center. The inspection of the car at that time revealed that the car had lost engine oil after running over an unknown object. (R. p. 063.) Plaintiff Zoe'Lia Culbreath (hereinafter, "Culbreath") had hit an object while driving the Kia and that collision caused the engine to leak oil. (R. p. 065: p.32, lines 1-7.) Culbreath then drove the Kia without oil which caused a complete failure of the original engine. (Id.). The car remained inoperable until June of 2019. In June of 2019, Hamilton purchased a replacement engine (hereinafter, "First Engine") for the Kia from Respondent. (R. p. 099, ¶7.) Appellants allege that the First Engine purchased from Respondent was installed by a certified mechanic (R. p. 017, ¶7.), but has not been able to produce proof of any certifications and the Appellants have been unable to locate said mechanic. (R. pp. 066-070.)

For some unknown reason, the First Engine did not operate after installation by the mechanic hired by Hamilton. (R. p.099, ¶7.) Appellants contend that the First Engine failed because it caught on fire, but there is no evidence in the record that the First Engine caught fire.<sup>1</sup> The failure of the First Engine was reported to Respondent, and on July 15, 2019, Respondent shipped a replacement engine (hereinafter, "Second Engine") to Hamilton. (Id.) Respondent did not charge Hamilton for the Second Engine. (R. p. 361.) Appellants admit in their Initial Brief that Respondent replaced the First Engine in fulfillment of its warranty obligations.<sup>2</sup> The Second Engine was allegedly installed by the same certified mechanic that installed the First Engine. (R. p. 017, ¶11.)

On September 10, 2019, the Kia, with the Second Engine installed, caught fire while

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<sup>1</sup> Brief of Appellants p.6

<sup>2</sup> Brief of Appellants p.3

being driven by Culbreath. (R. p. 017, ¶12.) The fire was investigated by the City of Greenwood's Fire Department and Police Department. The Fire Department issued a report that said, "Fire appears to be electrical in nature and not suspicious." (R. p. 074.) The Police Department issued a report that was silent as to the cause of the fire. (R. pp. 076-078.) Thereafter, Appellants sued Respondent alleging causes of action for (1) negligence and gross negligence, (2) breach of warranty and (3) violations of the South Carolina Unfair Trade Practices Act. (R. p. 020.). In the Amended Complaint, Appellants allege they suffered damage as a direct and proximate result of the alleged negligence, gross negligence, breach of warranties, and violations of the South Carolina Unfair Trade Practices Act. (Id.) The alleged damages include the value of the Kia that was destroyed in the fire. (R. p. 20, ¶27.)

During discovery, Appellants had several opportunities to identify an expert, but never identified a retained expert or any lay witness who was qualified to give expert opinions. (R. pp. 031-055.) Respondent retained Bryan Durig, P.E. ("Durig"), an expert on the cause and origin of fires to inspect the car to determine the cause of the fire. (R. pp. 102-109.) He prepared an affidavit that outlines his opinions. (R. pp. 097-101.) In that affidavit, Durig gives the following opinions that are relevant to this appeal:

1. The Kia had six open recalls. Two of those recalls related to fuel line issues and carried the risk of fire. Two of those recalls related to brake fluid leaks in the Hydraulic Electronic Control Unit ("HECU"). One recall related to premature bearing wear in the engine. (R. pp. 098-099, ¶5).

2. Upon Mr. Durig's inspection of the Kia after the fire, he found that parts were missing or had been removed from the engine. (R. p. 099, ¶8).

3. The cause of the fire could not be determined because parts were missing or had

been removed. (R. p.100, ¶9).

4. The fire could have been caused by damage to the fuel line during one of the engine replacements. (Id.)
5. The fire could have been caused by long term deterioration of the low pressure fuel line. (Id.)
6. The fire could have been caused by a brake fluid leak into the HECU. (Id.)
7. Because of the missing parts and the possible explanations for the fire, the cause of the fire is "Undetermined". (Id.)
8. The Fire Department report says the fire appeared electrical in nature. (R. p. 100, ¶10).
9. In his observations of the Kia, he did not observe evidence that the fire was caused by an internal engine failure of the Second Engine. (R. pp. 100-101, ¶11.)
10. The fire was not caused by the Second Engine sold by Respondent to a reasonable degree of engineering certainty. (R. p. 101, ¶12).
11. The cause of the fire is "Undetermined", to a reasonable degree of engineering certainty. (R. p. 101, ¶13).

The essential elements of Durig's findings are that there are multiple explanations of why the fire started, most if not all of which are unrelated to the Second Engine, and that the current condition of the Kia does not allow anyone to give a reliable opinion that the Second Engine caused the fire. In contrast, Respondents did not produce any expert testimony regarding the cause of the fire.

### **ARGUMENTS**

The subject matter of this case is a fire in a Kia owned by the Appellants. The

Respondent sold a replacement engine to Appellant Hamilton who hired a third-party mechanic to install the engine. Appellants allege that the engine sold by Respondent caught fire and destroyed the Kia. In support of its Motion for Summary Judgment, Respondent produced an expert affidavit that identified numerous potential causes for the fire. The foundation for the lower Court's ruling was the finding that the fire could have been caused by several alternative sources, some of which are not Respondent's responsibility. Based upon that finding, the Court properly ruled that an expert was necessary for Appellants to prove their case and that Appellants could not prove their case as a matter of law because they failed to produce the necessary expert testimony to demonstrate a question of fact.

I. THE CIRCUIT COURT RULED THAT APPELLANTS FAILED TO PROVE CAUSATION, NOT THAT THEY FAILED TO PROVE DEFECT.

Appellants' initial argument is that the trial court erred in finding that the Appellants failed to produce evidence that the Second Engine was defective. This argument is based upon a misinterpretation of the Order Granting Summary Judgment. The Order clearly states, that the "Court finds Plaintiff has failed to provide necessary direct and circumstantial evidence to establish **causation** of the fire damages." (R. p. 149.)(Emphasis added). Thus, the ruling is based upon the lack of evidence regarding causation only.

Even though not explicitly stated, the trial court assumed that there was evidence of a defect by moving directly to the element of causation. The Order does this by requiring proof that the Second Engine caused the fire without any discussion of what the defect may be. Instead the trial court identifies other possible causes of the fire such as the negligent installation of the engine. (Id.) The trial court also identifies evidence that tends to show that the engine was not the cause of the fire, such as the fire department report and the

affidavit of Respondent's expert. (Id.) The record also contains ample evidence to support the trial court's conclusion that there are other possible causes of the fire other than the engine sold by Respondent, specifically the affidavit of Respondents' expert Bryan Durig, P.E. (R. pp. 097-101.) The trial court then concludes correctly that "other potential causes of the fire exist which are unrelated." (R. p. 149.)

Appellants argue that evidence that the First Engine sold by the Respondent caught fire in the same manner is evidence that the Second Engine was also defective. First, this contention of fact is not in the record. Second, the comparison between the two engines is not relevant to the issue of causation. When the fire occurred in the engine compartment, only one engine could have caused the fire - the Second Engine. Thus, even if there was evidence that the First Engine caught fire, Appellants would still need an expert to give the opinion that the Second Engine supplied by the Respondent caused the fire.

Appellants cite several excerpts from the deposition of Brian Ard ("Ard"), the owner of Respondent that provide evidence of how Respondent inspects parts before reselling them. This is merely evidence related to the alleged breach of duty to the Appellants. It is not evidence that the specific engine sold by Respondent had a defect or was the cause of the fire that destroyed the Kia. Nothing from Ard's deposition supports the contention that the Second Engine was defective or that it caused the fire.

Appellants also argue that recalls by Kia Motors America, Inc. are evidence that the engine sold by Respondent was defective. A careful review of the recall information submitted by Appellants demonstrates that the recall information is evidence of defects in the Kia automobile that are unrelated to the Second Engine and for which Respondent cannot be held responsible. The recall cited by Appellants identifies a defect in the material of the low

pressure fuel tube "that can result in a fire in your vehicle's **engine compartment, . . . .**"(R. p. 124.)(Emphasis added). Reliance on this recall as evidence of a defect is misplaced. First, evidence of a defect is irrelevant to the basis of the Circuit Court's Order as it was based on the absence of evidence of causation. Second, the recall is evidence of a defect and potential cause of fire related to the low pressure fuel tube not the Second Engine, a distinction pointed out by Durig in his affidavit. (Id.) Therefore, the recall information is merely evidence of one of the many potential causes of the fire that cannot be attributed to the Second Engine and the Respondent. If the recall is not related to the Second Engine, Respondent cannot be responsible for a fire caused by the identified defect.

Appellants also submitted what appears to be a news story about recalls for the Kia Optima and Sorento dated September 3, 2020. (R. p. 126.) This report, even if it were admissible at trial, identifies a potential defect that allows brake fluid to leak and cause an electrical short. (Id.) A brake fluid leak causing an electrical short is not related to the Second Engine sold by Respondent as pointed out by Durig. An electrical fire is, however, consistent with the report by the Fire Department. (R. pp. 073-075.)

The recall information cited by Appellants identifies potential defects with Kia automobiles that may cause fires in the engine compartment. It does not identify a defect specifically with the engine that would cause the fire. This lack of specificity is the flaw that dooms Appellants' entire case. The Kia is a complex machine, and the Second Engine is the one and only part for which Respondent is responsible. That mechanical complexity necessitates the use of an expert to explain those complexities to a jury.

Appellants conclude the first section with a discussion of the alleged failure by the Respondent to educate itself about recalls and an alleged failure to properly inspect the parts

it sold. This discussion relates to duty, not causation. If Appellants cannot prove that the Second Engine caused the fire, the lack of an inspection or a warning about the risks of fire are irrelevant.

II. APPELLANTS DID NOT PRODUCE SUFFICIENT EVIDENCE THAT THE ENGINE SOLD BY RESPONDENT WAS THE CAUSE OF THE FIRE.

Appellants argue the circumstantial evidence that was introduced to the lower court was sufficient to create a question of fact regarding whether or not the engine sold by Respondent caused the fire. That circumstantial evidence falls short of the necessary evidence required by South Carolina law. The lower court correctly relied on Harris, *supra*, for the proposition that expert testimony regarding the cause of the fire was an essential element of Respondents' claim. In Harris, *supra*, plaintiff alleged that a fan purchased from Rose's caught fire and led to the death of her son. Harris introduced expert testimony that the fan was only a possible cause of the fire and conceded that other factors may have been the cause. Harris, *supra*. This case is similar in that Respondent, through the Durig Affidavit, presented evidence that the fire could have been caused by several different factors that were not related to the Second Engine and that the available evidence did not allow for an opinion to the requisite degree of certainty that the fire was most likely caused by the Second Engine. (R. p. 101, ¶¶12, 13.) Thus, the lower court correctly relied on Harris for the proposition that expert testimony that the fire was most probably caused by the Second Engine was a necessary element of all their claims.

Appellants' argument that Respondent's expert report somehow supports their argument that the engine was the most likely cause of the fire is misplaced. The expert opinion is that the cause of the fire within the compartment cannot be determined with the

necessary degree of certainty, i.e. most probably. (Id.) The opinion is relevant to counter testimony that the engine was the cause of the fire or, as used in this case, to provide a prima facie showing that the Respondent was entitled to summary judgment. The Durig Affidavit accomplishes that goal by stating two things. First, the Affidavit identifies several different causes of the fire in the engine compartment of the Kia. This establishes that the fire could have been caused by components of the Kia or work done on the Kia by others. Such evidence exonerates the Respondent from liability for the fire. Second, the expert report gives the opinion that the cause of the fire is inconclusive based on nationally recognized standards for fire evaluation. (R. pp. 097-101.) This opinion is based in part on the existence of multiple causes and the lack of physical evidence that would allow a reliable opinion as to the cause. (Id.) The lower court properly used this expert report to conclude that Respondent had met its burden of the prima facie showing of a right to summary judgment and to hold that Appellants must have expert testimony to prove the element of causation.

### III. IT WAS NECESSARY FOR APPELLANTS TO RETAIN AN EXPERT WITNESS.

Expert testimony is often required to prove causation. In the present case, Respondent supplied an engine that was installed by an independent mechanic into the Kia with all of the pre-existing parts manufactured and supplied by Kia. The complexity of this transaction that includes the new engine, the preexisting components of the car, and the mechanic who must incorporate that engine into the preexisting systems of the car makes the causation issue problematic for Appellants. The Durig Affidavit illustrates the complexity of the case and establishes the need for expert testimony by identifying multiple causes for the fire and opining that a reliable opinion about the cause of the fire was not possible within the standards of generally accepted fire investigation standards. (Id.)

As discussed previously, the expert opinions presented by Respondent were prima facie evidence of the entitlement to summary judgment. As such, the opinions did not defeat the Appellants' assertions. That was not the purpose. Instead, the opinions established the burden of proof that the Appellants were required to meet. That burden was expert testimony that the engine supplied by Respondent was more likely than not the cause of the fire. See, Harris. If Appellants had produced an expert with that opinion, denial of summary judgment may have been appropriate as there would have been a question of fact as to the cause of the fire. Instead, Defendants rely on circumstantial evidence such as the proximity of time. They also try to rely on the recall notices, however, those recalls refute Appellants claims rather than support them as they are evidence of defects caused by Kia, not the Respondent. Ultimately, Appellants rely on evidence that would force a jury to rely on conjecture and speculation. Appellants' assertion that their claims for breach of warranty and South Carolina Unfair Trade Practices do not require expert testimony is misplaced. Causation is an essential element for both breach of warranty and unfair trade practices' claims. First State Savings v. Phelps, 299 S.C. 441, 385 S.E.2d 821 (S.C. 1989)(Proof of causation is a necessary element of an oral express warranty); Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (S.C. 1996)(Proof of causation is a necessary element of an unfair trade practices claim). The lower court correctly held that the engine sold by Respondent had to be the cause of the fire for the Appellants to recover under any cause of action. Appellants tried to argue to the lower court that the transaction was somehow the basis of the claim but were forced to admit that the damages claimed were all related to the fire. (R. p. 349, lines 18-25.) The allegations of the Amended Complaint confirm that the fire damage to the car is the damage claimed by the Appellants. (R. p. 020, ¶27.) Because causation is a necessary element of both breach of warranty and unfair trade practices, Appellants are

required to sufficiently prove that the engine cause the fire through an expert.

Appellants' reliance on S.C. Code Ann. § 15-36-100(C)(2) is also misplaced. The section creates a common knowledge exception for the necessity of expert testimony for various professionals. Even if an automobile mechanic was included in this section, it would not be applicable because the complexity of the modern automobile is well beyond the ambit of common knowledge.

#### IV. PROOF OF CAUSATION IS NECESSARY FOR THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.

The trial court did not fail to address the Appellants' cause of action that alleges a breach of the South Carolina Unfair Trade Practices Act, codified in S.C. Code Ann. §39-5-10, *et seq.* The Act allows for recovery when plaintiff has suffered "any ascertainable loss of money or property ... **as a result of** the use or employment by another person of an unfair or deceptive method, act or practice." S.C. Code Ann. §39-5-140(a). (Emphasis added). The essential element of causation is clearly identified within the plain language of the statute. See also, Taylor, *supra*. Therefore, the trial court correctly addressed the SCUPTA claim, and all of the other claims made by Appellants, by addressing the common element of causation.

The phrase "as a result of" clearly requires a plaintiff to prove a causal connection between the deceptive act and the "ascertainable loss". Appellants have not cited any cases that eliminate the requirement of causation. The cited cases generally address the necessary element of public impact. Commonly used jury charges in South Carolina instruct that a plaintiff must prove a violation of the Unfair Trade Practices Act, proximate cause, and damages. Ralph King Anderson, Jr., *South Carolina Requests to Charge - Civil*, 2002, § 34-1. Ultimately, causation is an essential element of all civil causes of action.

Appellants tried to avoid the element of causation in the hearing on the matter by stating that "all of our complaints are connected to the transaction of the purchase ... of the engine, not the fire." (R. p. 349, lines 18-25.) In response, the trial court correctly pointed out that the damages "flow from the fire and Appellants counsel agreed." (Id.) Appellants' argument again focuses on the duty and ignores causation. The Order of the trial court very clearly states that, "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." (R. p. 149.) Thus, the trial court's decision is based entirely upon causation, as essential elements of SCUTPA.

V. THE CIRCUIT COURT CORRECTLY RULED THAT CAUSATION IS AN ESSENTIAL ELEMENT OF A WARRANTY CLAIM.

The trial court did not err in failing to address the allegations of a breach of warranty. A products liability case can sound in negligence, strict liability, and warranty. Rife v. Hitachi Const. Machinery Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (S.C. App. 2005) "Under any products liability theory, a plaintiff must prove that product defect was the proximate cause of the injury." Id. In the present case, Appellants have alleged that their damages were a "direct and proximate result" of all of the alleged causes of action, including breach of warranty and violations of the South Carolina Unfair Trade Practices Act . . ." (R. p. 020, ¶26.) Thus, Appellants have acknowledged the essential element of proof of causation. Appellants have failed, however, to offer sufficient evidence of causation as held by the Circuit Court. (R. p. 150.) A specific ruling about causation for each cause of action was simply not necessary. Causation was a common element to all the causes of action pled by the Appellants. When that evidence fails for one cause of action, it fails for all.

CONCLUSION

WHEREFORE, based upon the foregoing, Respondent respectfully requests that this Court

AFFIRM the decision of the trial court.

May 24, 2023

Respectfully submitted,

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