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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2022-000805

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

v.

301 Auto Parts, LLC, Respondent.

FINAL BRIEF OF APPELLANTS

May 26, 2023

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE 1

STANDARD OF REVIEW2

FACTUAL BACKGROUND..... 2

ARGUMENTS 5

 1. THE APPELLANTS’ PRODUCED AND INTRODUCED SUFFICIENT EVIDENCE THAT WOULD ALLOW A JURY TO CONCLUDE THAT THE ENGINE WAS DEFECTIVE. 6

 2. THE APPELLANTS PRODUCED SUFFICIENT EVIDENCE TO SUBMIT TO A JURY THAT THERE WAS A REASONABLE PROBABILITY THAT THE DEFECTIVE ENGINE CAUSED THE VEHICLE TO CATCH ON FIRE. 9

 3. IT WAS NOT NECESSARY FOR THE APPELLANTS TO RETAIN AN EXPERT WITNESS AND THE RESPONDENT’S WITNESS DID NOT DEFEAT THE APPELLANTS’ ASSERTIONS..... 11

 4. THE TRIAL COURT ERRED IN FAILING TO ADDRESS THE APPELLANTS’ CLAIM THAT THE RESPONDENT VIOLATED THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT (S.C. CODE §§ 39-5-10, *ET SEQ.*) 12

 5. THE TRIAL COURT ERRED IN FAILING TO ADDRESS THAT THE RESPONDENT BREACHED ITS WARRANTY IN THAT THE ENGINE PURCHASED FROM THE RESPONDENT WAS UNFIT FOR ITS INTENDED PURPOSE THAT WAS REPRESENTED TO THE RESPONDENT. 14

CONCLUSION 16

TABLE OF AUTHORITIES

CASES

Anderson v. Green Bull, Inc.,
471 S.E.2d 708 (Ct. App. 1996) 9

Armstrong v. Weiland,
225 S.E.2d 851 (1976) 11

Baughman v. Am. Tel. & Tel. Co.,
410 S.E.2d 537 (1991) 5

Beneficial Fin. I, Inc. v. Windham,
847 S.E.2d 793 (Ct. App. 2020) 13

Coker v. Cummings,
671 S.E.2d 383 (Ct. App. 2008) 2

Crary v. Djebelli,
496 S.E.2d 21 (1998) 13

Ferguson v. Charleston Lincoln Mercury, Inc.,
564 S.E.2d 94 (2002) 2

Fleming v. Rose,
567 S.E.2d 857 (2002) 2

Gardner v. Q.H.S., Inc.,
448 F.2d 238 (4th Cir.1971) 8

Gilliland v. Elmwood Properties,
391 S.E.2d 577 (1990) 2

Granatino v. Williams,
No. 2018-002166, 2022 WL 40006,
(S.C. Ct. App. Jan. 5, 2022), *reh'g denied* (Feb. 25, 2022) 2

Hancock v. Mid-South Mgmt. Co.,
673 S.E.2d 801 (2009) 2

Harris v. Rose’s Stores, Inc.,
433 S.E. 2d 905 (Ct. App. 1993) 5, 6, 9

Lane v. Trenholm Bldg. Co.,
229 S.E.2d 728 (1976) 16

<i>Livingston v. Noland Corp.</i> , 362 S.E.2d 16 (1987).....	8
<i>Messier v. Adicks</i> , 161 S.E.2d 845 (1968).....	6
<i>Nguyen v. Uniflex Corp.</i> , 440 S.E.2d 887 (Ct. App. 1994).....	10
<i>Noack Enters., Inc. v. Country Corner Interiors, Inc.</i> , 351 S.E.2d 347 (Ct. App. 1986), <i>cert. denied</i> (S.C. Sup. Ct. Order dated Nov. 9, 2018).....	13
<i>Phillips v. Morbark, Inc.</i> , 481 F. Supp. 2d 461 (D.S.C. 2007).....	11
<i>Rife v. Hitachi Const. Mach. Co.</i> , 609 S.E.2d 565 (Ct. App. 2005).....	2
<i>Singleton v. Stokes Motors, Inc.</i> , 595 S.E.2d 461 (2004).....	13
<i>Sizemore v. Hardwood Plywood & Veneer Ass'n</i> , 114 F.3d 1177 (4th Cir. 1997).....	10
<i>Skywaves I Corp. v. Branch Banking & Tr. Co.</i> , 814 S.E.2d 643 (Ct. App. 2018).....	13
<i>Soaper v. Hope Indus., Inc.</i> , 424 S.E.2d 493 (1992).....	15
<i>Tupper v. Dorchester Cnty.</i> , 487 S.E.2d 187 (1997).....	2
<i>Watson v. Southern Ry. Co.</i> , 420 F.Supp. 483 (D.S.C.1975).....	5
<i>Wogan v. Kunze</i> , 623 S.E.2d 107 (Ct. App. 2005).....	13
<i>Wright v. Craft</i> , 640 S.E.2d 486 (Ct. App. 2006).....	13

STATUTES

S.C. Code § 15-36-100, *et seq.* 12

S.C. Code § 36-2-314 14

S.C. Code § 36-2-315 14, 15

S.C. Code §§ 39-5-10, *et seq.* 1, 9, 12

OTHER AUTHORITIES

S.C. R. Civ. P. 56(c) 2

Restatement (Second) of Torts § 402(A) (1965) 9

EXHIBITS

Exhibit A – Ard Dep., Dec. 10, 2020 6

Exhibit B – Kia Motors Important Safety Recall, NHTSA Recall No. 20V-100,
Apr. 13, 2020 4, 7

Exhibit C – Kia issues new recall for engine fire risk in Optima, Sorento models,
Sept. 03, 2020 4, 7

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN ITS DETERMINATION THAT THE APPELLANTS FAILED TO DEMONSTRATE THAT THE ENGINE IN QUESTION WAS DEFECTIVE?
2. DID THE TRIAL COURT ERR IN ITS FINDING THAT THE APPELLANTS FAILED TO DEMONSTRATE THAT THE RESPONDENT'S ACTS OR OMISSIONS WERE THE CAUSE OF THE ENGINE FIRE?
3. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT FOR THE RESPONDENT BECAUSE THE APPELLANTS DID NOT RETAIN AN EXPERT WITNESS?
4. DID THE TRIAL COURT ERR IN NOT ADDRESSING THE APPELLANTS' CLAIMS OF THE RESPONDENT'S VIOLATIONS OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT (S.C. CODE §§ 39-5-10, *ET SEQ.*)?
5. DID THE TRIAL COURT ERR BY NOT ADDRESSING THE APPELLANTS' CLAIM THAT THE RESPONDENT IS LIABLE FOR BREACH OF WARRANTY?

STATEMENT OF THE CASE

On December 20, 2019, the Appellants, Lonnie Hamilton, III and Zoe'Lia L. Culbreath ("Appellants") brought this action in the Charleston County Court of Common Pleas (R. 001) against the Respondent, 301 Auto Parts, LLC ("Respondent") alleging (1) negligence and gross negligence and (2) breach of warranty, to which the Respondent filed its Answer (R. 007). On February 18, 2021, the Appellants moved for leave from the trial court to file an Amended Complaint to incorporate a third cause of action, which was granted by court (R. 113). On May 11, 2021, the Appellants filed the Amended Complaint (R. 016) adding the third cause of action for the violation of the South Carolina Unfair Trade Practices Act ("SCUTPA") (S.C. Code §§ 39-5-10, *et seq.*) to which the Respondent pled its Answer on May 13, 2021 (R. 022). On February 22, 2022, the Respondent filed a Motion for Summary Judgment (R. 056) which was granted by the trial court on April 11, 2022, (R. 145) after oral argument was heard (R. 337). On April 21, 2022, the Appellants filed a Motion to Alter or Amend the trial court's order granting summary

judgment in favor of the Respondent, which was denied by the trial court on May 13, 2022 (R. 151). On June 2, 2022, the Appellants served the Notice of Appeal on the Respondent (R. 139).

STANDARD OF REVIEW

“When reviewing the grant of a summary judgment motion, [the Appellate Court] applies the same standard that governs the trial court under Rule 56(c), SCRCP: summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Coker v. Cummings*, 671 S.E.2d 383, 386 (Ct. App. 2008), citing to *Fleming v. Rose*, 567 S.E.2d 857, 860 (2002). “Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts.” *Tupper v. Dorchester Cnty.*, 487 S.E.2d 187, 191 (1997), citing to *Gilliland v. Elmwood Properties*, 391 S.E.2d 577 (1990). ““In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party.”” *Granatino v. Williams*, No. 2018-002166, 2022 WL 40006, at *2 (S.C. Ct. App. Jan. 5, 2022), *reh'g denied* (Feb. 25, 2022), quoting *Hancock v. Mid-South Mgmt. Co.*, 673 S.E.2d 801, 802 (2009). ““On appeal from an order granting summary judgment, *the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below.*”” *Rife v. Hitachi Const. Mach. Co.*, 609 S.E.2d 565, 568 (Ct. App. 2005), citing *Ferguson v. Charleston Lincoln Mercury, Inc.*, 564 S.E.2d 94, 96 (2002) [emphasis added].

FACTUAL BACKGROUND

This case arises from a fire that destroyed a 2013 Kia Optima, owned by the Appellants, while Appellant Zoe'Lia L. Culbreath (“Appellant Culbreath”) was driving the vehicle on

September 10, 2019. The fire occurred just two months after the prior engine of the same vehicle was rendered inoperative, requiring its replacement.

The first engine was purchased by Appellant Lonnie Hamilton, III (“Appellant Hamilton”) from Respondent 301 Auto Parts, LLC (“Respondent” or “301 Auto Parts”) on or about June 11, 2019 and installed by a third-party mechanic and body shop recommended by and in privity of contract with 301 Auto Parts. The engine was represented by 301 Auto Parts to be suitable and functional specifically for the 2013 Kia Optima. Soon after the installation of the engine, it was determined to be defective. The Respondent properly warranted its replacement and the Appellants scheduled its installation by the same mechanic who previously installed the engine.

On or about September 10, 2019, the second, identical engine which was obtained from the Respondent caught on fire while the vehicle was being operated by Appellant Culbreath. The vehicle was rendered a total loss after the fire. The Respondent refused to warrant the second engine’s replacement. With no other adequate remedy by which to recover for the damages they sustained, the Appellants filed a Complaint initiating the present action against the Respondent on December 20, 2019.

According to the deposition of Brian Ard, (R. 272) the owner of 301 Auto Parts, the Respondent retailer “mostly sell[s] used auto parts” stripped from totaled cars purchased from insurance companies which they sell and deliver to customers. Dep. of Brian Ard at pg. 6 ¶ 7-10, Dec. 10, 2020¹. Further, when asked about how the company inspects for defects in an engine, Mr. Ard responded that the company simply starts it up to see if it “cranks”. *Id.* at pg. 11 ¶ 23-25; pg. 12 ¶ 1-9. Mr. Ard also admitted not to having or researching any information about recalls for

¹ Ex. A - Ard Dep., Dec. 10, 2020. (P. 272)

the scrapped parts it sells, despite being a merchant of those automobile parts on which the safety of its customers relies. *Id.* at pg. 19-22.

In April of 2020, approximately seven months after the engine fire, the Appellants received a notice from Kia Motors America, Inc. which they produced to the Respondent in discovery, that the manufacturer had determined that defects existed in the 2013 Optimas' 2.4-liter Gasoline Direct Injection (GDI) and 2.0-liter GDI Turbo engines which could result in an engine fire, which was due to the deterioration of the low pressure fuel tube from the heat generated in the engine compartment of the car. (R. 379-387)² It was later discovered, approximately a year after the fire, and also produced to the Respondent during discovery, that Kia engines in the Optima models had been mass recalled due to engine fires.³ Specifically, recalled models included the 2013 Optima in which engine fires were at significant risk of occurring due to electrical shorts in the hydraulic electronic control unit.

Based on the evidence, it is clear that this matter is ripe for deliberation by a jury and that the trial court erred in its decision granting summary judgment for 301 Auto Parts. Therefore, the Appellants respectfully request that the order rendered on April 11, 2022 by the trial court be REVERSED.

LEGAL ARGUMENTS

The grounds for the Appellants' Appeal of the trial court's order granting summary judgment in the present action are that the Appellants presented sufficient evidence to submit this matter to a jury, there exists genuine issues of material fact and that substantial facts are disputed,

² Ex. B – Kia Motors Important Safety Recall, NHTSA Recall No. 20V-100, Apr. 13, 2020. (R.379)

³ Ex. C – Kia issues new recall for engine fire risk in Optima, Sorento models, Sept. 03, 2020. (R. 387)

and that a jury could find the Respondent liable for each of the claims alleged in the Appellants' Amended Complaint, and as such, the trial court erred in its decision. "Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.'" *Baughman v. Am. Tel. & Tel. Co.*, 410 S.E.2d 537, 543 (1991), citing *Watson v. Southern Ry. Co.*, 420 F.Supp. 483, 486 (D.S.C.1975). Here, the granting of summary judgment was inappropriate and the case should have proceeded to a jury.

1. THE APPELLANTS' PRODUCED AND INTRODUCED SUFFICIENT EVIDENCE THAT WOULD ALLOW A JURY TO CONCLUDE THAT THE ENGINE WAS DEFECTIVE.

The trial court's principal issues with the Appellants' claims primarily pertained to proving that the engine was defective, with its opinion stemming from the South Carolina Court of Appeals' holding in *Harris v. Rose's Stores, Inc.*, 433 S.E. 2d 905 (Ct. App. 1993).

In the trial court's opinion granting summary judgment in favor of the Respondent, the court states that the Appellants failed to provide sufficient evidence to present to a jury that the engine was faulty and caused the fire that destroyed the Appellants' vehicle, citing to *Harris*. However, this comparison is misplaced. As opined in *Harris*, the "right of recovery in a products liability case must be predicated on proof, either direct or circumstantial, that there was a defect in the product and that it was reasonably probable that such defect was the cause of the injuries complained of." *Harris*, 433 S.E.2d at 907 (Ct. App. 1993), citing to *Messier v. Adicks*, 161 S.E.2d 845 (1968) [emphasis added]. The Appellants had produced significant evidence that would allow a jury to find that, not only was it possible, but it was probable that the engine was defective and that the defective engine in turn caused the fire in the engine compartment of the Appellants' vehicle based on the evidence.

For example, the first engine that the Appellants purchased from the Respondent auto parts retailer was defective and caught on fire in the same manner that the engine at issue did. The Respondent admitted liability in that instance and warranted the second engine.

Again, according to the deposition of Brian Ard, the owner of Respondent 301 Auto Parts, the Respondent retailer “mostly sell[s] used auto parts” stripped from totaled cars purchased from insurance companies which they sell and deliver to customers. Dep. of Brian Ard at pg. 6 ¶ 7-10, (R. 272) Dec. 10, 2020.⁴ Further, when asked about how the company inspects for defects in an engine, Mr. Ard responded that the company simply starts it up to see if the engine “cranks”. *Id.* at pg. 11 ¶ 23-25; pg. 12 ¶ 1-9. To reiterate, Mr. Ard also admitted not to possessing or looking into any information about recalls for the auto parts it sells, despite being a merchant of those automobile parts on which the safety of its customers relies. *Id.* at pg. 19-22; *see also* Dep. of Timmy Lee at pg. 21 ¶ 18-25, 22 ¶ 1-25, Dec. 10, 2020.⁵ The facts contradict the assertions of the Respondent, particularly as evidenced by the fact that two of the same engines sold to the Appellants combusted in the same manner.

The notices received by the Appellants from Kia Motors America, Inc. in the months after the fire are further convincing evidence that the engine was indeed defective, especially demonstrated by the way they combusted in the same manner. All notices indicate issues and various defects which are at high risk of leading to engine fires like the two that affected the Appellants’ vehicle.⁶ It was later discovered, approximately a year after the fire, and also produced to the Respondent during discovery, that Kia engines in the Optima models had been mass recalled

⁴ Ex. A – Ard Dep., Dec. 10, 2020. (R. 272)

⁶ Ex. B – Kia Motors Important Safety Recall, NHTSA Recall No. 20V-100, Apr. 13, 2020. (R. 379).

due to engine fires.⁷ Specifically, recalled models included the 2013 Optima which is the exact vehicle driven by the Appellants. The Respondent has conceded that it did not and does make itself familiar with auto parts recalls or defects, and continued to sell the recalled parts. In fact, the only attempt to ensure that the parts functioned as represented and warranted by the Respondent was seeing if the engines “crank”.

The Respondent’s admission on the record that it did little to nothing to keep itself educated as to manufacturers’ recalls is an additional breach of the duty it owed to the Appellants, and further highlights the likelihood that it sold a defective engine to the Appellants which caused the fire in the engine compartment of the vehicle. “A supplier... of a product [is] liable for failing to warn if they know or have reason to know the product is or is likely to be dangerous for its intended use; they have no reason to believe the user will realize the potential danger; and, they fail to exercise reasonable care to inform of its dangerous condition or of the facts which make it likely to be dangerous.” *Livingston v. Noland Corp.*, 362 S.E.2d 16, 18 (1987), citing to *Gardner v. Q.H.S., Inc.*, 448 F.2d 238 (4th Cir.1971). Though the Appellants did not claim a failure to warn by the Respondent, the Respondent nonetheless had a legal duty to reasonably inspect or be familiar with the risks of an engine known for combustion; this issue should therefore be left to a jury to dwell on and to determine whether the Respondent sold a defective engine.

Lastly, the failure to adequately inspect its merchandise to ensure that the parts sold are in the condition as represented and fit for the purpose for which the buyer intends to use them plausibly constitutes a violation of the South Carolina Unfair Trade Practices Act (SC Code §§ 39-5-10, *et seq.*) and a breach of warranty, and that the engine was, in fact, defective. “[A] product is

⁷ Ex. C – Kia issues new recall for engine fire risk in Optima, Sorento models, Sept. 03, 2020. (R. 387).

defective only ‘where the product is, at the time it leaves the seller's hands, in a condition not contemplated by the ultimate consumer, which will be unreasonably dangerous to him’.” *Anderson v. Green Bull, Inc.*, 471 S.E.2d 708, 710 (Ct. App. 1996), citing Restatement (Second) of Torts § 402(A) (1965).

2. THE APPELLANTS PRODUCED SUFFICIENT EVIDENCE TO SUBMIT TO A JURY THAT THERE WAS A REASONABLE PROBABILITY THAT THE DEFECTIVE ENGINE CAUSED THE VEHICLE TO CATCH ON FIRE.

As stated above, the Appellants necessarily established, by virtue of the plethora of circumstantial evidence introduced, that the Respondent sold to the Appellants an engine that was defective and unfit for its intended purpose. However, the trial court questioned that the engine was in fact what caused the vehicle to catch fire, stating that the Appellants failed to present adequate evidence proving this assertion. Namely, the trial court insinuates that because the Respondent retained an expert witness and the Appellants did not, the Appellants were unable to discredit the expert’s findings. The trial court again primarily cites *Harris v. Rose’s Stores, Inc.*, 433 S.E. 2d 905 (Ct. App. 1993). In *Harris*, this Court opined that “[c]ausation based upon a possibility rather than a probability is not sufficient for a plaintiff to recover in a products liability case.” *Id.* at 907. However, the evidence speaks for itself.

To reiterate, the expert retained by the Respondent simply asserted that, in his opinion, the cause of the fire was inconclusive. This is hardly evidence that contradicts the Appellants’ claims. The Respondent’s expert states in his report that the origination of the fire was within the engine compartment of the Appellants’ vehicle, which is where the engine is housed. By assessing all of the above-referenced evidence and after consideration of the Respondent’s expert’s speculative report, it is not only probable but likely that the engine was nonfunctional and thus combusted, which the manufacturer recalls conceded was a high risk.

To be sure, the Appellants are not making an argument asserting *res ipsa loquitor*, which is not recognized in South Carolina, in that simply because there was a fire that occurred in the engine compartment, it must have been caused by a defective engine. In *Nguyen v. Uniflex Corp.*, 440 S.E.2d 887, 889 (Ct. App. 1994), this Court determined that a tenant who suffered damages from a fire at the apartment building in which she lived failed to present evidence that showed that the way in which chemicals were stored by the landlord created a chemical reaction that caused a fire, specifically stating that although a chemical reaction was possible, the evidence presented by the tenant did not rise to the degree of probability that would establish causation. *Nguyen* is distinguishable from the present case. Unlike *Nguyen*, the Appellants' claims are not based on mere speculation, such as an unprovable chemical reaction that may have caused the fire in the engine compartment. Rather, the Appellants' claims are founded on well-evidenced assertions based on a manufacturer-admitted heightened engine fire risk, that the Appellants' previous engine (which was identical to the one subject to this action) had caught fire in a similar manner (and that the Appellants had not driven the vehicle negligently when the engine caught on fire), and due to the Respondent's failure to inspect the engines it sells to its customers, the Respondent violated the South Carolina Unfair Trade Practices Act. Therefore, there was a plethora of well-founded evidence on which a jury could deliberate and find that it was the defective engine that caused the fire within the engine compartment of the Appellants' vehicle. As such, the Appellants' claims are reasonably probable and certainly not "too remote to support proximate cause" *Sizemore v. Hardwood Plywood & Veneer Ass'n*, 114 F.3d 1177 (4th Cir. 1997).

3. IT WAS NOT NECESSARY FOR THE APPELLANTS TO RETAIN AN EXPERT WITNESS AND THE RESPONDENT'S WITNESS DID NOT DEFEAT THE APPELLANTS' ASSERTIONS.

The Appellants simply did not require the services of an expert witness to prove their claims, because the strength of their evidence speaks for itself. "If the Appellant does not rely on an expert witness to establish proximate cause, 'it is sufficient for Appellant to put forth some evidence which rises above mere speculation or conjecture'." *Phillips v. Morbark, Inc.*, 481 F. Supp. 2d 461, 464 (D.S.C. 2007), citing *Armstrong v. Weiland*, 225 S.E.2d 851, 853 (1976). The Appellants have introduced significant evidence that would certainly allow for a jury to conclude that the engine purchased from the Respondent was defective which likely caused the fire that occurred in the engine compartment of the Appellants' vehicle. There is no legal requirement that a plaintiff must utilize the testimony or opinion of an expert witness, and a party should thus not be penalized by a trial court on a motion for summary judgment for making the decision not to retain an expert.

Secondly, the Appellants' claims for breach of warranty and the violation of the South Carolina Unfair Trade Practices Act did not necessitate the use of an expert witness. These claims do not involve assertions that warrant expert knowledge and should have been submitted to a jury for deliberation. For example, a jury should be left to determine whether the second engine purchased by the Appellants from the Respondent and was allegedly defective, was fit for its particular purpose, which is the daily operating of a motor vehicle. Next, a jury should be left to determine whether the Respondent's failure to inspect its products constituted a breach of South Carolina's Unfair Trade Practices Act. None of these causes of action require the testimony or opinion of an expert witness.

For example, South Carolina Code § 15-36-100 specifies cases involving the negligence of a plethora of professionals, such as medical doctors, architects, lawyers, therapists, and others necessitating expert affidavits. However, (C)(2) of that section states that the experts are not needed in cases “involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the Respondent.” S.C. Code § 15-36-100(C)(2). Though the statutory provisions do not necessarily apply, they provide situations in which expert retention is prescribed by law; the determination of causation and damages, and for breaches of warranty and violations of the South Carolina Unfair Trade Practices Act are situations in which an expert witness is not and should not be required.

4. THE TRIAL COURT ERRED IN FAILING TO ADDRESS THE APPELLANTS’ CLAIM THAT THE RESPONDENT VIOLATED THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT (S.C. CODE §§ 39-5-10, *ET SEQ.*)

In the trial court’s opinion granting summary judgment in favor of the Respondent, the court failed to address that the Appellants’ third and fourth causes of action for the breach of the South Carolina Unfair Trade Practices Act, codified as S.C. Code §§ 39-5-10, *et seq.* The Act, as intended, makes unlawful “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce”. S.C. Code § 39-5-20(a). This Court has defined unfair as ““a practice which is offensive to public policy or which is immoral, unethical, or oppressive.”” *Beneficial Fin. I, Inc. v. Windham*, 847 S.E.2d 793, 800 (Ct. App. 2020), quoting *Wright v. Craft*, 640 S.E.2d 486, 498 (Ct. App. 2006); *Wogan v. Kunze*, 623 S.E.2d 107, 120 (Ct. App. 2005). ““In order to be actionable under SCUTPA, the unfair or deceptive act or practice must have an impact on the public interest.... ‘An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the act's embrace.’”” *Beneficial Fin. I, Inc.*, 847 S.E.2d at 800 (Ct. App. 2020), quoting *Skywaves I Corp. v. Branch Banking & Tr.*

Co., 814 S.E.2d 643, 655 (Ct. App. 2018); *Noack Enters., Inc. v. Country Corner Interiors, Inc.*, 351 S.E.2d 347, 349-50 (Ct. App. 1986), *cert. denied* (S.C. Sup. Ct. Order dated Nov. 9, 2018). Impact on public interest has been further defined as creating a potential for repetition, which can be shown in “either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts.” *Singleton v. Stokes Motors, Inc.*, 595 S.E.2d 461, 466 (2004), citing *Crary v. Djebelli*, 496 S.E.2d 21, 23 (1998).

The trial court failed to address this claim, and it was therefore dismissed without explanation. However, the factual analysis to determine whether the Respondent violated SCUTPA should be rightfully left to a jury, and that opportunity was deprived, thus prejudicing the Appellants. It is clear on its face that the Respondent’s failure to adequately inspect its parts, including the engines it sold to the Appellants, violated SCUTPA. First, the engine that was initially purchased was admittedly defective; the second engine was subsequently allegedly defective. It was then discovered that these exact engines were recalled for the increased fire risk they posed to operators and passengers in vehicles produced by one of the largest car manufacturers in the world, Kia Motors, and driven throughout South Carolina, thus impacting the broader public. The Respondent further admitted that it only checked that the engines “cranked”, and that it has declined to educate itself with important safety recalls in the parts it sells to consumers. Actual repetition and potential repetition of an unfair and deceptive act is therefore present, which offends public policy and potentially violates SCUTPA.

5. THE TRIAL COURT ERRED IN FAILING TO ADDRESS THAT THE RESPONDENT BREACHED ITS WARRANTY IN THAT THE ENGINE PURCHASED FROM THE RESPONDENT WAS UNFIT FOR ITS INTENDED PURPOSE THAT WAS REPRESENTED TO THE RESPONDENT.

Similarly, the trial court did not address the Appellants' cause of action for breach of warranty, and it was dismissed without justification. Pursuant to their well-plead complaint, the Appellants represented to the Respondent that they required an engine to replacement the previous, defective engine sold by the Respondent so that the Appellants' vehicle was safe and operable for daily use. Upon the combustion of the second replacement engine, it was clear that the engine did not work as reasonably expected and represented to the Appellants by the Respondent. The defective engine, as alleged, then caused a fire in the engine compartment of the Appellants' vehicle, damaging the car and rendering it inoperable.

The implied warranty statutes in South Carolina are codified under S.C. Codes § 36-2-314 and § 36-2-315, respectively. Section 314 governs the implied warranty of merchantability, which states, in relevant part, that “a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” S.C. Code § 36-2-314(1). The statute further reads those merchantable goods must, at least “pass without objection in the trade under the contract description”, be “fit for the ordinary purposes for which such goods are used”, and “run... of even kind, quality and quantity within each unit”. *Id.* at (2)(a)-(d).

Section 315 states, in relevant part, “[w]here the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is... an implied warranty that the goods shall be fit for such purpose.” S.C. Code § 36-2-315.

The South Carolina Supreme Court has held that “where the particular purpose for which a product is purchased is also the ordinary or intended purpose of the product, the warranties of

merchantability and of fitness for a particular purpose merge and are cumulative, such that a Appellant may proceed upon either theory.” *Soaper v. Hope Indus., Inc.*, 424 S.E.2d 493, 495 (1992). In this case, the defective engine purchased by the Appellants from the Respondent is a product that is frequently and commonly purchased by customers of the Respondent; additionally, the Respondent is a merchant that deals in goods of the kind, in that it sells used auto parts for vehicles.

The Respondent and its agents were well-aware of the Appellants’ purpose in purchasing that engine, in that it was intended to replace the previous engine in their vehicle sold by the Respondent that was rendered defective, to be used for the daily operation of said vehicle. The engine, which the Respondent admittedly minimally inspected, combusted within the vehicle after limited use for daily transportation. There has been no evidence that the damage to the vehicle was caused by the user. Further evidence shows that this exact engine sold to the Appellants by the Respondent, whose expertise in the field was relied on by the Appellants, was recalled on numerous occasions, on which the Respondent failed to educate itself. The Respondent had reason to know of these defects, or upon learning of them, owed a duty to warrant the replacement. It is indisputable that the engine did not function, and “where a product is not fit for any purpose, it is not fit for its particular purpose.” *Soaper*, 424 S.E.2d at 495 (1992).

In a comparable case, the Supreme Court in South Carolina opined that the real estate development company who acquired a house built by a construction company was liable to the homeowner for breach of warranty because the faulty septic tank cause damage to the house; the Court held that although the developer did not construct the home, it was still bound by an implied warranty of fitness, and the house was not able to be used for its intended purpose. *See Lane v. Trenholm Bldg. Co.*, 229 S.E.2d 728, 730 (1976). Specifically, the Court states that the purchaser,

being the developer who acquired the house from the construction company, “can fully inspect” the product it intends to sell. *Id.* at 730.

Analogous here, the Respondent, who purchases the parts it sells from insurance companies, is a vendor and owes a duty to inspect its products to ensure their working condition prior to reselling them to customers. The defective engine purchased by the Appellants did not function as represented due to the Respondent’s failures, and as such, the Respondent breached the statutorily enacted implied warranty it owes to its consumers.

CONCLUSION

WHEREFORE, for the aforementioned reasons, the Appellants in this matter respectfully pray that this Court REVERSE the decision of the trial court granting the Respondent’s motion for summary judgment.

Dated: May 26, 2023
Charleston, South Carolina

Respectfully submitted,

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2022-000805

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

v.

301 Auto Parts, LLC,

Respondents.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

May 26, 2023
Charleston, South Carolina

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