

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

EDWARD AND ANGELA DRISCOLL ,)
)
Plaintiff,)
)
v.)
)
AUTOMAXX,)
)
Defendant.)
)

C.A. No. CPU5-15-000102

DECISION AFTER HEARING

Date of trial: March 7, 2016

Date decided: April 27, 2016

Reigle, J.

On March 7, 2016, this Court held a *de novo* trial in this appeal from the Justice of the Peace Court. The appellant-plaintiff was Edward Driscoll,¹ who represented himself. He alleged that he purchased a motor vehicle from the defendant, Automaxx, who failed to honor a warranty to repair his vehicle. He sought compensation for the cost of repairs performed by another mechanic. The defendant-appellee, Automaxx, was represented by Peter J. Schaeffer, Jr., Esquire. Automaxx contended that Mr. Driscoll did not abide by the conditions of the warranty and therefore was not entitled to a remedy.

At trial, Mr. Driscoll testified for himself and called Mr. Lawrence J. McGreevy, an agent of Automaxx as a witness. Mr. McGreevy also testified for Automaxx as its sole witness. After the trial, this Court reserved decision and requested and received one submission from Mr. Driscoll. This is the Court's decision.

UNDISPUTED FACTS

The undisputed facts follow. Mr. Driscoll purchased a 2001 Land Rover on January 5, 2013 for \$7,787.00² from Automaxx in Dover, Delaware. Both parties agreed that the vehicle was sold with a limited express warranty.

The warranty was set forth in a document entitled, "BUYER'S GUIDE." Under a box checked "WARRANTY" and next to an unchecked box stating, "LIMITED WARRANTY" was the following statement:

"The dealer will pay 50% of the labor and 50% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations. Under state law, "implied warranties" may give you even more rights."³

¹ Angela Driscoll did not participate in the Court of Common Pleas case. Her claim was the same as her husband's claim. There was no motion to dismiss her from the case by Automaxx.

² See Plaintiff's Exhibit 3.

³ See Plaintiff's Exhibit 1. The Buyer's Guide referenced a warranty document that contained additional information but neither party introduced it into evidence or made reference to it at trial.

Under a typed statement, "SYSTEMS COVERED," was a hand-written statement:

"engine transmission differential } internally oiled and lubricated parts only
**work must be done at shop of Dealer's choice."

Under a typed statement, "DURATION," was a hand-written statement:

"30 days or 1000 miles whichever comes first."⁴

The Land Rover failed an inspection in New Jersey on February 2, 2013 and Mr. Driscoll immediately contacted Automaxx and made a claim under the warranty. This initial contact by Mr. Driscoll to Automaxx was within the 30 day time frame and 1000 miles contained in the warranty. The problem with the vehicle was related to an internally lubricated part and covered under that portion of the expressed warranty. There were additional conversations between Mr. Driscoll and employees and agents of Automaxx regarding the repair of the vehicle. The Land Rover was ultimately repaired by another dealer, Tony Dicesare's Auto Service, LLC, in New Jersey for \$3,284.20⁵ and paid for by Mr. Driscoll. Mr. Driscoll sought 50% of the cost of the repair or \$1,642.10.

DISPUTED FACTS AND ARGUMENTS

The disputed issues follow. Mr. Driscoll contended that Automaxx essentially gave him "the run around" and refused to honor the warranty and repair his vehicle. He testified that the majority of his conversations were with Mr. Diblasio, the operations manager of Automaxx. Mr. Driscoll expected him to be present at the trial to represent Automaxx and therefore he did not subpoena him as a witness. Mr. Diblasio did not appear as a witness for Automaxx. Instead, Automaxx was represented by Mr. McGreevy. Mr. Driscoll contended that Automaxx refused to repair his vehicle which caused him to have it repaired at another shop.

⁴ See Plaintiff's Exhibit 1.

⁵ Plaintiff's Exhibit 2.

Automaxx, through Mr. McGreevy, contended that it received a facsimile from Tony Dicesare on March 1, 2013 that outlined the problem with Mr. Driscoll's vehicle. He claimed that in response, Automaxx generated an estimate to repair the Land Rover for \$2,013.00 with the understanding that Mr. Driscoll would have to bring the vehicle to Automaxx for repair and pay 50% of the cost or \$1,006.50. Mr. McGreevy testified that the term, "the work must be done at shop of Dealer's choice" meant Automaxx and not another mechanic because they always need to view the vehicle to assess if it would be covered under the warranty.

Mr. Driscoll denied that Automaxx ever made an offer to repair his Land Rover. He also testified that he would have accepted an offer to have his vehicle repaired at Automaxx because it was considerably lower than the price given to him by Mr. Dicesare and that to behave in a different manner would be illogical. Mr. McGreevy testified that Mr. Driscoll refused to bring the vehicle to Automaxx because he was angry and did not want them to touch his vehicle.

THE LAW

This case involved an express limited warranty to repair and such warranties are covered by Delaware's Uniform Commercial Code. It was an "express warranty," rather than an "implied warranty," because it was affirmatively written and agreed to between the parties.⁶ It was a limited warranty because it was limited in its terms.⁷ It merely covered half of the cost of certain parts and labor if the vehicle was repaired at the seller's shop and the claim had to be made within a specified time period and mileage amount. Claims are permitted for breach of limited warranties but the remedies are limited as well.⁸

⁶ See 6 Del. C. § 2-313.

⁷ See 6 Del. C. § 2-316.

⁸ See 6 Del. C. § 2-719. See also 77A C.J.S. Sales § 485 *Remedies for Breach of Warranties. Repair or replacement.*

THE BURDEN OF PROOF

The buyer of a product has the burden to prove that a seller breached its warranty.⁹ Mr. Driscoll was the buyer of the product. Automaxx was the seller that conveyed the limited express warranty to repair as part of the sale. At trial, Mr. Driscoll had to prove that Automaxx breached the limited express warranty.

To prove that a seller breached its warranty, “[t]he buyer must prove: (1) the existence of an express . . . warranty, (2) a breach of the defendant’s express . . . warranty, (3) a causal connection between the defendant’s breach and the plaintiff’s injury or damage; and 4) the extent of loss proximately caused by the defendant’s breach. Also, “the buyer must first prove compliance with any conditions precedent that the seller has imposed with respect to the warranty.”¹⁰

Mr. Driscoll had to prove that there was an express warranty, that Automaxx breached its warranty, that there was a connection between the breach and the damages and that the loss was caused by the defendant’s breach. He also had to prove that he complied with any conditions precedent imposed by the warranty.

The standard that a buyer has to meet in such a case is a preponderance of the evidence standard. “The plaintiff has the burden of establishing a breach of warranty by a preponderance of the evidence.”¹¹ “In other words, the plaintiff must introduce evidence that provides a rational basis for the [fact-finder] to conclude, more probably than not, that the defendant warranted its product, breached its warranty, and the plaintiff’s damages proximately resulted. Thus, a verdict based on mere conjecture as to any of these elements cannot stand and will be set aside.”¹²

⁹ Am. L. Prod. Liab. 3d § 24:1 *Proof of Breach of Warranty – Burden of proof, generally.*

¹⁰ Am. L. Prod. Liab. 3d § 24:1 *Proof of Breach of Warranty – Burden of proof, generally.*

¹¹ Am. L. Prod. Liab. 3d § 24:1 *Proof of Breach of Warranty – Burden of proof, generally.*

¹² Am. L. Prod. Liab. 3d § 24:1 *Proof of Breach of Warranty – Burden of proof, generally.*

Mr. Driscoll had to prove that it was more likely than not, that Automaxx breached its warranty and that he was damaged as a result.

CREDABILITY OF WITNESSES

In a bench trial, a Court must consider all of the evidence, including exhibits and testimony of witnesses. When testimony is in conflict, a Court, as the fact-finder, has to resolve issues regarding credibility of witnesses.¹³

In this case, the witnesses agreed on the terms of the written warranty. Under Mr. Driscoll's version, however, the warranty was not honored by Automaxx because it refused to repair his vehicle. Under Automaxx's version, Mr. Driscoll refused to bring his vehicle in to be repaired and Automaxx could not repair it.

This Court is unable to find either Mr. Driscoll or Mr. McGreevy to be a more credible witness. Both parties have pointed to potential motivations for the other party to be untruthful. Mr. Driscoll was angered by the failure of the vehicle so soon after its purchase and Automaxx's requirement that he bring his vehicle from New Jersey to Delaware for repair. Mr. McGreevy, as a long-standing employee of Automaxx, was motivated to conceal its failure to honor the warranty and delay in addressing Mr. Driscoll's vehicle.

DECISION

In this case, Mr. Driscoll failed to meet his burden to prove that Automaxx did not honor its warranty to him on the purchase of his 2001 Land Rover. Although Mr. Driscoll was able to prove that a limited express warranty existed, he was not able to prove that he met the conditions precedent that Automaxx imposed with respect to the limitations in the warranty. Mr. Driscoll was able to prove the problem with the vehicle arose during the time and mileage limitations imposed by the limited warranty. He was also able to prove that the required repair work was

¹³ E.g. *Young v. Frase*, Del., 702 A.d. 1234, 1237 (1997).

covered by the warranty because it was for “internally lubricated parts” which were specifically included in the warranty. However, the warranty was also limited by Automaxx for it to solely perform the repair and bear only half of the cost of the work performed. This was a very limited and specific condition precedent and Mr. Driscoll was not able to prove *by a preponderance of the evidence* that he presented the motor vehicle to Automaxx for repair.

As stated in the previous analysis regarding the credibility of the witnesses, this Court could simply not find one witness more credible than the other and therefore Mr. Driscoll could not meet his burden to show that his factual version was more likely than the factual version presented by Automaxx. It is not clear to the Court whether Automaxx stubbornly tried to evade the assertion of the warranty of the vehicle or refused to repair the vehicle or if Mr. Driscoll became frustrated and stubbornly refused to bring the vehicle back to Delaware for repair. It is clear to the Court that this was a very limited express warranty with conditions that were crafted to benefit the seller rather than the buyer. It was a difficult case for a self-represented litigant to attempt to prove but the Court cannot use conjecture to reach a decision and must rely upon proven facts. In this case, Mr. Driscoll did not prove to the Court that Automaxx breached its warranty and therefore the Court will not award damages to him.

IT IS SO ORDERED.

Anne Hartnett Reigle

The Honorable Anne Hartnett Reigle