STATE OF MINNESOTA
IN COURT OF APPEALS
A09-405

Robert Polzin, et al.,
Appellants,

vs.

Chrysler Group LLC,
a Delaware limited liability company licensed to
transact business in the State of Minnesota,
Respondent.

Filed May 25, 2010
Affirmed
Kalitowski, Judge

Martin County District Court
File No. 46-CV-08-339

Todd E. Gadtke, Hauer, Fargione, Love, Landy & McEllistrem, P.A., Minneapolis, Minnesota; and

Daniel Joseph Brennan, Minneapolis, Minnesota (for appellants)

Julian C. Janes, Gislason, Martin, Varpness & Janes, P.A., Edina, Minnesota (for respondent)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellants Robert and Shirley Polzin contend that the district court erred in granting summary judgment to respondent Chrysler Group LLC, arguing that determining whether respondent breached its express warranty or violated Minnesota's lemon law involves questions of fact for the jury. We affirm.

D E C I S I O N

In December 2006, appellants purchased a new 2007 Dodge Ram 1500 pickup truck from Militello Motors in Fairmont. The truck was covered by respondent's basic limited warranty for new vehicles, limiting appellants' remedies to repair and replacement of defective parts. From the time of purchase through February 2008, appellants brought the truck to the dealership after the check-engine light illuminated a total of five times. Following the fifth time, appellants sued respondent, alleging, among other claims, breach of express warranty and violation of Minnesota's lemon law. The claims related to "[t]he problems, conditions and/or defects experienced by [appellants] . . . evidenced by, but not necessarily limited to, check engine light on intermittently and temperature and oil gauges erratically changing." Following a hearing, the district court granted respondent's motion for summary judgment as to all counts.

Appellants argue that the district court erred by granting summary judgment to respondent on appellants' breach-of-warranty claims and lemon-law claim. On appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in applying the law. *State by Cooper v. French*, 460

N.W.2d 2, 4 (Minn. 1990). "When the district court grants summary judgment based on the application of a statute to undisputed facts, the result is a legal conclusion that we review de novo." *Weston v. McWilliams & Assocs., Inc.*, 716 N.W.2d 634, 638 (Minn. 2006). We must view the evidence in the light most favorable to the party against whom summary judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

I.

Appellants argue that the district court erred in granting summary judgment to respondent on appellants' breach-of-warranty claims. Specifically, appellants contend that whether respondent breached the limited warranty by failing to conform the vehicle to the warranty within a reasonable time or number of repair attempts is a question of fact for the jury. We disagree.

Appellants assert their breach-of-warranty claim under the Magnuson-Moss Warranty Act (the Act), 15 U.S.C. § 2310 (d)(1) (2008). The Act provides that a consumer who is damaged by a warrantor's breach of warranty may bring suit in an appropriate state or federal court. 15 U.S.C. § 2310(d)(1). The Act requires the application of state law with regard to whether a warranty was breached. *Hines v. Mercedes-Benz USA, LLC*, 358 F. Supp. 2d 1222, 1234-35 (N.D.Ga. 2005).

To establish a breach-of-warranty claim under Minnesota law, a plaintiff must prove three elements: (1) the existence of a warranty, (2) breach, and (3) a causal link between the breach and the alleged harm. *Peterson v. Bendix Home Systems, Inc.*, 318 N.W.2d 50, 52-53 (Minn. 1982). Minn. Stat. § 336.2-719(1)(a) (2008), a provision of the Uniform Commercial Code (UCC), expressly authorizes the seller to limit the buyer's

warranty remedies to repair and replacement of nonconforming goods. But section 336.2-719 also provides that where such a limited remedy "fail[s] of its essential purpose," the buyer may seek a remedy set forth in the general remedy provisions of Article 2 of the UCC, including a refund of the purchase price. Minn. Stat. § 336.719(2) (2008); *see also Durfee v. Rod Baxter Imports, Inc.*, 262 N.W.2d 349, 356 (Minn. 1977) (citing this statute).

A limited remedy fails of its essential purpose when "circumstances arise to deprive the limiting clause of its meaning or one party of the substantial value of its bargain." *Durfee*, 262 N.W.2d at 356. If a "seller repairs the goods each time a defect arises, a repair-and-replacement clause does not fail of its essential purpose. But if repairs are not successfully undertaken within a reasonable time, the buyer may be deprived of the benefits of the . . . remedy." *Id.*

Here, the repair-and-replace warranty did not fail of its essential purpose because respondent successfully repaired each defect in a reasonable time, and the record indicates that there are no current problems with the truck.

Failure of power train control module

In January 2007, appellants brought the truck to the dealership after the check-engine light illuminated. The truck's power train control module (PCM), the computer that controls the truck's operation, registered a fault code indicating a problem with the coolant sensor circuit. The service technician replaced the coolant sensor and returned the truck to appellants the same day.

A day or two later, appellants brought the truck back to the dealership after they noticed that the check-engine light was illuminated again, the throttle light was also illuminated, and the temperature gauge was "pegged on cold." When the PCM registered the same fault code, the service technician contacted respondent for further instruction. Respondent informed the technician that respondent may issue a computer software update for the particular problem. But when the technician contacted respondent again on February 19, 2007, respondent instructed him to replace the wiring harness connecting the newly replaced coolant sensor to the vehicle's PCM. The technician replaced the wiring harness and returned the truck to appellants on February 19, 2007.

In late February 2007, appellants noticed that the check-engine light had illuminated for the third time, the throttle light was also illuminated, and the temperature gauge was pegged at hot. This time, respondent instructed the technician to replace the vehicle's PCM. The technician ordered the required part and replaced the PCM on March 5, 2007.

The technician testified that when the PCM registers the particular fault code displayed each of the three times above, there may be a failure of one or more of three parts: the coolant sensor (replaced the first time), the wiring between the sensor and the PCM (replaced the second time), or the PCM (replaced the third time). A technical advisor for respondent averred that the three repair orders "all reflect the fact that the Dodge Ram's power train control module was not operating correctly," and described the process of servicing the vehicle pursuant to a "differential diagnosis":

> At the time that the dealership looked at the check engine light issue and the code that had been stored in the vehicle's computer, the most likely cause of the problem was the coolant sensor and the dealership properly replaced it. Once the check engine light went on just a few days later with the code again indicating a faulty coolant sensor, then the next step in the differential diagnosis is to ensure that there is not some sort of flaw in the wiring linking the coolant sensor to the PCM. This repair was properly performed, and when the check engine light went on yet again soon afterwards, it compelled the conclusion that it was the PCM itself that was causing the check engine light to come on.
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> [U]nder the circumstances, and given the complexity of the PCM, it would have been inappropriate and contrary to industry standard for the dealership to simply replace the PCM before first concluding that it was not the coolant sensor and then the sensor's wiring that was not actually working properly.

Appellants did not rebut this evidence in the summary-judgment proceeding and do not challenge it here. Thus, the district court properly concluded that respondent repaired the PCM within a reasonable time.

Failure of oxygen sensor and thermostat

On November 15, 2007, appellants brought the truck to the dealership after they noticed that the check-engine light had illuminated once again. The PCM registered a fault code indicating a failure of the truck's oxygen sensor. A technician replaced the oxygen sensor and returned the truck to appellants the same day.

On February 8, 2008, the check-engine light illuminated for the fifth time, and appellants brought the truck back to the dealership for inspection. The PCM registered a fault code indicating a malfunction of the truck's thermostat. A technician replaced the faulty thermostat part and returned the truck to appellants the same day. Thus, the record

supports the district court's finding that the last two repairs were "isolated problems . . . that were repaired on the same day that [appellants] brought the vehicle in. . . ."

Moreover, the record shows that appellants were not deprived of the substantial value of their bargain, as required for a finding of failure of the essential purposes of a limited warranty remedy under *Durfee*, 262 N.W.2d at 356. Appellant Robert Polzin testified, "When the gauges come on, I don't go any further than what I have to to get home." Appellant Shirley Polzin testified that when they take trips, appellants use her car instead of the truck because they do not trust the truck. But appellant Robert Polzin admitted that aside from the lights on the dash being illuminated, appellants did not have any problems with the truck's performance. And the district court found that appellants put over 22,000 miles on the truck. In sum, because the record shows that the dealership successfully repaired each of the three defects in a reasonable amount of time, the district court properly concluded that appellants failed to establish a breach of the limited warranty.

II.

Appellants argue that the district court erred in granting summary judgment to respondent on appellants' lemon-law claim, because the question of whether respondent failed to conform the vehicle to the limited warranty after a reasonable number of repair attempts is a question for the jury. We disagree.

Minn. Stat. § 325F.665 (2008), Minnesota's lemon law, provides in pertinent part:

> If the manufacturer, its agents, or its authorized dealers are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or

> condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either replace the new motor vehicle with a comparable motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price[.]

Minn. Stat. § 325F.665, subd. 3(a). The statute also provides a presumption that a manufacturer has made a "reasonable number of attempts" when the same nonconformity has been subject to repair four or more times within the warranty term, but the nonconformity continues to exist. *Id*. at subd. 3(b).

In *Sipe v. Fleetwood Motorhomes of Penn., Inc.*, the District Court of Minnesota articulated the lemon-law analysis in three elements that a buyer must establish to recover: (1) the manufacturer failed to conform the vehicle to the warranty; (2) the defect substantially impaired the use and value of the vehicle; and (3) the defect continues to exist after a reasonable number of repair attempts. 574 F. Supp. 2d 1019, 1028 (D. Minn. 2008).

Nonconformity to warranty

Appellants' contention that respondent violated Minnesota's lemon law fails because the record shows that respondent successfully conformed appellants' truck to the limited warranty. After appellants brought the truck to the dealership for the third time, the dealership determined that illumination of the check-engine light was due to a failure of the PCM, and brought the truck into conformity with the warranty by replacing the PCM. When the check-engine light illuminated for the fourth time, the dealership brought the truck into conformity with the warranty by replacing the oxygen sensor. And

when the check-engine light illuminated for the fifth time, the dealership brought the truck into conformity with the warranty by repairing the thermostat. The record indicates that since repair of the thermostat, appellants have reported no further problems with the truck. Thus, there is no nonconformity requiring repair, replacement, or refund under the lemon-law statute. *See Sipe*, 574 F. Supp. 2d at 1029 (holding that a jury could not reasonably conclude that there was a nonconformity requiring the seller to repair, replace, or refund where diagnostic tests revealed no problems with the engine and where the vehicle had not stalled since the third incident years ago).

Appellants argue that the condition to be analyzed under the lemon-law statute is illumination of the check-engine light, rather than the defective PCM, oxygen sensor, and thermostat as separate conditions. And because the dealership repaired the truck five times for illumination of the check-engine light within the warranty term, appellants argue that the presumption that the manufacturer failed to conform the vehicle to the warranty after a reasonable number of repair attempts applies. *See* Minn. Stat. § 325F.665, subd. 3(b). But the record supports the district court's conclusion that illumination of the check-engine light is an indicator of underlying defects, and not a defect or condition itself: a service technician testified that the check-engine light may illuminate for any one of up to 150 different reasons. The technician stated "anything that will actually cause this vehicle to emit more emissions than federally mandated has to turn a light on." The technician also opined that the light may be triggered by more minor reasons, such as a loose gas cap or the wrong viscosity of motor oil. Thus, analyzing the illumination of the check-engine light as a condition or defect that may be

repaired to conform the vehicle to the warranty is not reasonable unless the evidence indicates that the light is defective or illuminates without cause. We therefore conclude that the presumption does not apply.

Moreover, appellants failed to establish that a defect continues to exist after a reasonable number of repair attempts without the presumption. Appellants do not assert that a defect "continues to exist" after the dealership repaired the faulty thermostat. *See* Minn. Stat. § 325F.665, subd. 3(a). And the record supports the district court's finding that the dealership's course of repairs, including the differential diagnosis, was reasonable and successful.

Substantial impairment of use or value

Even if we consider illumination of the check-engine light to be a condition or defect under the lemon-law statute, appellants failed to establish that the condition substantially impairs the use or market value of the vehicle. In *Sipe*, the District Court of Minnesota held that an alleged engine defect did not substantially impair the value of the buyer's motor home where the buyer put 10,000 miles on the motor home since it last stalled and listed the motor home for sale at market value and in "excellent condition." 574 F. Supp. 2d at 1029.

Here, the condition of the check-engine light illuminating five times within roughly one year, indicating the existence of three separate problems, does not rise to substantial impairment of use or value. The record indicates that (1) appellants continued to drive the truck, putting 22,000 miles on it; (2) appellants never experienced any performance problems; (3) appellants did not present evidence that the truck has

decreased in value; (4) each time appellants brought the truck in for inspection, the dealership addressed the issue promptly and according to industry standards; and (5) appellants do not claim that the condition or defect still exists.

Finally, appellants argue that their experience with the truck has led them to distrust it. But appellants do not cite authority to show that lack of confidence may constitute substantial impairment of use or value. In conclusion, the district court did not err in granting summary judgment to respondent on appellants' lemon-law claim.

Affirmed.