

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

Glenn Struck, :
 :
 Plaintiff, : C.A. No. 06-11-0070
 :
 v. :
 :
 Continental Warranty, Inc., :
 :
 Defendant. :

Decision after Trial

Date of Trial: August 1, 2007

Date of Decision: August 6, 2007

**Judgment for the Defendant, Continental Warranty, Inc.
and against Plaintiff, Glenn Struck**

Maggie Clausell, Esquire, 9 East Loockerman Street, Suite 205, Dover, Delaware 19901,
Attorney for Plaintiff

Seth J. Reidenberg, Esq., Young, Conaway, Stargatt & Taylor, LLP, Post Office Box
391, Wilmington, Delaware 19899, and Joseph M. Gembala, III, Esquire, admitted
pro hac vice, 1528 Walnut Street, Suite 1401, Philadelphia, Pennsylvania 19102,
Attorneys for Defendant.

Trader, J.

In this civil action the plaintiff, Glenn Struck, seeks reimbursement for repairs to his vehicle as result of a warranty issued by Continental Warranty, Inc. Since I conclude that the damage to his vehicle was really because of overheating or the continued operation of an impaired vehicle, I rule in behalf of the defendant.

The relevant facts are as follows: On June 22, 2004, the plaintiff purchased a 1999 Volkswagen Beetle from J & C Auto Sales, Inc. (Plaintiff's Exhibit 1). On the same date, he purchased a warranty from Continental Warranty, Inc. for the sum of \$720.00. (Plaintiff's Exhibit 2). This vehicle service agreement obligated the defendant to pay for certain repairs to the plaintiff's vehicle for a period of twenty-four months or twenty-four thousand miles. The service agreement contained exclusions for either repairs required because of overheating or without proper lubricants or coolants or repairs from negligence or continued operation of an impaired vehicle. The service agreement also required the plaintiff to perform certain routine maintenance on the vehicle.

On or about December 9, 2005, the plaintiff's vehicle became disabled and was towed to Dover Volkswagen for repairs. The initial diagnosis by Dover Volkswagen was that the water pump stopped and tore up the timing belt. (Plaintiff's Exhibit 3). On January 6, 2006, Continental Warranty sent an independent adjuster to examine the plaintiff's vehicle. After the inspection, the defendant declined to pay for the repairs to the plaintiff's vehicle on the grounds that the plaintiff continued to operate the vehicle with a coolant leak that caused severe damage to the engine. When the defendant refused to pay for the repairs to plaintiff's vehicle, the plaintiff filed a civil action in this Court for damages.

At trial an expert witness testified in behalf of the plaintiff and an expert witness testified in behalf of the defendant. Expert testimony is the evidence of a person skilled in an art, science, professional or business in a way which is not common to his fellow man. This skill has come to the expert as a result of special study or experience. The value of such testimony depends upon the learning and skill of the expert and varies with circumstances of the case. The trier of fact should consider the expert's means of knowledge or reasons he assigns for any opinions he gives. The trier of fact should accept his testimony if he finds his qualifications sufficient and his reasons satisfactory. *Johnson v. Brooks*, 1987 Del. Super. LEXIS 1349, *7 (Del. Super., Oct. 26, 1987); *Culver v. The Prudential Ins. Co. of Am.*, 179 A. 400, 403 (Del. Super., 1935).

Michael Leshner, the plaintiff's expert witness, testified that all of the damage to the vehicle was a result of the failure of the water pump. Despite his academic credentials, he did not inspect the vehicle and relied on the written notes of the mechanic as well as the notes of the inspector for the warranty company for his opinion. He did not consult with the plaintiff or his attorney until the day before the trial. In this case, I conclude that it was important to inspect the vehicle in order to render an opinion as to the causation of the damage to the vehicle.

Fred Summer, the defendant's expert witness, examined the vehicle and spoke to the technician that did the repairs to the water pump and timing belt. After he examined the vehicle, he observed that the timing belt had melted and he concluded that this was because of severe overheating. He observed that the oil smelled burnt and the engine smelled burnt. He noticed water bottles in the back of the plaintiff's vehicle and he concluded that the plaintiff kept putting water into the vehicle so that it would operate.

He further concluded that the engine would not start because the cylinder had warped because of the overheating of the vehicle. He also concluded that the plaintiff continued to operate the vehicle with a known coolant leak causing severe overheating and damage to the vehicle.

Based on the photographs introduced by the defendant (Defendant's Exhibits 1, 2 and 3) and Mr. Summer's examination of the plaintiff's vehicle, I accept his expert opinion that the damage to the vehicle either resulted from overheating or the plaintiff's continued operation of an impaired vehicle. I also reject plaintiff's testimony that the water in the bottles was used for drinking water, and I reject the testimony of his expert witness on the issue of the cause of damage to the vehicle.

It is, therefore, ordered that judgment be entered in behalf of Continental Warranty, Inc. for the costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge