

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III
JUDGE**

February 3, 2012

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RE: Mariano Aguilar v. Universal Warranty Corporation
C.A. No. CPU5-11-000433

Decision on Defendant's Motion for Summary Judgment

Dear Ms. Townsend, Ms. Phillippi and Mr. Eliassen:

The Court is in receipt of the Defendant's Motion for Summary Judgment for the above-referenced civil matter that was filed on October 27, 2011. After a careful review of the motion, the file and all argument, please be advised that the motion is denied.

In his complaint, the plaintiff, Mariano Aguilar (Aguilar), alleges that he and his mother, Sylvia Puente (Puente), purchased a 2003 Chevrolet Corvette (Corvette) from Champion Chevrolet in Austin, Texas. Purchased as part of the Corvette transaction was a vehicle services contract (Contract) through the defendant, Universal Warranty

Corporation (Universal) and MIC General Insurance Corporation.¹ On or about December 15, 2009, the Corvette's engine experienced a catastrophic failure and ceased to function, after which Aguilar contacted Universal and attempted to invoke the Contract to cover the costs of repairing the Corvette. Universal responded by sending an inspector to Delaware to look at the vehicle. After the inspection, Universal denied coverage and Aguilar allegedly spent \$8,592.07 repairing the damage to the Corvette. Aguilar commenced this action against Universal seeking damages for nonperformance of the Contract. In a subsequent answer to Universal's Request for Admissions, Aguilar admitted that Puente was the registered owner of the Corvette. However, Aguilar stated that the vehicle was, in effect, actually owned by him and that Puente's record ownership was simply a function of him being under 18 at the time of the purchase. Aguilar also stated that there was an existing lien on the Corvette, held by Wachovia, which prevented Puente from transferring title and registration to Aguilar. Additionally, it is clear from the record that the Contract is in the name of Puente. Aguilar is not mentioned as a party to it.

Universal has filed the present Motion for Summary Judgment seeking a dismissal of Aguilar's claims against it. It bases its motion on three specific grounds:

- (1) That Puente is a necessary party to the action as she, not Aguilar, is the owner of the car and purchaser of the Contract. Therefore, only she has standing to enforce the Contract.
- (2) That the coverage under the Contract was properly denied because Aguilar modified the car in manner which did not meet the manufacturers specifications.
- (3) That Aguilar failed to properly maintain the vehicle and/or provide

¹ MIC General Insurance Corporation was dismissed by stipulation of the parties and approval of the Court on May10, 2011.

documentation of such maintenance, as required by the Contract for coverage under it to be in effect.

When presented with a motion for summary judgment, the Court must view the facts and reasonable inferences therefrom in a light most favorable to the non-moving party. *Browning-Ferris, Inc. v. Rockford Enterprises, Inc.*, 642 A.2d 820, 823 (Del. Super 1993). The court will grant summary judgment only if both the pleadings and the record show that there are no genuine issues as to any material fact. The moving party bears the burden of showing that no such issues are present. *Moore v. Sizemore*, 405 A.2d 679, 680 (Del. 1979).

I. Sylvia Puente is a necessary party to the action.

Universal's first contention is that Puente is the proper party to bring an action under the Contract and that Aguilar lacks standing to bring this action. Aguilar responds that he plans to add Puente as a party, but, he has not done so yet.

In Delaware, it is settled law that any party to a contract can enforce that contract. If a third party, who is a stranger to the contract, seeks to enforce a contract, he or she must demonstrate that all the parties intended that the contract benefit the third party. *Triple C Railcar Service, Inc. v. City of Wilmington*, 630 A.2d 629, 633 (Del. 1993). Delaware has strict requirements regarding who can be considered a third party beneficiary:

“To qualify as a third party beneficiary of a contract, (i) the contracting parties must have intended that the third party beneficiary benefit from the contract, (ii) the benefit must have been intended as a gift or in satisfaction of a pre-existing obligation to that person, and (iii) the intent to benefit the third party must be a material part of the parties' purpose in entering into the contract.” *Madison Realty Partners 7, LLC v. Ag ISA, LLC*, 2001 WL 406268 (Del. Ch. Apr. 17, 2001).

If a party cannot show the necessary elements for third party beneficiary status, the general rule in Delaware controls, and a stranger or nonparty to a contract has no legal

right to enforce it. *Stuchen v. Duty Free Int'l, Inc.*, 1996 WL 33167249 (Del. Super. 1996).

In this case, the plain terms of the Contract state that it is between Universal and Puente. Aguilar is not mentioned, nor is he the registered owner of the vehicle. At a minimum to maintain this action, Aguilar must file a motion to substitute Puente as a plaintiff. Puente, as the owner of record of the vehicle in question and party to the Contract, is the only person with standing to seek enforcement of the Contract. Therefore, for the forgoing reasons, Aguilar must submit a motion substituting Puente as a plaintiff by the deadline ordered by the Court for the filing of motions for this action to continue. Otherwise, the case will be dismissed. While the Court could dismiss Aguilar's claim, and require that Puente file separately, in the interest of judicial economy, the Court will instead entertain a motion to substitute parties.

II. There remain genuine issues of material fact as to whether the Corvette was modified in a manner not in compliance with the manufacturer's specifications and the Contract.

Universal's second contention is that Aguilar modified the Corvette in a manner that does not comply with the manufacturer's specifications. Such a modification would be a violation of the Contract and nullify its coverage. However, other than a general statement in an expert affidavit, Universal provides very little evidence of the manufacturer's specifications for the Corvette. Therefore, the Court cannot determine if any of Aguilar's modifications to the Corvette violate the manufacturer's specifications.

Aguilar has admitted to "upgrading" the exhaust manifold and installing lights under the body of the car. However, he claims that the modifications are irrelevant and have nothing to do with the Corvette's engine failure.

In viewing the facts in the light most favorable to Aguilar, the non-moving party, there remains a question as to whether the modifications are relevant. Further, it is a

question of material fact whether the modifications met the manufacturer's specifications. It is possible that Aguilar's alterations, while differing from the original parts, may have met or exceeded specifications. Therefore, because there remain genuine issues of material fact as to the nature and effect of the modifications, summary judgment is inappropriate at this time.

III. There remain genuine issues of material fact as to whether Aguilar properly maintained the Corvette and whether its engine failure resulted from a lack of proper maintenance.

Universal alleges that coverage under the Contract was properly denied due to the fact that Aguilar failed to properly maintain the vehicle and maintain proper records of any maintenance. Under the terms of the Contract, the owner of the Corvette is required to maintain the vehicle in good working order and perform all required maintenance. If the owner chooses to do the work himself, he is required to be able to show receipts for materials and parts and a log noting the date and mileage when he performed the maintenance. Universal contends that although Aguilar claims to have done the required maintenance himself, he has failed to "produce verifiable receipts for the requisite maintenance." Further, Universal relies on the report of its inspector which states that the Corvette's engine oil contained water and a high percentage of oxidized solids, which indicates that there was a "lack of maintenance and/or the engine running too hot." In response, Aguilar has filed an affidavit from his expert that indicates that the engine failed due to a defective valve spring totally unrelated to Aguilar's maintenance of the vehicle. Aguilar also contends that the vehicle was well maintained contrary to the findings of Universal's investigators.

Viewing the facts in the light most favorable to Aguilar, the non-moving party, there remains a question as to whether Aguilar failed to properly maintain the Corvette and whether any such failure to properly maintain the vehicle caused or contributed to its

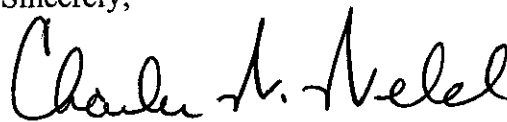
catastrophic engine failure. Aguilar's expert's statement indicates that the engine was clean and that he believes that the engine damage was caused by an inherent defect unrelated to the maintenance of the vehicle. However, Universal's expert's statement indicates that he believed that the failure was related to a lack of proper maintenance and hard use. Therefore, as genuine issues of material fact exist as to whether the Corvette was properly maintained, and whether the alleged lack of proper maintenance was a factor in the engine's failure, summary judgment is inappropriate.

IV. Conclusion

Universal is correct in its contention that Aguilar lacks standing to bring this action. Puente must be substituted as the plaintiff for the action to continue. Further, genuine issues of material fact remain as to whether Aguilar's modifications to the Corvette violate the manufacturer's specifications. Finally, there remain genuine issues of material fact as to whether Aguilar properly maintained the Corvette, and what caused the engine to fail. Therefore, for all of the forgoing reasons, the Defendant's Motion for Summary Judgment is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink that reads "Charles W. Welch, III". The signature is written in a cursive, flowing style.

Charles W. Welch, III