

SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

December 23, 2008

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Re:*State Farm Mutual Automobile Insurance Company (as subrogee of Timothy Smithart) v. Ford Motor Company*
C.A. No. 08C-05-020

Date Submitted: October 21, 2008

Dear Counsel:

_____This correspondence will explain the Court’s bench ruling on December 17, 2008, concerning dismissal of this action. For the reasons set forth, the Motion to Dismiss is granted in part and denied in part.

BACKGROUND

On May 20, 2008, State Farm Mutual Automobile Insurance Company (“Plaintiff”) filed a complaint against Ford Motor Company (“Defendant”) seeking reimbursement of the property damage claims paid by Plaintiff to its insured, Timothy Smithart, arising from a spontaneous fire in the insured’s 2004 Ford Expedition. On July 10, 2008, Defendant filed a Motion to Dismiss for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6). The parties filed supplemental pleadings and the Court held oral argument on December 17, 2008, to address the Defendant’s Motion to Dismiss.

STANDARD OF REVIEW

On a motion to dismiss for failure to state a cause of action, the court must accept the factual allegations in the Complaint as true and determine only whether the facts alleged fit within any cognizable legal theory entitling plaintiff to relief.¹

DISCUSSION

Economic Loss Doctrine

The economic loss doctrine prohibits recovery in tort where a product has damaged only itself (i.e., has not caused personal injury or damage to other property), and the only losses suffered are economic in nature.² Damages for inadequate value, costs of repair, and replacement of defective product, or consequential claims without any claim of personal injury or damage to other property constitute economic loss covered under the U.C.C. and not products liability.³ Other property has been characterized as items added to the product by the initial purchaser.⁴ In the instant action, the complaint alleges only economic loss to the vehicle itself. As there is no allegation of personal injury and Plaintiff's indemnity payments do not constitute "other property", the economic loss rule applies and Plaintiff cannot assert a claim in negligence. The alleged damages are inappropriate for tort law application and to hold otherwise would be contrary to Chief Justice Veasey's holding in *Danforth*. Thus, Plaintiff's negligence claim is dismissed.

¹*Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

²*Danforth v. Acorn*, 608 A.2d 1194, 1195 (Del. 1992).

³*Id.*

⁴*Saratoga Fishing Co. v. J.M. Martinac & Co.*, 117 S.Ct. 1783 (1997).

Strict Liability

Delaware does not extend strict liability to cases involving the sale of products.⁵ When Delaware enacted the warranty provisions of the U.C.C. abrogating the requirement of privity with respect to breach of warranty claims, the Generally Assembly sent a clear message that products liability remedies in sales cases should be limited to the sales warranty law provided within the U.C.C., and that there should be no remedy outside the Code.⁶

In light of Delaware's clear public policy precluding strict liability in torts relating to the sale of goods, Plaintiff's claim of strict liability is dismissed.

Breach Of Warranty

An insurance company stands in the shoes of its insured in a subrogation action.⁷ Equally decided is the insurer acquires all the rights and entitlements, as well as all of the limitations and obligations of its insured.⁸

Because Plaintiff stands in the shoes of its insured and Plaintiff is considered a natural person under 6 *Del. C.* §2-318, Plaintiff has a viable claim for breach of warranty. Accordingly, Plaintiff's claim of breach of warranty is not dismissed.

⁵*Cline v. Prowler Indus. Of Maryland, Inc.*, 418 A.2d 968 (Del. 1980).

⁶*Id.*

⁷*Great American Assur. Co. v. Fisher Controls Intern.*, 2003 WL 21901094 (Del. Super.).

⁸*Id.* at 5.

CONCLUSION

Considering the foregoing, Defendant's Motion to Dismiss is granted with respect to Plaintiff's negligence and strict liability claims, and denied with respect to Plaintiff's breach of warranty claim. Defendant shall file a response to Plaintiff's breach of warranty claim within twenty days.

IT IS SO ORDERED.

Very truly yours,

/s/ T. Henley Graves

T. Henley Graves

cc: Prothonotary