STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2226

Galen Swenson, et al.,
Appellants,

vs.

Kia Motors America, Inc.,
a foreign corporation licensed to transact business in the State of Minnesota,
Respondent.

Filed September 6, 2011
Reversed and remanded
Peterson, Judge

Hennepin County District Court
File No. 27-CV-10-18593

Todd E. Gadtke, Daniel J. Brennan, Gadtke & Brennan, PA., Maple Grove, Minnesota (for appellant)

Carrie L. Hund, Bassford & Remele, P.A., Minneapolis, Minnesota; and

Bruce S. Terlep (pro hac vice), Swanson, Martin & Bell LLP, Lisle, Illinois (for respondent)

Considered and decided by Schellhas, Presiding Judge; Peterson, Judge; and Minge, Judge.

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

PETERSON, Judge

In this appeal from judgment dismissing appellants' claims for breach of warranty and violation of the Magnuson-Moss Warranty Act on statute-of-limitations grounds, appellants assert that the district court erred by determining that the statute of limitations ran from the time of delivery, rather than from the time of breach. We reverse and remand.

FACTS

On March 31, 2006, appellants Galen and Patricia Swenson purchased and took delivery of a new 2006 Kia Sportage. The vehicle was manufactured by respondent Kia Motors America, Inc., and came with a limited warranty, which provides, in part:

> Kia warrants that your new Kia Vehicle is free from defects in material or workmanship, subject to the terms and conditions set forth in this manual. An Authorized Kia Dealer will make necessary repairs, using new or remanufactured parts, to correct any problem covered by this limited warranty without charge to you.
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> . . . .
>
> The liability of Kia under this warranty is limited solely to the repair of Kia-supplied replacement of parts which are defective in material or workmanship. Such repair or replacement shall be carried out by an Authorized Kia Dealer at its place of business, and specifically does not include any expense for or related to transportation to such a dealer or payment for loss of use of the Kia Vehicle.

Under the heading "Warranty Coverage" the warranty states:

> Except as limited or excluded below, all components of your new Kia Vehicle are covered for 60 months/60,000

> miles from the Date of First Service[1], whichever comes first (Basic Limited Warranty Coverage). This Warranty does not cover wear and maintenance items, or those items excluded elsewhere in the Manual.
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> . . . .
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> . . . [T]he Power Train Limited Warranty begins upon expiration of the 60 month/60,000 mile Basic Limited Warranty Coverage, and will continue to cover the following components up to 120 months or 100,000 miles from the Date of First Service, whichever comes first. It does not cover normal wear and tear, maintenance, or those items excluded elsewhere in this manual.

On several occasions over the course of approximately four years, appellants returned the vehicle to respondent and its authorized dealers for repairs, without success. In June 2010, appellants notified respondent that they no longer wanted the vehicle because "[respondent] had taken an unreasonable amount of time and/or number o[f] repair attempts to conform the subject vehicle to [respondent's] warranty." Respondent refused to take back the vehicle.

In July 2010, appellants brought suit against respondent, alleging violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2310 (2006), breach of express warranty in violation of Minn. Stat. § 336.2-607 (2008), breach of implied warranty of merchantability in violation of Minn. Stat. § 336.2-314 (2008), and revocation of acceptance under Minn. Stat. § 336.2-608 (2008). Respondent moved to dismiss under Minn. R. Civ. P. 12.02(e), arguing that appellants' claims were barred by the four-year

[1] "Date of First Service" is defined as "the first date the Kia Vehicle is delivered to the first retail purchaser, is leased or is placed into service as a company vehicle . . ., whichever is earliest." The parties do not dispute that the date of first service is March 31, 2006.

statute of limitations, which began to run on March 31, 2006, the date of delivery of the vehicle. Appellants argued that the statute of limitations began to run on the date the warranty was breached, not on the date of the vehicle's delivery, but agreed to dismiss their claims for breach of implied warranty and revocation of acceptance. Following a hearing, the district court granted respondent's motion to dismiss on the ground that appellants' action was barred by the four-year statute of limitations under Minn. Stat. § 336.2-725(1) (2008). This appeal followed.

D E C I S I O N

"When reviewing a case dismissed pursuant to Minn. R. Civ. P. 12.02(e) for failure to state a claim on which relief can be granted, the question before this court is whether the complaint sets forth a legally sufficient claim for relief." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). "The reviewing court must consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). "The standard of review is therefore de novo." *Id.* "The construction and application of a statute of limitations, including the law governing the accrual of a cause of action, is a question of law and is reviewed de novo." *MacRae v. Group Health Plan, Inc.*, 753 N.W.2d 711, 716 (Minn. 2008).

> (1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

> (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

Minn. Stat. § 336.2-725(1), (2) (2010).

Relying on *Anderson v. Crestliner, Inc.*, 564 N.W.2d 218 (Minn. App. 1997), the district court determined that, (1) because the Kia warranty is a repair-and-replace warranty, the four-year statute of limitations under Minn. Stat. § 336.2-725(1) applies, and (2) the statute of limitations on a repair-and-replace warranty begins to run when tender of delivery is made.[2] Based on these determinations, the district court concluded that the statute of limitations had run and, therefore, dismissed appellant's warranty claims.

The district court's reliance on *Crestliner* was misplaced. This court did not hold in *Crestliner* that the statute of limitations on a repair-or-replace warranty begins to run when tender of delivery is made. The warranty in *Crestliner* included an exclusive-remedy clause, which stated that the "sole and exclusive remedy under [the] warranty" was that Crestliner would "repair or replace without charge any part or parts covered by this warranty and found to Crestliner's satisfaction, to be defective in material or

[2] The district court appears to have determined that the warranty must be either a warranty of future performance or a repair-or-replace warranty. But the two types of warranties are not mutually exclusive. There can be a warranty explicitly extending to the future performance of goods with a limitation of the remedy to replacement in the event of breach of warranty. *R.W. Murray Co. v. Shatterproof Glass Corp.*, 697 F.2d 818, 823 (8th Cir. 1983).

workmanship." 564 N.W.2d at 220. The issue in *Crestliner*, however, was whether the warranty explicitly extended to future performance of the goods, which would mean that the statute of limitations began to run when the breach was discovered, rather than upon tender of delivery. Despite the exclusive-remedy clause in the warranty, this court concluded that "the district court erred when it construed the warranty as a repair or replacement commitment, rather than a warranty of future performance" because the warranty explicitly promised "that the hull and deck structure of each new fiberglass boat shall be free from any defects in material and workmanship for a period of five years" and, therefore, the warranty explicitly extended to future performance of the goods. *Id.* at 222.

The Kia warranty states,

> Kia warrants that your new Kia Vehicle is free from defects in material or workmanship, subject to the terms and conditions set forth in this manual. An Authorized Kia Dealer will make necessary repairs, using new or remanufactured parts, to correct any problem covered by this limited warranty without charge to you.

The warranty manual then sets forth the following term, "Except as limited or excluded below, all components of your new Kia Vehicle are covered for 60 months/60,000 miles from the Date of First Service, whichever comes first (Basic Limited Warranty Coverage)." The warranty in *Crestliner* stated,

> Crestliner warrants to the first purchaser at retail that each new boat of Crestliner's manufacture shall be free from any defect in material or workmanship according to the following guidelines.
>
> . . . .

FIBERGLASS BOATS

> The following warranties apply specifically to all fiberglass boats.
>
> 1. The warranty period for defects in material or workmanship of the hull and deck structure is 5 years.

564 N.W.2d at 220.

The only significant difference between the language in the two warranties is that Crestliner used the future tense to say that its boats shall be free from any defect in material or workmanship, while Kia used the present tense to say that its vehicle is free from defects in material or workmanship. Both warranties then say that the coverage period is five years. Although stating the warranty in the present tense suggests that Kia is saying nothing about future performance, adding that an authorized Kia dealer will correct any problem covered by this limited warranty and that all components are covered for 60 months makes the two warranties indistinguishable. The warranty term that all components are covered for 60 months has the same effect as the statement that the hull and deck structure shall be free from defects for five years. In both warranties, the manufacturer agrees to repair or replace defective components of the goods for five years after the initial purchase. We, therefore, conclude that this court's determination in *Crestliner* that the "warranty explicitly extends to future performance," 564 N.W.2d at 221, necessarily leads to a determination that Kia's warranty explicitly extends to future performance. Because the warranty extends to future performance, the four-year statute of limitations did not begin to run until Kia's breach was or should have been discovered,

and the district court erred in determining that the statute of limitations began to run upon tender of delivery.

Reversed and remanded.