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STATE OF MINNESOTA
IN COURT OF APPEALS
A11-732

Joel O. Jansen,
Appellant,

vs.

CNH America, LLC,
Respondent.

Filed December 27, 2011
Affirmed
Halbrooks, Judge

Renville County District Court
File No. 65-CV-08-196

Dan Rasmus, Rasmus Law Office, LLC, Minneapolis, Minnesota (for appellant)

Daniel A. Haws, John Paul J. Gatto, Murnane Brandt, St. Paul, Minnesota (for respondent)

Considered and decided by Halbrooks, Presiding Judge; Stoneburner, Judge; and Worke, Judge.

UNPUBLISHED OPINION

HALBROOKS, Judge

Appellant challenges the district court's grant of summary judgment to the manufacturer of a front-end loader that he purchased, arguing that the district court erroneously determined as a matter of law that (1) the manufacturer had no statutory duty

to repair, replace, or refund the purchase price of the loader under Minnesota's lemon law, Minn. Stat. §§ 325F.6653-.6654 (2010), and (2) oral statements purportedly made by an employee of the dealership at the time of purchase did not alter the unambiguous terms of the written warranty agreement that appellant signed. For the reasons discussed below, we affirm.

FACTS

In September 2006, appellant Joel Jansen purchased a 2006 Case Model 430 skid-steer loader from a dealership in Willmar to use on his dairy farm. Appellant also purchased a three-year/4000-hour power-train warranty. After approximately 300 hours of operation, an engine fire damaged the loader beyond repair.

On January 13, 2007, appellant purchased a second Case Model 430 skid-steer loader, this time from Schoffman's, Inc., a dealership in Redwood Falls that had no connection with the Willmar dealership. This second loader (the 2007 loader) is the subject of the present litigation.

Three documents constitute the purchase agreement among appellant, Schoffman's, respondent CNH America, LLC (which manufactures Case equipment), and CNH Capital (the financial-services business of CNH America): the purchase agreement between appellant and Schoffman's (signed on January 13, 2007); the retail installment sale contract and security agreement between appellant and Schoffman's and assigned to CNH Capital (signed on January 18, 2007); and the case warranty and limitation of liability among appellant, CNH America, and Schoffman's (signed on January 19, 2007).

The purchase agreement provides, in part:

> SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS) OVER AND ABOVE THOSE AS PROVIDED BY THE ORIGINAL EQUIPMENT MANUFACTURER.
>
> . . . .
>
> No person is authorized to give any other warranties or to assume any other liabilities on [CNH America's] behalf unless made or assumed in writing by the company, and no person is authorized to give any warranties or to assume any liabilities on the seller's behalf unless made or assumed in writing by the seller.
>
> . . . .
>
> THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE EXCLUDED, AS ARE ALL OTHER REPRESENTATIONS TO THE USER-PURCHASER, AND ALL OTHER OBLIGATIONS OR LIABILITIES, INCLUDING LIABILITY FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES, ON THE PART OF THE COMPANY OR THE SELLER.

Under the retail installment sale contract and security agreement, between appellant and Schoffman's, and assigned to CNH Capital, appellant made a down payment of approximately $5,000 and financed the balance (approximately $20,000) through CNH Capital. The contract terms provided for 48 monthly payments, beginning in February 2007. The contract provides, in part:

> NO WARRANTY. The Equipment is sold AS IS except for any applicable manufacturer's express, written warranty. If any manufacturer's express warranty applies to the

> Equipment, such warranty is restricted to the manufacturer's written, limited warranty provided separately to Buyer. Seller and manufacturer make no other representation or warranty, express or implied, and specifically exclude the implied warranties of merchantability and fitness for particular purpose. Neither Seller nor manufacturer will be liable for incidental or consequential damages resulting from a breach of the express warranty or any implied warranty imposed by law.

The case warranty and limitation of liability among appellant, CNH America, and Schoffman's states that the "Case Warranty is limited to the written terms in this pamphlet. Case does not authorize any person, dealer or agent to change or extend the terms of this warranty in any manner." The warranty also states that "the Warranty Period for all coverage begins at the time that any person, dealer or agent first places the unit into service . . . . The Warranty Period ends when either the month or machine hour limit is reached, whichever limit occurs first." Under the manufacturer's warranty, CNH America agreed to pay for parts and labor to repair defects in material or workmanship anywhere in the loader for one year and guaranteed the engine for two years or 2000 hours of operation. Just above the warranty's signature line are five statements, each followed by "Yes" and "No," intended to verify that the dealer has given the customer the relevant warranties and explained the warranty terms and coverage to the customer. Under the five statements is written: "The answers circled above are correct. I acknowledge that I have read and I accept this warranty policy statement." Appellant did not respond (by circling) to any of the five statements, but he did sign in the space beneath the acknowledgement.

The record establishes that appellant did not make any claims for warranty power-train service in the first 12 months that he owned the loader and did not make any claims for warranty engine service in the first 2000 hours of operation. But between January 2007 and January 12, 2008, appellant brought the 2007 loader to Schoffman's 21 times for other warranty repairs. CNH America authorized, and paid for, warranty service each time. But on January 17 and January 21, 2008, when appellant brought the loader to Schoffman's to have its hydraulic hoses repaired, the Schoffman's warranty manager told him that the loader was out of warranty (as of January 12, 2008) and that he would have to pay for the repairs himself. Appellant disputed that the warranty had expired, and the matter was submitted to a CNH America manager of field service operations, who determined that because the loader's one-year power-train warranty had expired (on January 12) and because the problem with the hydraulic hoses was unrelated to the engine (and thus not covered by the extended engine warranty), the requested service was not covered under the warranty. In response, appellant stopped making payments and defaulted in February 2008. In August 2008, CNH Capital commenced suit against appellant for breach of the January 2007 contract.

In December 2008, when the loader had reached approximately 2600 operating hours, a broken fuel pump punctured a hole in the loader's engine, rendering the machine inoperable. Schoffman's and CNH America both refused to repair the engine on the ground that it had operated for more than 2000 hours, the warranty limit.

By answer and third-party complaint, appellant asserted claims against Schoffman's, CNH Capital, and CNH America for breach of warranty, breach of

contract, and violation of Minnesota's lemon law, Minn. Stat. §§ 325F.6651-.6656 (2010). Appellant's third-party complaint alleged that when he purchased the loader in January 2007, a Schoffman's employee gave him oral assurances that the warranty terms of the loader would be identical to the terms applicable to the loader that he purchased in 2006 from a different dealer—that is, a three-year, 4000-hour warranty.

The district court granted Schoffman's and CNH America's motions for summary judgment, reasoning that appellant had failed to show that the oral assurances alleged in the complaint took place, that any such assurances were disclaimed by documents signed by appellant at the time of the 2007 purchase, and that the lemon law did not apply because the manufacturer's duty to repair farm tractors under the statute "is limited to warranties on the engine and power train," Minn. Stat. § 325F.6653, and none of appellant's warranty claims concerned the engine or power train.

The parties stipulated to the dismissal of CNH Capital before appellant noticed this appeal. The parties subsequently stipulated to the dismissal of Schoffman's. CNH America is therefore the only remaining respondent.

D E C I S I O N

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). A motion for summary judgment should be granted when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled

to a judgment as a matter of law." Minn. R. Civ. P. 56.03. The party moving for summary judgment has the burden of demonstrating that no genuine issue of material fact exists. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988). A moving party is entitled to summary judgment when no facts exist in the record which would "giv[e] rise to a genuine issue for trial as to the existence of an essential element of the nonmoving party's case." *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 847 (Minn. 1995). Any doubts and factual inferences must be resolved in favor of the nonmoving party. *Elstrom v. Indep. Sch. Dist. No. 270*, 533 N.W.2d 51, 55 (Minn. App. 1995), *review denied* (Minn. July 27, 1995).

"In order to successfully oppose a motion for summary judgment, a party cannot rely upon mere general statements of fact but rather must demonstrate at the time the motion is made that specific facts are in existence which create a genuine issue for trial." *Hunt v. IBM Mid Am. Emps. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986); *see also* Minn. R. Civ. P. 56.05 (requiring nonmoving party to present specific facts showing a genuine issue for trial). "Mere speculation, without some concrete evidence, is not enough to avoid summary judgment." *Bob Useldinger & Sons, Inc. v. Hangsleben*, 505 N.W.2d 323, 328 (Minn. 1993).

I.

Appellant contends that CNH America was required by statute to repair, replace, or refund the purchase price of the loader in December 2008, when a broken fuel pump damaged the loader's engine. Minnesota's lemon law for farm machinery addresses both the manufacturer's duty, under specific conditions, to repair a defective farm tractor after

the end of the warranty period and the manufacturer's duty to replace the tractor or refund the purchase price if the repairs prove impossible. The duty-to-repair provision provides:

> If a farm tractor does not conform to applicable express written warranties and the consumer reports the nonconformity to the manufacturer and its authorized dealer during the term of the express written warranties or during the period of one year following the date of the original delivery of the farm tractor to the consumer, whichever is earlier, the manufacturer or its authorized dealers shall make the repairs necessary to make the farm tractor conform to the express written warranties, notwithstanding that the repairs are made after the expiration of the warranty term or the one-year period. For a self-propelled vehicle this section is limited to warranties on the engine and power train.

Minn. Stat. § 325F.6653. Under Minn. Stat. § 325F.6654, subd. 1(a), if the manufacturer or an authorized dealer is unable, after at least four attempts, to make the farm tractor conform to any applicable express written warranty or if the farm tractor is out of service for more than 60 days while the corrections are being attempted, the manufacturer must either replace the farm tractor or refund the purchase price to the consumer. The consumer may bring a civil action to enforce the refund-or-replace obligation, but no action may be brought unless the manufacturer "has received prior direct written notification from or on behalf of the consumer." *Id.*, subd. 1(a).

Appellant contends that CNH America violated the statute both by refusing to repair the loader's engine in December 2008 and by failing to replace the loader (or refund the purchase price) after more than four unsuccessful attempts to make the loader conform to express warranties. We disagree.

By the explicit terms of the statute, the duty-to-repair provision and the refund-and-replace provision of the lemon law, as applied to farm equipment, can only arise as to warranties on the engine and power train. Minn. Stat. §§ 325F.6653, .6654, subd. 1(b). Therefore appellant was required to demonstrate, among other things, the existence of specific facts that create a triable issue as to whether the loader's nonconforming warranties involved the loader's engine or power train. The only directly relevant record evidence is the affidavit of a CNH America warranty administrator, who reviewed the records of all of appellant's claims for warranty service on the loader (all of which are in the record), and reported that appellant made no claims for warranty service on the loader's power train during the power train's 12-month warranty period and no claims for warranty service on the engine during the engine's 2000-operating-hours warranty period. The only engine claim appellant made was the December 2008 claim, when the loader had 2600 operating hours and was therefore out of warranty.

Appellant does not dispute that he made no explicit warranty claims for defects in the engine or power train during the warranty period. Rather, he argues that the warranty claims that he made for recurring electrical, cylinder, and hydraulic-system problems within the warranty period may have eventually caused the fuel pump to break, damaging the engine. Appellant is arguing that the December 2008 engine damage relates back to the earlier reported defects, despite the fact that the earlier defects concededly do not implicate the engine or power-train warranties. He contends that a material issue of fact exists as to whether the electrical, cylinder, and hydraulic-system defects could have caused the eventual engine failure. But as the district court observed at the hearing,

appellant has not come forward with any specific facts, in the form of an expert affidavit or some other evidence consisting of more than a bare assertion, to allow a jury to conclude that the engine failure could reasonably have been caused by the non-engine-related defects reported by appellant during the warranty period. Appellant's speculation about the causal relationship between the reported nonconformities and the engine or power-train damage is insufficient to create a material issue of fact. The district court properly granted summary judgment on this issue.

Appellant also argues that CNH America violated the lemon law by failing to notify him of his rights under the statute. Minn. Stat. § 325F.6652 requires the manufacturer to provide the consumer with written notice of the consumer's right to a refund or replacement concerning a defective vehicle, provided the consumer notifies the manufacturer of the problem in writing and gives it an opportunity to repair the vehicle. Appellant contends that CNH America's conceded failure to provide this notice entitles him to reversal of summary judgment and a replacement loader.

Appellant did not raise this issue before the district court and has therefore waived it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that issues not properly raised before and ruled on by the district court may not be considered on appeal). We further note appellant provides no authority for his contention that the remedy for failing to provide statutory notice of the consumer's rights under the lemon law is to require the manufacturer to provide a replacement vehicle. The warranty that appellant got when he bought the loader guarantees, subject to various limitations, the repair of any defective workmanship or materials by the dealer. As the record makes

clear, appellant was aware of, and rightfully took full advantage of, the dealer's duty to make warranty repairs, and he does not indicate that he was prejudiced by the failure to provide notice.

II.

Appellant contends that when he purchased the loader from Schoffman's in January 2007, a Schoffman's employee represented to him that the terms of the warranty on the 2007 loader would be the same as the terms of the warranty that he received when he purchased the 2006 loader from a different dealer—that is, a 4000-hour, three-year warranty, and not, as is written on the warranty he signed at the time of the 2007 purchase, a one-year, 2000-hour warranty. The only evidence of this alleged representation is appellant's assertion in an affidavit.

Our analysis of this issue is complicated by the fact that Schoffman's is no longer a party to this matter. Because the entire basis of appellant's claims concerning the warranty involves the conduct of Schoffman's employees at the time of the January 2007 purchase, it is unclear how this issue affects CNH America, if at all. Appellant's counsel argued before the district court, without citing supporting authority, that CNH America was somehow bound by Schoffman's actions because of an agency relationship between the two. Appellant does not demonstrate whether, if at all, Schoffman's could, by oral agreement, alter the terms of a warranty between CNH America and a customer, particularly when CNH America, as the manufacturer, would be bound by the terms of the agreement.

But even assuming, arguendo, that CNH America were bound by Schoffman's alleged representations, appellant's contention that those representations created a duty for CNH America that was in any way different from the express written terms of the warranty that appellant signed at the time of the January 2007 purchase is without merit. The Schoffman's warranty is clear that it is the exclusive, and entire, warranty applicable to the 2007 loader. Appellant does not deny that he signed the warranty directly beneath language stating, "I have read and I accept this warranty policy statement," or that he signed two other contractual agreements between himself and CNH America at the time of the 2007 loader purchase that contained similar warranty limitations. "In the absence of fraud or misrepresentation [neither of which is alleged here], a person who signs a contract may not avoid it on the ground that he did not read it or thought its terms to be different." *Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982); *see Currie State Bank v. Schmitz*, 628 N.W.2d 205, 210 (Minn. App. 2001) ("Parties who sign plainly written documents must be held liable, otherwise such documents would be entirely worthless and chaos would prevail in our business relations." (quotation omitted)).

"The parol evidence rule prohibits the admission of extrinsic evidence of prior or contemporaneous oral agreements, or prior written agreements, to explain the meaning of a contract when the parties have reduced their agreement to an unambiguous integrated writing." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003) (quotation omitted). "[W]hen parties reduce their agreement to writing, parol evidence is ordinarily inadmissible to vary, contradict, or alter the written agreement." *Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 713 (Minn. 1985).

Here, the representations purportedly made by the unidentified Schoffman's employee are squarely at odds with the terms of the warranty that appellant signed and as such are inadmissible and do not alter the terms of the warranty. And the case warranty and limitation of liability signed by appellant states that the "Case Warranty is limited to the written terms in this pamphlet. Case does not authorize any person, dealer or agent to change or extend the terms of this warranty in any manner." Therefore, even if a Schoffman's employee did make the statement as alleged by appellant, the statement could not alter the terms of the written warranty. While it may be true, as appellant argues, that under certain circumstances the agreement between the parties to a contract may comprise both oral and written terms, he offers no support for the contention that when an oral statement and a written contract term are at odds, the former controls.

On this record, we conclude that the terms of the warranty that appellant signed at the time of the January 2007 purchase established CNH America's obligations with respect to the loader.

Affirmed.