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NO. COA05-1380

NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2006

ROBERT C. JOYCE,
Plaintiff,

v.

Watauga County
No. 04 CVS 309

DAIMLERCHRYSLER MOTOR
CORPORATION and/or
DAIMLERCHRYSLER MOTORS
COMPANY, LLC,
Defendant.

Appeal by Defendant from judgment and order entered 23 May 2005 and 30 June 2005 by Judge Zoro J. Guice, Jr. in Superior Court, Watauga County. Heard in the Court of Appeals 6 June 2006.

Chester E. Whittle, Jr. for plaintiff-appellee.

The Charleston Group, by R. Jonathan Charleston, Freddie Lane, Jr., and Jose A. Coker, for defendant-appellant.

WYNN, Judge.

To recover a refund under the New Motor Vehicles Warranties Act, a purchaser must establish, *inter alia*, that the vehicle failed to conform to the terms in the manufacturer's express warranty.¹ Because Plaintiff failed to prove that the vehicle did not conform to the terms of the express warranty, we must hold that

¹ *Taylor v. Volvo N. Am. Corp.*, 339 N.C. 238, 245, 451 S.E.2d 618, 622 (1994).

the trial court erred in concluding that the New Motor Vehicles Warranties Act applied and in awarding damages to Plaintiff.

On 25 July 2001, Plaintiff Robert C. Joyce purchased a new Dodge Ram pickup truck from Hall Chrysler-Isuzu, Inc. ("Hall, Inc.") - an authorized dealer of Defendant DaimlerChrysler Motors Company, LLC in Boone, North Carolina. The vehicle was manufactured by DaimlerChrysler, assembled at a plant in Saltillo, Mexico, transported by railroad to a Walkertown, North Carolina rail yard, and transported by truck to Hall, Inc.

In the Warranty Information booklet given to Mr. Joyce at the time of delivery, the express warranty for corrosion provided:

2.2 Corrosion Warranty

A. Description of Coverage

This warranty covers the cost of all parts and labor needed to repair or replace any sheet metal panels that get holes from rust or other corrosion. If a hole occurs because of something other than corrosion, this warranty does not apply. Cosmetic or surface corrosion - resulting, for example, from stone chips or scratches in the paint - is not covered. For more details on what isn't covered by this warranty, see 3.6.

Section 3.6 of the warranty booklet provided that, *inter alia*, the "surface corrosion caused by such things as industrial fallout, sand, salt, hail, and stones" is not covered by warranty.

Within months of the delivery of the vehicle, Mr. Joyce noticed that hundreds of small, rust-like corrosion spots had appeared all over the painted surface of the vehicle. The spots

would go away after Mr. Joyce washed and waxed the vehicle, but would return within several weeks. Approximately twelve to fourteen months after delivery of the vehicle, Mr. Joyce presented it to Hall, Inc. and pointed out the spots; however, no written record of this visit was kept by the dealer. The surface condition was identified as "rail dust"² and it was initially believed that washing and waxing would fix the problem.

From the end of 2002 to early 2003, Mr. Joyce presented the vehicle to Hall, Inc. several times with the spot problem. Hall, Inc. buffed the vehicle at its detailing shop, but within weeks the spots reappeared. In April 2003, Hall, Inc.'s sales manager turned the vehicle over to the service department who sent the vehicle to a body repair shop, which was unsuccessful at fixing the spot problem. In May or June 2003, a manufacturer's representative looked at the vehicle and informed Mr. Joyce that the problem was not covered by the express warranty.

In June 2004, Mr. Joyce brought an action against DaimlerChrysler alleging violation of section 20-351.1 of the North Carolina General Statutes or the New Motor Vehicles Warranties Act. In September 2004, pursuant to a motion to inspect, DaimlerChrysler's representative inspected the vehicle at Hall,

² The trial court found that "[r]ail dust on a vehicle's surface is a condition occurring as a result of a vehicle being transported by railway when the metal wheels of a train on the metal tracks, together with the braking action, cause small, hot metal particles to rise and embed themselves in the vehicle's painted surfaces. This results, as in this case, in hundreds of small, rust-like spots on virtually all painted surfaces and would appear, as in this case, weeks or longer after delivery of the vehicle."

Inc. and concluded that the surface problem was "industrial fallout or rail dust." Following a non-jury trial, the trial judge concluded that the rust spots on Mr. Joyce's vehicle failed to conform to the express warranties issued by DaimlerChrysler and awarded Mr. Joyce trebled damages in the amount of \$99,986.88 plus attorney's fees.

On appeal, we note that when the trial court sits without a jury, the standard of review on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts. *Willen v. Hewson*, __ N.C. App. __, __, 622 S.E.2d 187, 190 (2005). Where such competent evidence exists, this Court is bound by the trial court's findings of fact even if there is also other evidence in the record that would sustain findings to the contrary. *Id.* The trial court's conclusions of law, by contrast, are reviewable *de novo*. *Id.*

[T]o recover a refund under the [New Motor Vehicles Warranties] Act, a lessee or purchaser must establish (1) the terms of the manufacturer's express warranty, (2) that the vehicle failed to conform to the those [*sic*] terms in the warranty, and (3) that after a reasonable number of attempts to remedy that breach of the warranty (4) the vehicle still failed to conform.

Taylor v. Volvo N. Am. Corp., 339 N.C. 238, 245, 451 S.E.2d 618, 622 (1994); accord N.C. Gen. Stat. § 20-351.2 (2005).

Here, DaimlerChrysler argues that the trial court erred in (1) concluding that the corrosion warranty extends to the condition complained of by Mr. Joyce; (2) considering evidence of purported

subsequent remedial measures to establish culpable conduct; and (3) depriving DaimlerChrysler of its constitutional rights to equal protection, due process, fundamental fairness, and open courts. Because we agree with DaimlerChrysler's first contention, we do not reach the remaining issues on appeal.

In this case, the trial court found as fact that "[t]he warranty included anti-corrosion warranties and ' . . . the cost of all parts and labor needed to repair or replace any sheet metal panels that get holes from rust or other corrosion.'" The trial court also found that, after delivery, Mr. Joyce's vehicle had "hundreds of small, rust-like corrosion spots . . . all over the painted surface of the vehicle[.]" The trial court then found that these spots constituted a non-conformity with the express anti-corrosion warranty. This finding of fact is actually a conclusion of law; therefore, we will review the conclusion *de novo*. See *Willen*, __ N.C. App. at __, 622 S.E.2d at 190 (conclusions of law are reviewable *de novo*); see also *Davidson v. Univ. of N.C. at Chapel Hill*, 142 N.C. App. 544, 552, 543 S.E.2d 920, 925 (2001) (Industrial Commission's designation of a finding as either a "finding of fact" or a "conclusion of law" is not conclusive).

The New Motor Vehicles Warranties Act is limited to "express" warranties which are those warranties that are agreed upon by the parties by written or oral conduct. *Taylor*, 339 N.C. at 247, 451 S.E.2d at 623. An express warranty is contractual in nature and its terms are therefore construed in accordance with their plain

meaning. *Coates v. Niblock Dev. Corp.*, 161 N.C. App. 515, 517, 588 S.E.2d 492, 494 (2003).

The record on appeal shows that the express warranty covered, "the cost of all parts and labor needed to repair or replace any sheet metal panels that *get holes* from rust or other corrosion." (emphasis added). Thus, the plain language of the warranty unambiguously states that the warranty only covers the cost of repairs for corrosion if the metal panels develop holes due to rust. *Hemric v. Groce*, 169 N.C. App. 69, 76, 609 S.E.2d 276, 282, *disc. review denied*, 359 N.C. 631, 616 S.E.2d 234 (2005) ("Where the language of a contract is plain and unambiguous, the construction of the agreement is a matter of law; and the court may not ignore or delete any of its provisions, nor insert words into it, but must construe the contract as written, in the light of the undisputed evidence as to the custom, usage, and meaning of its terms." (citation omitted)).

Moreover, the trial court made no findings that the vehicle had actual holes in the metal panels, nor is there evidence in the record to support such a finding. Instead, the trial court found that the vehicle had spots in the paint from rail dust. A spot in the paint is distinctly different from a hole in the sheet metal. See AMERICAN HERITAGE COLLEGE DICTIONARY 647, 1316 (3d ed. 1997) (hole: "[a]n opening or a perforation"; spot: "[a] mark on a surface contrasting in color to its surroundings"). Therefore, spots in the paint, the condition of Mr. Joyce's vehicle, does not fall under the express warranty.

Nonetheless, Mr. Joyce argues that the warranty book creates an express warranty to cover his vehicle's condition under section 6.2 which states:

6.2 Pre-Delivery Service

A defect in or damage to the . . . paint . . . of your truck may have occurred at the factory or while it was being shipped to the dealer.

Such a defect or damage is usually detected and corrected at the factory. In addition, dealers must inspect each truck before delivery. They repair any defects or damage detected before the truck is delivered to you.

This section of the warranty book states that any damage that occurs during shipment is to be repaired by the dealer, not DaimlerChrysler, the manufacturer. As Hall, Inc., the dealer, is not a party to this action, section 6.2 is inapplicable. Moreover, the trial court did not consider this warranty section in its order and made no findings of fact establishing the terms of this section of the warranty.

Because Mr. Joyce failed to prove that his vehicle did not conform to the terms of an express warranty provision, we must conclude that the New Motor Vehicles Warranties Act is inapplicable. Accordingly, the trial court erred in granting judgment in favor of Mr. Joyce; therefore, we reverse and remand.

Reversed and remanded.

Judges GEER and STEPHENS concur.

Report per Rule 30(e).