Circuit Court for Baltimore County
Case No.: 03C15005174

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 00033

September Term, 2017

BENJAMIN DEDJOE

v.

BMW OF NORTH AMERICA

Eyler, Deborah S.,
Wright,
Reed.

JJ.

Opinion by Reed, J.

Filed: April 23, 2018

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*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The appellant, Mr. Benjamin Dedjoe, filed suit against the appellee, BMW of North America, alleging that BMW—the manufacturer of his vehicle—breached express and implied warranties, Maryland's Consumer Protection Act, Maryland's Automotive Warranty Enforcement Act, and the federal Magnuson-Moss Warranty Act. The trial court granted the manufacturer's Motion for Summary Judgment on the ground that expert witness testimony is required for the appellant to bring the aforementioned claims. Subsequently, the appellant filed this timely appeal. He presents the following question, which we have shortened and reworded for clarity:

> I. Whether the trial court properly granted the appellee's Motion for Summary Judgment against the appellant on the ground that the appellant failed to show a defective part in the vehicle, even though the appellee described the part as "faulty," and fixed the part at its own cost three different times in three years?[1]

For the reasons that follow, we answer that question in the affirmative and affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

On March 20, 2012, the appellant, Mr. Dedjoe ("the appellant"), purchased a used 2010 BMW 750xi Sedan from Great Neck Suzuki in Great Neck, New York, which was

[1]The appellant presented his question exactly as follows:

> Whether the Circuit Court properly granted summary judgment against the owner of a motor vehicle on claims for breach of warranty on the ground that the owner had failed to show a defective part in the vehicle when the manufacturer itself had described the part in the vehicle as faulty and had replaced it three times at its own expense in three years even though it admitted that the part rarely need to be replaced.

manufactured by the appellee, BMW North America ("Manufacturer"). The appellant purchased the used vehicle for $62,762.64. When the appellant purchased the vehicle, it was still covered under a written, limited warranty that expired in November of 2013—nine months after the appellant purchased the vehicle from Great Neck Suzuki.

At the time of purchase, the rights and obligations under the limited warranty transferred to the appellant from the original owner. However, the warranty only provided for repair and/or replacement of qualifying parts during a specific timeframe. According to the warranty agreement that transferred from the original owner to the appellant with his purchase of the car, the agreement only requires that the manufacturer replace/repair qualifying parts during the first 48 months or 50,000 miles, whichever occurs sooner. When the appellant purchased the car, it had accumulated around 39,000 miles. Even though, there was approximately two years left in the 48-month warranty period, the car had reached nearly 50,000 miles at the time of purchase, and by November of 2013 had exceeded the 50,000 miles covered by the limited warranty.

After the appellant purchased the vehicle, and within the warranty period, the vehicle's fuel injection system began to malfunction. As such, the appellant took the vehicle to Keeler BMW in Latham, New York on November 21, 2012, to have his vehicle serviced. At that time, the appellant explained to Keeler BMW that the "service engine light" had come on and that the vehicle was running very poorly. Keeler BMW performed diagnostic tests, and ultimately, replaced the fuel injection system. The manufacturer fixed the part at no cost to the appellant, pursuant to the warranty agreement. At the time of the first repair, the vehicle was still covered by the limited warranty.

The fuel injection system was replaced a second time on November 26, 2014 at BMW of Catonsville in Baltimore, Maryland, after the warranty period had ended. At this time, the vehicle had 74,839 miles on it, and the appellant claimed that the vehicle was not driving properly. According to the repair order drafted by the service provider, there were "faulty" injectors that needed repair. In response, the dealership replaced all eight fuel injectors. Despite the fact that the warranty period had ended, and BMW introduced testimony that only one of the fuel injectors actually needed replacing at that time, BMW shouldered the cost for a second replacement of all of the fuel injectors.

On a third occasion in February of 2015—just two months after the second visit—the appellant took his vehicle back to BMW Catonsville in Baltimore, Maryland, claiming that the fuel injector system needed to be repaired because the vehicle was running "very poorly." After the dealership performed a diagnostic test to determine the cause of the reported issues with the vehicle, a serviceman replaced just one fuel injector in cylinder number 8 without charging the appellant for the cost of the repair. After the third repair, the appellant continued using the vehicle, and as of January 2016, the vehicle had 103,200 miles on it. The appellant contends—although the limited warranty period was already exhausted—the manufacturer breached express and implied warranties of merchantability because the fuel injection system in the vehicle was defective when he purchased the vehicle.

The appellant brought suit against the manufacturer on May 12, 2015, claiming that the vehicle's fuel injection system was defective. As a result of the manufacturer's defective product, the manufacturer breached express and implied warranties, the

Maryland Consumer Protection and Automotive Warranty Enforcement Act, and the federal Magnuson-Moss Act. The parties engaged in discovery, and on March 7, 2016, the manufacturer moved for summary judgment on the ground that there was no genuine issue of material fact.[2] In its motion, it argued the appellant failed to introduce expert witness testimony during the discovery period to support his claims that the vehicle's fuel injection system was defective.

On January 31, 2017, the Circuit Court for Baltimore County held a hearing on the motion. The trial court granted the manufacturer's Motion for Summary Judgment on all counts and held that each of the appellant's claims required proof of a manufacturer's defect. The trial court held that each of the claims brought by the appellant required proof of a manufacturer's defect, and the appellant could not prove such a defect without expert witness testimony.

The appellant filed this timely appeal arguing that the trial court erred in granting the manufacturer's Motion for Summary Judgment because an expert witness was not required for the appellant to bring his claims. According to the appellant, the decision granting the Motion for Summary Judgment should be vacated because the express words and conduct of the manufacturer support an inference that the product was defective, and therefore, the appellant did not need to introduce expert witness testimony as to the defectiveness of the fuel injector system.

[2] Initially, the discovery period was to end on February 20, 2016; however, that deadline was later extended to April 22, 2016.

DISCUSSION

A. Parties' Contentions

The appellant argues that the repeated replacement of the fuel injectors and the express words and conduct of the manufacturer are indicative of a defect in the part, and as a result, expert witness testimony is unnecessary to establish that the fuel injectors were defective.

According to the appellant, an "inference of a product defect" is sufficient to support his claims of: (1) breach of express warranties, (2) breach of implied warranties, (3) violation of the Maryland Consumer Protection/Automotive Enforcement Act, and (4) violation of the federal Magnusson-Moss Act. The appellant argues that an inference of a product defect can be derived from the fact that the product was not functioning properly because: (1) the appellant made repeated trips to the manufacturer for replacement of the fuel injectors, (2) the service provider referred to the fuel injectors as "faulty," (3) the service provider replaced the fuel injectors on three separate occasions, even though it is uncommon for the fuel injectors to be replaced, and (4) the manufacturer replaced the "faulty" parts at no cost to the appellant. Therefore, it was unnecessary for the appellant to present expert witness testimony as to the defectiveness of the part.

The appellant also argues that a negative inference in favor of the appellant can be made based on the manufacturer's refusal to provide a history of the warranty repairs for the appellant's vehicle. According to the appellant, the fuel injectors were likely replaced prior to the appellant purchasing the vehicle in 2012, and it can be inferred based on the repeated replacements within the three-year period that the appellant owned the vehicle

that the fuel injection system had issues prior to 2012. As such, the appellant claims that trial judge erred in granting the manufacturer's Motion for Summary Judgment.

The appellee-manufacturer argues that the appellant cannot bring his claims for breach of express and implied warranties, the Maryland Consumer Protection/Automotive Warranty Enforcement Act, and the federal Magnuson-Moss Act without first showing that the part was defective, and an expert witness is required to make such a showing. The manufacturer further asserts that the trial court did not err in granting summary judgment as to the aforementioned claims because the alleged defect is "beyond the knowledge of an average person," and as such, expert testimony is crucial. The manufacturer further contends that the trial court properly granted summary judgment in their favor because the appellant has not established the elements of the breach of express warranty claim by failing to introduce expert testimony, which is required for the appellant to bring subsequent claims under the federal Magnusson-Moss Act. We agree and explain.

B. Standard of Review

This Court reviews the trial court's decision granting the Motion for Summary Judgment in favor of the manufacturer under a de novo standard. *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450 (2006). The trial court is afforded broad discretion in granting and denying equitable relief; however, a decision of the trial court that involves an interpretation or application of Maryland constitutional, statutory, or case law must be "legally correct." *Schisler v. State*, 394 Md. 519, 535 (2009).

Pursuant to the Maryland Rules, summary judgment may be granted where the trial court determines that there is no genuine dispute to any material fact and that the moving party is entitled to a judgment in their favor as a matter of law. *See* Md. Rule 2-501.

C. Analysis

The trial court properly granted the manufacturer's Motion for Summary Judgment because the appellant failed to introduce expert witness testimony to support his claims that the product he purchased from the manufacturer was defective. In order to support all four of the claims brought by the appellant under the Maryland Consumer Protection Act/Automotive Enforcement Act, the federal Magnusson-Moss Act, and for breach of express and implied warranties, the appellant must first show that there was a defect in the materials or the workmanship of the manufacturer that caused the vehicle to malfunction. *See Ford Motor Co. v. General Accident Ins. Co.*, 365 Md. 321, 334−35 (2001) (a plaintiff must show the existence of "three 'products litigation basics'—defect, attribution of the defect to the seller, and a causal relationship between the defect and the injury").

The existence of a product defect can be established by inference or through expert witness testimony**.** Under Maryland law, expert testimony is required to support claims that a product does not function properly as a result of a product defect if "the subject of the inference is so particularly related to some science or profession that is beyond the ken of an average layman." *See Mohammad v. Toyota Motor Sales, USA, Inc.*, 179 Md. App. 693, 708 (2008) (quoting *Hartford v. Scarlett Harbor*, 109 Md. App. 217, 257–58 (1996)). As such, the appellant cannot bring breach of express or implied warranties claims under MD. CODE, ANN., COM. LAW, § 2-714., or the Automotive Warranty Enforcement Act, MD.

CODE, ANN., COM. LAW, § 13−408, without first showing the existence of a defective product, either by inference or through expert testimony. *Laing*, 180 Md. App. at 150. As a result of his failure to show the requisite defect, he is also barred from bringing claims under the federal Magnusson-Moss Act, 15 U.S.C. § 2310, because he has failed to show that the manufacturer breached the express warranty. *See Crickenberger v. Hyundai*, 404 Md. 37 (2008).

1. The appellant has not established a product defect because the facts presented do not support an inference of a product defect.

In granting the manufacturer's Motion for Summary Judgment, the trial court correctly stated, "[t]here are simply no facts presented through discovery that create an inference that there was some defect in the vehicle's fuel injection system," because a product defect cannot be inferred from the mere fact that the fuel injectors were replaced. For example, the fuel injectors may have to be replaced because of wear and tear, or a result of a minor impact, or exposure to a chemical used to clean the car or engine. In Maryland, "a defect attributable to a manufacturer may be inferred 'where circumstantial evidence tends to eliminate other causes, such as product misuse or alteration...'" *Harrison v. Bill Cairns Pontiac of Marlow Heights, Inc.*, 77 Md. App. 41, 50 (1988). A product defect cannot be inferred where some technical or scientific knowledge beyond that of a reasonable juror is needed to arrive at the conclusion that the product was defective. *Mohammad*, 179 Md. App. at 708.

The appellant relies on *Virgil v. Kash N' Karry*, 61 Md. App 23, 31 (1984), to support his claims that a product defect can be inferred from the evidence; however, the

facts in the *Kash N' Karry* case are distinguishable from the facts in the instant case. In *Kash N' Karry*, the appellant purchased a coffee thermos and two to three months later the coffee thermos imploded. This Court held that the trial court erred in granting a Motion for Directed Verdict in favor of Kash N' Karry on the ground that expert witness testimony was unnecessary because an inference of a product defect could be drawn from the fact that the coffee thermos imploded when the appellant poured coffee and milk into the thermos. *Id.*

Here, the same inference in *Kash N' Karry* cannot be derived from the replacement of the appellant's fuel injectors. In *Kash N' Karry*, the appellant was using the coffee thermos for its ordinary purpose when it imploded causing her injuries. *Id.* at 27. The average juror would not need technical or scientific knowledge to infer that some defect caused the coffee thermos to implode when the appellant poured liquid into it. *Id.* at 31 ("expert witness testimony is hardly necessary to establish that a thermos bottle that explodes or implodes when coffee and milk are poured into it is defective"). Unlike the exploding coffee thermos, the average layperson cannot infer a defect that is attributable to the manufacturer from the mere replacement of the fuel injectors. The simple fact that the fuel injection system was serviced three times in three years does not give rise to an inference that there was a defect in the vehicle part. *See Laing*, 180 Md. App. at 136. In this case, the trial court judge could not automatically draw an inference of a product defect from the "goodwill repairs."[3]

[3] The appellant claims that a reasonable manufacturer would not have replaced the parts at no cost to the consumer if there was not a legitimate defect in the replaced part;

Furthermore, the appellant did not present facts that dispel the possibility that the fuel injection system needed to be replaced because he did not properly care for, and service his vehicle. Although the appellant contends the issues with his vehicle—the fact that the "service engine light" had come on, and that the vehicle was running very poorly—are attributable to a faulty fuel injection system, the appellant, or any prior owner of the vehicle, may have caused these issues himself. During discovery, the manufacturer introduced expert testimony from Joel Hoadley, a technical support engineer at BMW that "the vehicle was not properly maintained" and the same fuel injectors could be replaced twice in two months for various reasons including "overdue oil services." In his deposition on April 20, 2016, Mr. Hoadley stated that the fuel injectors could have been replaced twice in two months for "various reasons," and "when [he] reviewed the maintenance history on the vehicle, [he] noticed the vehicle wasn't properly maintained. He also stated that "when oil is overdue, the oil thins out [and] could get into the combustion chamber and could fry the tip of the injector." As such, an inference of a product defect attributable to the manufacturer cannot be derived where there are other potential causes like this one.

2. Expert witness testimony is required to establish a defective product because the facts do not support an inference of a product defect.

Without an inference of a product defect, the appellant is required to introduce expert witness testimony as to the existence of a defect attributable to the manufacturer.

however, the manufacturer correctly states that "it cannot be automatically assumed that every time a dealership elects to replace a part, it is because a defect in material or workmanship exists." According to the manufacturer, it is not uncommon for a car dealership to make "goodwill repairs," or to replace or make repairs on vehicles that are out of warranty "in the interest of customer service."

According to Maryland case law, each of the appellant's claims require a defect, and as such "favorable expert testimony [is] necessary to sustain the appellant's burden of production." *Laing*, 180 Md. App. at 164. Favorable expert testimony is required to establish a product defect where an inference of a product defect cannot reasonably be drawn from the facts. *Id.* at 159. In *Crickenberger*, the Court of Appeals held that an expert witness was required to support the appellant's claims that her used vehicle was defective when the appellant purchased the vehicle from the manufacturer. 404 Md. at 53. The Court reasoned that an inference of a product defect could not be derived from the mere fact that the vehicle needed repairs, as the issues with the vehicle could have been the result of other causes. *Id.* Therefore, the Court found that an expert witness was required to eliminate those other causes and show the vehicle was, in fact, defective. *Id.*

Like in *Crickenberger*, the appellant claims that the repeated replacement of the fuel injectors creates a defect. However, the fact that the fuel injectors were replaced is insufficient to establish a defect because there are other potential causes, and an expert is necessary to eliminate those causes. Accordingly, expert witness testimony is required to support all four of the appellant's claims against the manufacturer.

CONCLUSION

For the above reasons, the circuit court properly granted the manufacturer's Motion for Summary Judgment.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.