

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001469-MR

JAMES BYRON WILLIAMS

APPELLANT

v. APPEAL FROM CARTER CIRCUIT COURT
HONORABLE SAMUEL C. LONG, JUDGE
ACTION NO. 98-CI-00011

VOLVO-WHITE

APPELLEE

OPINION

AFFIRMING

** ** * * * * *

BEFORE: PAISLEY AND TACKETT, JUDGES; AND HUDDLESTON, SENIOR
JUDGE. ¹

PAISLEY, JUDGE. This is an appeal from a summary judgment
entered by the Carter Circuit Court in an action relating to an
alleged breach of warranty. For the reasons stated hereafter,
we affirm.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution
and KRS 21.580.

The pertinent facts were well stated in a related opinion rendered by this court on August 25, 2000, in Appeal No. 1999-CA-001804-MR. We adopt that description of the facts as follows:

The controlling facts of the case are generally uncontested. Mr. Williams purchased three used Volvo dump trucks from CR Truck Sales on May 14, 1997. The trucks had been previously owned by Morris Trucking Co. of West Virginia, after which they were repossessed by a finance company and later purchased by CR Truck Sales. CR Truck Sales is not an authorized dealer of Volvo Trucks, nor did Volvo North America play a role in the sale of these trucks. At the time of purchase, Mr. Williams signed two purchase agreements and two invoices regarding the sale. Both stated clearly and conspicuously that the vehicles were being sold without warranty: "All trucks sold as is. No warranty of any kind by CR Truck Sales." Mr. Williams admits his signature appears on all four documents.

Approximately six months later, two of the trucks experienced broken axle housings which required extensive repairs. At this time, both trucks were within the time and mileage limitations of the Volvo manufacturer's warranty. Mr. Williams presented the trucks for repair to CR Truck Sales, who claimed no obligation under the warranty. The repairs were also presented to Volvo North America under the manufacturer's warranty; Volvo claimed that no warranty coverage would be extended.

Mr. Williams initiated this action against both CR Truck Sales and Volvo North America for breach of warranty. Williams asserted a claim of fraud against CR Truck Sales, claiming that CR Truck Sales misrepresented to him that the Volvo manufacturer's warranty would be extended to his trucks. He also asserted a claim of breach of contract against CR Truck Sales that, if no warranty was extended, they breached an oral

contract to do so. Furthermore, Mr. Williams also brought a claim of breach of warranty against Volvo North America for failure to cover repairs under the express warranty. The lower court granted summary judgment in favor of both defendants.

This court affirmed the trial court's entry of summary judgment in favor of CR Truck Sales but vacated the award of summary judgment in favor of Volvo, finding that the trial court erred by determining that there was no privity of contract between appellant and Volvo. On remand, the trial court found that there was no genuine issue of material fact as to whether appellant caused the vehicles' failure through misuse, thereby rendering the vehicles ineligible for repairs under Volvo's express warranty. The court therefore entered summary judgment in favor of Volvo and dismissed the action. This appeal followed.

First, appellant contends that the trial court erred by entering summary judgment for Volvo as to the issue of whether he had overloaded or misused the vehicles. We disagree.

The Volvo truck warranty included the following exclusions:

1. **DAMAGES:** Damages due to accidents, misuse, negligence, improper operations, storage or transport, operation at excessive speeds, loading beyond the factory rated load capacity, and improper or insufficient maintenance services are not covered. Damages due to failure to follow Volvo GM Heavy Truck

Corporation service procedures are considered damages due to improper maintenance services.

2. **APPLICATION:** The responsibility of supplying the correct application or specification information on a vehicle sold to the customer belongs to the selling location. Vehicle application problems, including but not limited to, replacement of incorrect axle or transmission gear ratios, failures of component parts of vehicles being operated in excess of factory rated load capacities, or the use of a vehicle for a purpose for which it was not intended are not covered. (Emphasis added.)

Thus, the warranty itself excluded coverage of vehicle damage which resulted from loading a truck beyond its "factory rated load capacity."

Here, it is undisputed that each truck had a factory rated load capacity of 75,800 pounds, including the weight of the truck itself and the load carried therein. The record showed that the trucks' original owner overloaded the vehicles with such frequency that, after a point, Volvo refused to make further warranty repairs. Moreover, not only did appellant admit that he regularly carried loads in excess of 75,800 pounds, but his own records established that during the six months prior to the failure of the axle housings, the trucks hauled more than 1,100 loads which exceeded the allowable capacity, frequently by as much as 50,000 pounds. Further, each of the three witnesses who testified by deposition regarding the cause of the axle failures concluded that the damages resulted

from the routine overloading of the vehicles, and there is nothing in the record to suggest that appellant could adduce any affirmative evidence during a trial to rebut that conclusion or to show that a genuine issue of material fact existed as to causation. That being so, it is clear that the trial court did not err by finding that there was no genuine issue of material fact as to this issue.

Appellant next contends that the trial court erred by failing to find that a genuine issue of material fact existed as to whether Volvo reasonably should have foreseen that the trucks would be misused and, if so, whether Volvo failed to adequately warn owners regarding the dangers of such misuse. This contention clearly lacks merit, as "the economic loss doctrine bars recovery in tort" for economic losses relating to a product's failure where, as here, there is not the "kind of harm against which public policy requires manufacturers to protect, independent of any contractual obligation." East River Steamship Corp. v. Transamerica Delaval, 476 U.S. 858, 866, 106 S.Ct. 2295, 2300, 90 L.Ed.2d 865 (1986). See also Miller's Bottled Gas, Inc. v. Borg-Warner Corp., 955 F.2d 1043, 1050 (6th Cir. 1992); McCracken County School Board v. Hoover Universal, Inc., 1994 WL 1248581 (W.D. Ky. 1994). Instead, damages were limited to only those which were recoverable under the terms of the warranty.

Next, appellant in essence contends that the trial court erred by failing to conclude that the factory rated load capacity limitation should not be enforced as it was unconscionable for Volvo "to sell coal trucks in a market in which they're always overloaded according to the Appellee's claimed standards." However, given the complete absence of any evidence to show that Volvo either concealed evidence as to the trucks' weight limitations or otherwise failed to reveal pertinent information about the trucks' capacities, it cannot be said that Volvo acted unconscionably by selling trucks which did not meet the needs of the vehicles' subsequent purchasers.

Finally, appellant contends that the trial court erred by enforcing warranty provisions which purported to limit or liquidate damages, thereby causing the warranty to fail as to its essential purpose. However, it is clear that Volvo and the trucks' original purchaser, as well as appellant in his capacity as a subsequent purchaser who had privity of contract with Volvo, agreed to the various terms of the trucks' warranties. In addition to the specific exclusions quoted above, those terms limited purchasers' remedies in pertinent part as follows:

In no event shall Volvo GM Heavy Truck Corporation or its dealers be liable for special or consequential damages, including loss of income, downtime expenses and any other commercial losses, unless expressly provided otherwise in this warranty. The buyer's remedy is limited to repair or replacement of the part or

component which is determined defective in normal use. The truck warranty certificate contains the sole and exclusive warranty for Volvo trucks.

. . . .

This warranty is expressly in lieu of all other warranties and representations, expressed or implied including, but not limited to, implied warranty of merchantability or fitness for a particular purpose.

. . . .

No payment or other compensation will be made for consequential, indirect, or incidental expenses or damages of any kind.

As the warranties specifically provided that appellant's remedy was limited to the "repair or replacement" of parts or components determined to be defective in normal use, appellant was not entitled to be reimbursed for any attempted repairs which fell outside the terms of the warranty. Hence, the court did not err in this regard.

The court's summary judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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