Battle v. Lincoln

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Vernell Battle, Jr. asks this court to reverse the judgment entered upon the trial court's order granting summary judgment for respondents, Santa Monica Lincoln and Robert Justis, on Battle's complaint alleging numerous causes of action including breach of contract, fraud, negligence, implied breach of warranties and covenants and unfair business practices in connection with Battle's purchase of a 2001 Lincoln Navigator from respondents. Although respondents purported to sell him a "new" Navigator, Battle alleged the vehicle contained defects resulting from an accident prior to purchase and/or it had been repaired or altered prior to sale. The trial court granted summary judgment for respondents. As set forth below, we find respondents failed to satisfy the initial prima facie burden to show no triable issue of fact. Their evidence, namely an expert declaration, failed to disclose with sufficient specificity the basis for the opinions, inter alia, the vehicle was new when purchased, had not been repaired and did not contain defects which impaired its use, safety and value. Consequently, we conclude the trial court should have denied the motion for summary judgment, and therefore we reverse.

FACTUAL AND PROCEDURAL HISTORY

In August 2001, Battle purchased a new 2001 Lincoln Navigator from respondents. Shortly after purchase Battle noticed certain alleged abnormalities and defects [1] on the vehicle, which caused Battle to suspect the vehicle had been involved in an accident, was otherwise defective or had been altered prior to purchase.

In December 2001, Battle retained Gregory Barnett, an automotive diagnostic and repair expert to inspect the vehicle. Barnett observed a number of purported defects [2] which led him to conclude the vehicle had been altered and/or damaged as a result of an accident.

In April 2002, Battle filed a complaint against respondents [3] alleging causes of action for breach of implied warranties; revocation of acceptance; fraud; breach of contract; breach of implied covenant of good faith and fair dealing; unfair business practices and negligence. Battle's claims were premised the factual allegations: (1) Battle intended to purchase a new Navigator; (2) respondents

represented the vehicle was new; (3) the vehicle contained defects resulting from a collision or, was otherwise defective or was significantly altered prior to sale; (4) respondents failed to disclose the true condition of the Navigator; and (5) the defects/alterations impaired the value, safety and use of the vehicle.

In December 2002, Battle's expert and an expert retained by respondents, Robert J. McFarland, inspected the Navigator.

In February 2003, respondents [4] filed a motion for summary judgment. Respondents asserted they were entitled to summary judgment based on the "undisputed material facts" the Navigator was new when sold to Battle, the vehicle had not been involved in any prior accident, nor had it been repaired or repainted as a result of an accident and that none of Battle's complaint's impaired the use, safety or value of the vehicle.

In support of its motion, respondents submitted a two-page declaration from their expert, McFarland. McFarland stated he was an expert with over 45 years of experience in the field of automotive repairs, diagnosis, restoration, inspection and investigation. McFarland provided the following opinions and conclusions concerning Battle's Navigator: (1) the vehicle "is in above average condition both inside and out and is without any modifications;" (2) "[t]here is no evidence that the subject vehicle was not new when purchased" or "has ever been involved in an accident" or "has ever been repaired /repainted for damages caused by an accident;" (3) "[a]ll of Mr. Battle's complaints are of a fit and finish and are normal on all new vehicles;" and (4) "[n]one of the complaints expressed by Mr. Battle impair the use, safety or value of the subject vehicle in any way." McFarland further indicated his opinions were based on his review of "all of the records pertaining to the subject vehicle," a visual and physical inspection and photographs of the Navigator, a test drive of the Navigator and a comparison with an exemplar vehicle of the same year, model-type and similar mileage.

Battle opposed the motion and supported his opposition with excerpts from his deposition testimony and a declaration from his expert Barnett. Barnett attested to the various alleged defects and/or alterations he had observed during his inspections and as to his conclusion the vehicle had been damaged in a presale accident.

The court granted respondents' motion. According to counsel, [5] the court found Battle's expert declaration failed to disclose a basis for the opinion the Navigator had been damaged prior to purchase and that Battle had otherwise failed to show the alleged defects were connected to a presale accident.

Thereafter, Battle filed a motion for reconsideration. Battle asserted that additional diagnostic testing conducted during the pendency of the motion demonstrated that the vehicle suffered damage as a result of an accident.

The court denied the motion and entered judgment.

Battle appeals.

DISCUSSION

On appeal Battle asserts the trial court erred in granting respondents' summary judgment motion. [6] As set forth below, we agree.

In reviewing a grant of summary judgment motion, this court determines de novo whether there is a genuine issue of material fact and whether the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subdivision (c); Union Bank v. Superior Court (1995) 31 Cal.App.4th 573, 579.) The moving party bears the burden to persuade the court that there is no triable issue of material fact and that the moving party is entitled to judgment as a matter of law. Thus, the moving party must initially "produce evidence sufficient to make a prima facie[[7]] showing of the nonexistence of a triable issue of material fact." (Bushling v. Fremont Medical Center (2004) 117 Cal.App.4th 493, 506.)

Where, as here, a defendant moves for summary judgment and the plaintiff bears the burden of proof by preponderance of the evidence at trial on the issues that are the subject of the motion, the defendant must initially present "evidence that would require a reasonable trier of fact not to find any underlying material fact more likely than not. . . ." (Aguilar v. Atlantic Richfield Company, supra, 25 Cal.4th at p. 851.) Thus, we must determine whether the defendant has shown by sufficient and competent evidence that the plaintiff does not possess, and cannot reasonably obtain, sufficient evidence to establish at least one element of plaintiff's cause of action. (Id. at p. 854.)

If the defendant fails to present sufficient, admissible evidence in support of its initial prima facie burden, the motion should be denied. This rule applies even where the plaintiff does not object to the defendant's evidence, presents defective declarations or fails to present a sufficient counter showing. (Rincon v. Burbank Unified School Dist. (1986) 178 Cal.App.3d 949, 954-956.)

If, however, the defendant has met its initial obligation, then the burden shifts to the opposing plaintiff to demonstrate the existence of a triable issue of material fact as to the element or elements challenged by the defendant. (Hunter v. Pacific Mech. Corp. (1995) 37 Cal.App.4th 1282, 1286.)

In conducting our review, we are limited to the facts shown by the evidentiary materials (i.e., declarations and deposition testimony) submitted, as well as those facts admitted or uncontested in the pleadings, and moving and opposing papers. (Sacks v. FSR Brokerage, Inc. (1992) 7 Cal.App.4th 950, 962.) The evidence presented by the moving party is strictly construed and that of the opposing party is liberally construed; the facts alleged in the evidence of the opposing party and the reasonable inferences there from must be accepted as true. (Savage v. Pacific Gas and Electric Co. (1993) 21

Cal.App.4th 434, 440.) In addition, in considering a motion for summary judgment neither the trial court, nor this court may weigh the evidence to determine whose version is more likely true. Nor may a summary judgment be based upon the court's evaluation of credibility. (Binder v. Aetna Life Insurance Company (1999) 75 Cal.App.4th 832, 840.) Doubts as to the propriety of summary judgment should be resolved against granting the motion.

Where, as here, the resolution of a summary judgment motion turns on sufficiency of expert declarations, the expert presented in support of the motion must disclose a "reasoned explanation" for his or her conclusions. (Kelley v. Trunk (1998) 66 Cal.App.4th 519, 523-525.) Trunk has been described as suggesting that where an expert's opinion provides the sole basis for supporting summary judgment, that opinion must set-forth "in excruciating detail" its factual basis. (Hanson v. Grode (1999) 76 Cal.App.4th 601, 608, fn. 6.) In sum, an expert opinion unsupported by reasons or explanations does not establish the absence of a material fact for trial, as required for summary judgment. An expert's declaration without illuminating explanation is insufficient to carry the burden in moving for summary judgment.

Such is the case before us. In our view respondents did not support their motion with admissible evidence. [8] In particular, respondent's expert, McFarland failed to adequately explain his opinions and failed to connect the purported bases of his opinions to his conclusions.

First, McFarland attested that there was "no evidence the [Navigator] was not new when purchased," but did not explain how he arrived at the conclusion. While the declaration discloses his conclusions were based on his "review of documents, inspection and test drive of the vehicle," it fails to explain which of these bases led him to conclude the vehicle was in fact new. [9] On appeal respondents suggest this conclusion is based on McFarland's review of all records relating to the vehicle, but McFarland does not so state in his declaration. It is McFarland, rather than respondents, who must attest to the bases of his conclusions. In addition, even were we to assume the conclusion is based on the vehicle records, the opinion nonetheless is still inadequate because it does not explain what the vehicle records disclosed which led to the opinion. Moreover, we note McFarland did not opine the car was new when purchased. The fact that, in McFarland's view, no evidence exists to show the vehicle was used or damaged when Battle bought it, does not mean the car was new. Consequently, McFarland's opinion also falls short of demonstrating what respondents sought to prove.

Second, while McFarland states the vehicle is above average condition, is without modifications and there is no evidence of repair/repaint for damage caused by an accident, this opinion does not address Battle's claim that the vehicle was damaged or altered, even in absence of an accident.

Third, McFarland concludes Battle's complaints are of a "fit and finish" and are "normal on all new vehicles" without providing any basis to test the conclusion. The declaration fails to define "fit and finish" and does not explain the "normal" range of complaints for a new vehicle. Without further guidance, the soundness of McFarland's conclusions cannot be assessed. An expert opinion is only as

good as the facts and reasons on which it is based. (Kelley v. Trunk, supra, 66 Cal.App.4th at p. 523 ["An expert's opinion, even if uncontradicted, may be rejected if the reasons given are unsound"].) Similarly, although McFarland concludes that none of Battle's complaints "impair the use, safety or value" of the Navigator, McFarland does not explain how he arrived at this conclusion.

McFarland's two-page declaration contains only ultimate factual conclusions unsupported by sufficient reasoned explanations. [10] Mere conclusions of fact are insufficient to satisfy the evidentiary requirements of the summary judgment statute. Because summary judgment is a drastic measure which deprives the losing party of a trial on the merits, it should only be granted where it is clear from the admissible evidence that the moving party is entitled to judgment as a matter of law. It should not be invoked where, as here, the moving party failed to provide admissible evidence to satisfy its initial burden on the motion.

In view of the foregoing, respondents' motion should have been denied.

DISPOSITION

The judgment is reversed and the case remanded for further proceedings consistent with this opinion. Appellant is entitled to recover costs on appeal.

We concur:

JOHNSON, Acting P.J.

ZELON, J.

1. These included: bouncing of the vehicle when driven over 45 miles per hour; a gouge in the back bumper, a loose roof rack, loose molding and loose inside paneling, a paint stain on the inside panel of a door, a gap between fog light and body panel, rough edges on back side panel of the vehicle and squeaks in the dash board.

2. Barnett noted the following defects: (1) left front fog lamp misadjusted and a large gap between the lamp and the bumper cover; (2) left front fender gap misaligned at cowl; (3) left front door gap misaligned at cowl and roof line; (4) portion of left front door not painted and "there are wrench marks on all of the hinge bolts, indicating that the door was replaced as part of collision damage"; (5) Left rear door seal does not grip aperture properly at roofline; (6) crack in the paint at the "D" pillar near the bottom right corner of the pop- out window; (7) hood gap is off from side- to- side; (8) a large "hook mark" on the left front door frame extension hole and "hook marks" on both left and right rear frame extensions, indicating that the vehicle was placed on a frame rack, chained down at the rear corners using hooks and chains, and the frame was straightened by pulling on the left front frame rail using a hook and chain; and (9) paint thickness uneven on repaired area when compared to rest of vehicle.

3. Battle also named others, including, Ford Motor Company in his complaint. Ford is not a party to this appeal.

4. Defendant Ford Motor Company unsuccessfully attempted to join in respondents' motion.

5. Neither the reporter's transcript from the summary judgment motion hearing nor any written order disclosing the court's rationale is included in the record on appeal.

6. He also claims the court abused its discretion in denying the motion for reconsideration. In view of our conclusion the court should have denied the summary judgment motion, we do not reach the merits of Battle's claims concerning his reconsideration motion.

7. A prima facie showing in this context is "one that is sufficient to support the position of the party in question." (Aguilar v. Atlantic Richfield Company (2001) 25 Cal.4th 826, 851.)

8. Below Battle did not specifically object to McFarland's declaration. Nonetheless, Battle did assert the motion should have been denied because respondents had failed to meet its evidentiary burden on the motion.

9. In fact, none of McFarland's "conclusions" are linked to any particular factual bases.

10. In view of our conclusion, we do not assess the adequacy of Battle's opposing expert declaration.