IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Michael Rende,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 18 L 5552
	)	
Deece Automotive, Inc.,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Summary judgment is inappropriate if there exists any question of material fact that cannot be resolved as a matter of law. The record in this case presents a conflict between two witnesses as to whether the defendant conducted any prior repairs or maintenance to the vehicle in which the plaintiff was riding and injured. For that reason, the defendant's summary judgment motion must be denied.

Facts

On June 6, 2012, Cathy Shaw purchased a previously owned 2003 Ford Explorer from Carmax. On December 24, 2012, Shaw was driving the vehicle when its left, front wheel partly fell off. Shaw had the car towed to Deece Automotive. On December 26, 2019, Deece employee and manager, James Morgan, worked on Shaw's car. He saw that the lug nuts were loose on the left, front wheel. Morgan did a visual inspection of the other wheels to determine whether those wheels' lug nuts were tight. Morgan used a torque wrench on the other three wheels, but he doesn't recall if any of the lug nuts were loose.

On May 4, 2013, Shaw's son, John Malone and three friends, including Michael Rende, were in the Explorer driving north on

Interstate 65 in Indiana. Another friend, Mario Guagliardo, drove the vehicle. With no warning, the right, front tire blew out and the vehicle jerked to the right. Guagliardo tried to correct the Explorer to the left, but was unsuccessful, and it proceeded to roll over. Rende was ejected from the vehicle during the accident and suffered severe injuries. After the accident, Guagliardo looked at the right, front wheel after the accident and said that the metal had broken in half.

On June 3, 2014, Rende filed his original complaint against Deece. On June 21, 2017, Rende voluntarily dismissed his complaint. On May 29, 2018, Rende re-filed his current complaint. The complaint brings five counts against Deece: products liability, breach of warranty of fitness for a particular use, implied warranty of merchantability, *res ipsa loquitur*, and negligence.

The case proceeded through extensive written and oral discovery during the original and re-filed actions. One of the persons deposed during discovery was Brian Campolattara, Deece's primary owner. He testified that Deece replaced the Explorer's front, left wheel, although the repair bill does not indicate the work undertaken. Campolattara also provided an affidavit attesting that Deece worked only on the Explorer's left, front tire and never performed any work on the right, front tire.

On November 4, 2020, Deece filed a summary judgment motion. The motion raises two arguments: (1) the record does not establish that Deece repaired, replaced, or performed work on the right, front wheel; and (2) the *res ipsa loquitur* cause of action fails because Deece was never in exclusive control of the vehicle at the time of the accident. On February 8, 2021, Rende filed his response. On February 16, 2021, Deece filed its reply.

Analysis

The Code of Civil Procedure authorizes the issuance of summary judgment "if the pleadings, depositions, and admissions

on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005. The purpose of summary judgment is not to try a question of fact, but to determine whether one exists that would preclude the entry of judgment as a matter of law. *See Land v. Board of Ed. of the City of Chicago*, 202 Ill.2d 414, 421, 432 (2002).

A defendant moving for summary judgment may disprove a plaintiff's case in one of two ways. First, the defendant may introduce affirmative evidence that, if uncontroverted, would entitle the defendant to judgment as a matter of law; this is the so-called "traditional test." *See Purtill v. Hess*, 111 Ill. 2d 229, 240-41 (1986). Second, the defendant may establish that the plaintiff lacks sufficient evidence to establish an element essential to a cause of action; this is the so-called "*Celotex* test." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986), *followed Argueta v. Krivickas*, 2011 IL App (1st) 102166, ¶ 6. A court should grant summary judgment on a *Celotex*-style motion only when the record indicates that the plaintiff had extensive opportunities to establish his or her case but failed in any way to demonstrate that he or she could do so. *Colburn v. Mario Tricoci Hair Salons & Day Spas, Inc.*, 2012 IL App (2d) 110624, ¶ 33.

Regardless of the approach, if the defendant presents facts that, if not contradicted, are sufficient to support summary judgment as a matter of law, the nonmoving party cannot rest on the complaint and other pleadings to create a genuine issue of material fact. *See Harrison v. Hardin Cnty. Cmty. Unit Sch. Dist. No. 1*, 197 Ill. 2d 466, 470 (2001). Rather, a plaintiff creates a genuine issue of material fact only by presenting enough evidence to support each essential element of a cause of action that would arguably entitle the plaintiff to judgment. *Prostran v. City of Chicago*, 349 Ill. App. 3d 81, 85 (1st Dist. 2004). To determine whether a genuine issue as to any material fact exists, a court is to construe the pleadings, depositions, admissions, and affidavits strictly against the moving party and liberally in favor of the opponent. *See Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 (2004).

The inferences drawn in favor of the nonmovant must, however, be supported by the evidence. *Destiny Health, Inc. v. Connecticut Gen'l Life Ins. Co.*, 2015 IL App (1st) 142530, ¶ 20. A triable issue precluding summary judgment exists if the material facts are disputed, or if the material facts are undisputed but a reasonable person might draw different inferences from the undisputed facts. *Id.* On the other hand, if no genuine issue of material fact exists, a court has no discretion and must grant summary judgment as a matter of law. *See First State Ins. Co. v. Montgomery Ward & Co.*, 267 Ill. App. 3d 851, 854-55 (1st Dist. 1994).

Deece's summary judgment motion is both a traditional and a *Celotex* motion. Deece argues that the record establishes Deece never worked on the Explorer's right, front wheel and that Rende has failed to adduce any evidence to the contrary. This court disagrees.

The sole issue that determines the fate of Deece's motion is whether Morgan worked on the Explorer's right, front wheel. Campolattara insists that Deece worked only on the Explorer's left, front tire and never performed any work on the right, front tire. Campolattara testified that he knows this to be true based on his conversations with Morgan. On the other hand, there is no documentation to establish what Morgan did to the Explorer. In contrast, Morgan testified he tightened the lug nuts on the left, front wheel and then used a torque wrench to tighten the lug nuts on the other wheels. Morgan's testimony unquestionably contradicts Campolattara's and creates a question of material fact that cannot be resolved as a matter of law. It is also unexplained how the Explorer could have be driven for more than four months without the right, front wheel failing off. That issue, while not directly addressed by the parties is a second question of material fact that this court cannot answer.

This court reaches a different result as to the *res ipsa loquitur* cause of action that is count four. *Res ipsa loquitur* is often improperly pleaded separately from an ordinary negligence claim, but it is not an independent cause of action. *Krivokuca v.*

City of Chicago, 2017 IL App (1st) 152397, ¶ 43. Rather, *res ipsa loquitur* is merely an evidentiary doctrine that permits proof of a fact through an inference rather than direct evidence. *Metz v. Central Ill. Elec. & Gas Co.*, 32 Ill. 2d 446, 448-49 (1965); *Collins v. Superior Air-Ground Ambulance Serv., Inc.*, 338 Ill. App. 3d 812, 816 (1st Dist. 2003). In short, *res ipsa loquitur* causes of action are a form of improper pleading and should be dismissed.

Conclusion

For the reasons presented above, it is ordered that:

1. The defendant's summary judgment motion as to counts one, two, three, and five is denied;
2. The defendant's summary judgment motion as to count four is granted; and
3. Count four is dismissed with prejudice.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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