

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

TIMOTHY WATKINS, both Individually and :
as the Administrator of the Estate of :
RUTH WATKINS, Deceased :
Plaintiffs :

vs. :

CONTINENTAL TIRE THE AMERICAS, :
LLC d/b/a GENERAL TIRE AND RUBBER :
COMPANY, :
GENERAL MOTORS, LLC, and :
FELIX BENABE, JR., :
Defendants :

vs. :

JOSE'S GARAGE and :
TAFOYA TIRE SERVICE :
Additional Defendants :

DECEMBER TERM, 2013

NO. 3586

DOCKETED

OCT 25 2016

N. ERICKSON
DAY FORWARD

Watkins Etal Vs Benabe-ORDER



13120358600197

ORDER

And Now, this ^{25th} day of October, 2016, after considering the Motion filed by Defendant General Motors, LLC to Amend this Court's Order of September 13, 2016 which denied Summary Judgment, and Plaintiffs' Response thereto, and for the reasons set forth in Court Exhibit "A", attached, it is hereby **ORDERED** that the Defendant's Motion is **DENIED in its entirety**. The request of Defendant to certify the record for immediate interlocutory appellate review will not materially advance the ultimate termination of this litigation.

BY THE COURT:

RECEIVED
OCT 25 2016
DAY FORWARD

Frederica A. Massiah-Jackson
FREDERICA A. MASSIAH-JACKSON, J.

Court Exhibit "A"

On August 1, 2016, Defendant General Motors filed a Motion for Summary Judgment (Control No. 16080270) in this 402A litigation. General Motors asserted that Plaintiff-Decedent was not wearing her seatbelt at the time of the accident and consequently was not an intended user of the 2000 Chevrolet Tracker. The Defendant relied on a Police Report as support for this argument. Memorandum, dated August 1, 2016, page 3:

“Plaintiff, Ruth Watkins, the right front seated passenger in the Tracker, **was not wearing her seatbelt**. See Police Report, a copy of which is attached hereto as Exhibit “C”. As a result of the accident, Ms. Watkins was ejected from the vehicle and was fatally injured.” (Emphasis in original).

On September 1, 2016, Plaintiff-Estate responded in its Memorandum, inter alia, that the driver of the motor vehicle testified that he observed Ms. Watkins put on her seatbelt. Memorandum (unpaged):

“*Assuming arguendo* that Defendant GM had a proper basis to argue that unbelted occupants cannot bring automotive defect claims, the aforementioned eyewitness testimony of Mr. Benabe (see Exhibit “A”) makes it constructively impossible for Defendant GM to claim that it possesses unambiguous and irrefutable evidence demonstrating the exclusion of all genuine issues of material fact and all proper inferences drawn therefrom. Thus, putting temporarily aside that Defendant GM’s Motion is inconsistent with Pennsylvania statutes and Pennsylvania caselaw, the lack of an adequate factual basis for Defendant GM’s Motion requires a denial.”

Rule 1035.2 of the Pennsylvania Rules of Civil Procedure provide in pertinent part:

“(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report . . .”

The *Note* further reiterates that summary judgment is based on an evidentiary record which entitles the moving party to judgment as a matter of law. “Under subparagraph (1), the record shows that the material facts are undisputed and, therefore, there is no issue to be submitted to the jury.” In the case at bar, General Motors is not entitled to summary judgment because the material fact upon which it based its defense of “unintended user” is not applicable. Whether Ms. Watkins was wearing her seatbelt is a fact in dispute on this evidentiary record.

Most significantly, the so-called “seat belt defense” has not been adopted by the majority of U.S. jurisdictions, including Pennsylvania. Honorable Christine Donohue noted in Gaudio v. Ford Motor Co., 976 A.2d 524 (Pa. Superior Ct. 2009) that the Legislature determines the public policy of the Commonwealth. 75 Pa. C.S.A. §4581(e) states:

“Civil actions. In no event shall a violation or alleged violation of this subchapter be used as evidence in a trial of any civil action; nor shall any jury in a civil action be instructed that any conduct did constitute or could be interpreted by them to constitute a violation of this subchapter; nor shall failure to use a child passenger restraint system or safety seat belt system be considered as contributory negligence nor shall failure to use such a system be admissible as evidence in the trial of any civil action.”

The Gaudio Court relied on well-established Appellate precedent and held that the clear and unambiguous language of Section 4581(e) is a “blanket exclusion of evidence of seatbelt usage in civil actions.” It is not up to General Motors to substitute its judgment for the legislative will.

For all of the reasons set forth above the Defendant’s Motion for Summary Judgment was Denied on September 13, 2016, and, the Defendant’s Motion to Amend is Denied in its entirety.

A handwritten signature in black ink, appearing to be 'J. G.', is written over a faint horizontal line.