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Summary Judgment Ruling in Complex Contract Dispute Addresses Issues from A (Admiralty) to W (Warranty) and Many in Between

Virginia Rocket Docket Blog

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In a case involving a fact pattern that could be on a law school exam, EDVA Judge Mark Davis provides a detailed analysis of a series of issues in a complex dispute between a yacht owner and a marine engine manufacturer. What Hurts, LLC v. Volvo Penta of the Americas, LLC, Civil Action No. 2:22cv552, 2024 U.S. Dist. LEXIS 3063 (E.D.Va. Jan. 4, 2024)

Judge Davis' opinion gives valuable guidance on multiple topics important to commercial litigators practicing in the EDVA, including jurisdictional and choice of law issues, proof of fraud and fraudulent concealment, the parol evidence rule, oral express warranties and contractual limitations on damages under the Uniform Commercial Code (U.C.C.).

Background

According to Judge Davis' opinion, this saga involving a yacht buyer, What Hurts, and an engine manufacturer, Volvo Penta, began in 2019 when What Hurts bought a 60-foot yacht designed and manufactured in Florida by a company called Midnight Express. The yacht's engines and the "lower units," which transferred power and rotation from the engines to the propeller shaft, came with a limited warranty provided by the engine manufacturer, Seven Marine, which is owned by Volvo Penta.

Shortly after the purchase, the yacht began having performance issues. Over the course of the next year, Volvo Penta unsuccessfully tried to repair the engines and resolve the problems. In 2021, the parties began to negotiate a resolution in which What Hurts would release all claims in exchange for replacement of the engines and lower units.

As part of the negotiations, the parties discussed installing different lower units made by DPH. What Hurts initially requested the same lower units as initially installed, but a Volvo Penta representative responded that "if it was my boat, I would go with a DPH but it's your choice…" What Hurts ultimately chose the DPH lower units.

In March 2021, the parties entered into a Release Agreement in which Volvo Penta provided four refurbished Seven Marine engines and upgraded DPH lower units for $10,000. The engines and lower units, however, continued to have problems. What Hurts ultimately removed the replacement engines and lower units, installed

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Mercury brand marine engines and brought suit against Volvo Penta for fraud, fraudulent concealment and breach of express warranty.

Issue No. 1 – Admiralty Jurisdiction

What Hurts' complaint stated that it was filed "in admiralty," but Judge Davis pointed out that contract disputes fall within federal admiralty jurisdiction only if the nature of the contract is maritime. Contracts to repair or restore a boat which had been engaged in maritime commerce or navigation are maritime contracts, but contracts to build a boat are not maritime.

Here, the yacht had been fully constructed before the parties entered into the Release Agreement. Thus, it was a maritime contract, and so What Hurts' breach of warranty claim fell within the court's admiralty jurisdiction.

Issue No. 2 – Jurisdiction Over the Fraud Claims

What Hurts' fraud claims, however, did not fall within admiralty jurisdiction because the claims had no connection to navigable waters.

Both parties argued that the court had diversity jurisdiction over the fraud claims, but Volvo Penta is a limited liability company, and, as the court pointed out, the citizenship of a limited liability company is determined by the citizenship of its members. Neither Volvo Penta or What Hurts offered any evidence of the citizenship of Volvo's members, and so the court ruled it could not assert diversity jurisdiction.

That ruling left only supplemental jurisdiction under 28 U.S.C. § 1367(a) as a possible basis for jurisdiction over the fraud claims. On that issue, the court ruled that the fraud claims shared a "common nucleus of operative facts" with the breach of express warranty claim, and so the claims formed part of the same case or controversy, satisfying the requirements for supplemental jurisdiction.

Issue No. 3 – Choice of Law – Warranty Claim

Judge Davis then turned to issues of the applicable state law. It is often said that the result of any choice of law analysis is that "forum law applies," and that's where Judge Davis ended up.

For the breach of warranty claim, federal maritime choice of law rules applied, and so the court had to choose between federal or state substantive law. Here, the parties had included a provision in the Release Agreement that Virginia law governed any dispute. When sitting in admiralty, Judge Davis held, federal courts will enforce such agreements unless there is a compelling policy reason not to do so, which did not exist in this case.

Issue No. 4 – Choice of Law – Fraud Claims

A court exercising supplemental jurisdiction applies the choice of law rules of the forum state. This case, however, had a twist because the case had originally been filed in Florida and transferred to Virginia. Under those circumstances, the court applies the choice of law rules of the state where the action was originally filed.

Under Florida choice of law rules for tort claims, the court applies the law of the state with the most significant relationship to the claim, looking at factors such as where the injury occurred, where the conduct causing the injury occurred, the location of the parties and the location of the parties' relationship.

Here, What Hurts claimed it would not have entered into the Release Agreement if it had known of Volvo Penta's alleged misrepresentations. Thus, Judge Davis found, the claim arose out of the parties' contractual relationship, which was centered in Virginia.

Issue No. 5 – Actual Fraud – Statement of Material Fact

Having successfully made its way through the procedural issues, Judge Davis turned to the fraud claims. Under Virginia law, a claim of fraud requires clear and convincing evidence that the defendant knowingly and intentionally made a false statement of material fact with the intent to mislead, as well as reliance by the plaintiff and resulting damage.

What Hurts claimed that Volvo Penta fraudulently represented that it would perform an application review to ensure that the DPH lower units would work. Such a statement, the court held, is no more than a statement of future performance, not an actionable statement of material fact.

Similarly, the statement by Volvo Penta's representative that "if it was my boat, I would go with a DPH" was an expression of opinion, not a statement of fact.

Issue No. 6 – Actual Fraud – Knowing and Intentional Falsity

Next, Judge Davis addressed whether Volvo Penta's remaining statements — essentially that the combination of the original engines with the DPH lower units would work.

Agreeing with Volvo Penta, Judge Davis found that there was insufficient evidence that What Hurts had met its burden. The key obstacle for What Hurts was the clear and convincing evidence requirement. What Hurts offered only generalized arguments that did not raise a sufficient inference that Volvo made knowing and intentional misstatements under that standard, requiring dismissal of the actual fraud claim.

Issue No. 7 – Fraudulent Concealment – Duty to Disclose

What Hurts asserted that Volvo Penta fraudulently concealed that (1) it planned to continue the Seven Marine brand; and (2) it had not tested the combination of the engines and the DPH lower units on either the yacht or on any vessel made by Midnight Express.

The tort of fraudulent concealment, however, requires that the defendant have a duty to disclose the facts at issue. As to the discontinuance of the Seven Marine brand, there was no evidence that Volvo Penta knew that What Hurts was acting under the assumption that the brand would continue, and so no duty to disclose that fact arose. Moreover, the closure of the brand had been announced several months before the Release Agreement was signed, and so there was no showing that Volvo Penta had knowingly and deliberately failed to disclose that fact.

Likewise, Judge Davis found that What Hurts had failed to establish that Volvo Penta knew that What Hurts was acting on the assumption that Volvo Penta had tested the combination of the engines and DPH lower units on the yacht or another Midnight Express vessel.

Issue No. 8 – Express Warranty – Parol Evidence Rule

In addition to the express warranties made in the Release Agreement, What Hurts alleged that Volvo Penta's representative made several oral express warranties, requiring Judge Davis to address the parol evidence rule.

Judge Davis noted that parol evidence may be considered unless an agreement is both "final" and "complete." The parties did not dispute that the Release Agreement was intended to be a final agreement. As a result, the court could consider oral evidence of terms consistent with the agreement, unless the agreement was also a complete expression of the parties' agreement, excluding any other terms.

Judge Davis found that there is no clear test for whether an agreement is "complete." The presence of a merger clause is strong evidence that an agreement is complete, but the Release Agreement did not contain such a clause, and the parties offered no evidence to show that the Release Agreement was complete. As a result, the court held that at this stage, the parol evidence rule did not bar consideration of oral warranties.

Issue No. 9 – Oral Express Warranties

What Hurts argued that Volvo Penta's representatives orally warranted (1) that the replacement engines and the DPH lower units would work together; and (2) that Volvo Penta would perform an application review to ensure that the DPH lower units would work.

Whether an affirmation of fact constitutes an express warranty, Judge Davis noted, is generally a question of fact. Further, What Hurts had submitted evidence that the yacht had ongoing issues after installation of the replacement engines and DPH lower units, creating an issue of fact as to breach of the oral warranty that they would work together. Accordingly, the court denied summary judgment on the claim for express warranty without directly addressing the issue of a violation of the written warranty.

Issue Nos. 10 and 11 – Expert Testimony and Notice

Judge Davis then quickly dismissed two independent bases for summary judgment on the express warranty claim. First, Judge Davis ruled that expert testimony was not necessarily required to prove a breach of an express warranty. Second, whether What Hurts had given Volvo Penta adequate notice of breach of warranty and an opportunity to cure was a factual issue that could not be decided on summary judgment.

Issue No. 12 – Limitations on Consequential Damages

Limitations on damages for breach of warranty are routinely included in sales contracts, and the Release Agreement included a provision that Volvo Penta would not be liable for any incidental or consequential damages and that its sole obligation was repair or replacement of defective parts.

Since the Release Agreement primarily involved the sale of goods, the U.C.C. governed the agreement. Under the U.C.C., limitations on consequential damages are valid unless they are unconscionable. *See* Va. Code § 8.2-719(3). Unconscionability primarily goes to grossly unequal bargaining power between the parties, and What Hurts had no evidence to support such a finding. Accordingly, the court upheld the limitation on recover of consequential damages.

Issue No. 13 – Limitations on Incidental Damages and Direct Damages

The parties disputed the standard for determining whether a limitation on incidental damages is enforceable, requiring Judge Davis to perform a detailed statutory analysis of Virginia's U.C.C. Unlike consequential damages, Virginia's U.C.C. does not specifically address limitations on incidental damages. As a result, Judge Davis concluded that a more general provision in the U.C.C. applied. That statute provides that limitations on remedies are enforceable unless circumstances cause a limited remedy to fail of its essential purpose. *See* Va. Code § 8.2-719(2).

A limited remedy fails of its essential purpose when circumstances arising during the performance of the agreement deprive the buyer of the substantial value of its bargain. Volvo Penta argued that it supplied replacement engines in a timely manner, but Hurts argued that the replacement engines and the DPH lower units could not work together because of the yacht's design. As a result, there was an issue of fact whether any amount of repair or replacement could make the engines and lower units perform as warranted, precluding summary judgment.

Judge Davis reached the same conclusion on Volvo Penta's motion for summary judgment on direct damages, finding that there were issues of material fact as to whether the limitation of damages to the repair or replacement of parts precluded What Hurts' claim for direct damages.

Takeaways

The *What Hurts v. Volvo Penta* provides helpful analysis of many issues which can come up in litigation involving the sale of goods, and so is helpful authority for commercial litigators in the EDVA.

The case also illustrates the importance of thorough contract drafting, particularly the importance of including merger clauses in contracts to avoid claims that one party orally made promises that are not reflected in the contract itself. Likewise, the case illustrates that a contracting party intending to disclaim warranties or limit warranty damages in a contract governed by the U.C.C. must be careful to follow the statutory requirements.

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