IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

LISA BLACKSTON	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	**C.A. No. N11C-01-087 MJB**
	)	
HYUNDAI MOTOR AMERICA,	)	
	)	
	)	
Defendant.	)	

Submitted: December 6, 2013
Decided: March 27, 2014

Upon Defendant's Motion for Summary Judgment, **GRANTED.**
Upon Plaintiff's Motion for Summary Judgment, **MOOT.**

OPINION

Lisa Blackston, *pro se*

Sean A. Meluney, Esq., White and Williams, LLP, 824 N. Market Street, Suite 902, Wilmington, Delaware Attorney for Defendant

Brady, J.

I. INTRODUCTION

This action concerns whether the defendant, Hyundai Motor America ("HMA"), breached a warranty provided to the plaintiff, Lisa Blackston, relating to Blackston's 2000 Hyundai Accent (the "Vehicle"). Presently before the Court is (1) a Motion for Summary Judgment filed by Blackston on January 17, 2013, in which she contends the undisputed facts support her recovering (a) $5,500 for the value of her Vehicle at the time it disappeared and (b) all out-of-pocket expenses she has incurred, because HMA "took away any opportunity" to have her Vehicle repaired, and (2) a Motion for Summary Judgment filed by HMA on February 6, 2013. HMA's Motion asserts summary judgment should be granted in its favor because, *inter alia*, Blackston failed to provide expert support for her claim that HMA breached the Vehicle's warranty. The Court held a hearing on February 14, 2013 relating to Blackston's Motion for Summary Judgment and deferred ruling. At the February 14 hearing, HMA asserted that Blackston had not yet provided expert support for her breach-of-warranty claim, well beyond the Court's deadline, and the Court made clear to Blackston that her Complaint would be dismissed if she failed to provide expert support within sixty days. Delays in deposing the party who Blackston asserted would serve as her expert witness resulted in the matter not being submitted to the Court until December 6, 2013. This is the Court's decision. Because Blackston has failed to provide the necessary expert support, HMA's Motion for Summary Judgment is **GRANTED** and Blackston's Motion for Summary Judgment is, therefore, **MOOT**.

II. BACKGROUND

A. Underlying Dispute

The case *sub judice* arises from a dispute between the parties regarding warranty coverage of the Vehicle Blackston purchased from the Castle Hyundai Dealership ("Castle") in July 2000.[1] Blackston's Vehicle came with a warranty[2] that covers the "powertrain," including the engine, for 10 years/100,000 miles for the original owner and 5 years/60,000 miles for all subsequent owners.[3] The engine on Blackston's Vehicle failed on August 5, 2006.[4] Blackston contends she misunderstood the nature of her warranty coverage and did not initially contact HMA regarding her Vehicle's engine failure.[5]

Eventually, Blackston contacted HMA in October 2007 and was allegedly informed that the Vehicle's engine was still covered under warranty.[6] Thereafter, on November 16, 2007, Blackston had the car towed to Castle.[7] A technician at Castle, Joseph Seeney ("Seeney"), diagnosed the engine as "damaged beyond repair."[8] On December 17, 2007, Castle sent a letter to Blackston denying warranty coverage, explaining (1) "the overheating condition and the engine concern [are] due to lack of maintenance of your vehicle," specifically, Blackston failing to properly maintain the Vehicle's coolant levels, and (2) a Hyundai factory representative concurs with this finding.[9] Blackston made no attempt to

[1] Plaintiff's Reply to Defendant's Motion for Summary Judgment at *1.
[2] Hyundai Accent Handbook (Defendant's Exhibit H in Motion for Summary Judgment).
[3] *Id.* at *5 (labeled page 6 in the exhibit).
[4] Plaintiff's Amended Complaint at *2.
[5] *Id.* at *2.
[6] *Id.*
[7] John Wendkos correspondence dated December 17, 2007 (Defendant's Exhibit D in Motion for Summary Judgment).
[8] Castle Service Records for November 16, 2007 (Defendant's Exhibit B in Motion for Summary Judgment).
[9] John Wendkos correspondence dated December 17, 2007 (Defendant's Exhibit D in Motion for Summary Judgment).

retrieve her Vehicle from Castle. Over the ensuring several years, the Vehicle has gone missing, which prevents further inspection or diagnosis.

B. Blackston's Amended Complaint

Blackston filed suit against Castle and HMA in our State's Court of Common Pleas. However, on January 12, 2011, the case was transferred to the Superior Court and Blackston filed an Amended Complaint, which does not include Castle, with more specific allegations against HMA.[10] Through her Amended Complaint, Blackston alleges that HMA (1) "denied warranty coverage without good cause," and (2) "refused to make adequate repairs."[11] Blackston's seeks (1) reimbursement of expenses she incurred renting a replacement vehicle while her Vehicle was inoperable and (2) "the monetary value of $3,000 plus the cost of labor" needed to replace her Vehicle's engine.[12]

C. Expert Deadlines

The Trial Scheduling Order in this matter set November 3, 2011, as the date by which Blackston was required to provide HMA with any expert report on which she planned to rely. On November 3, 2011, the Court extended Blackston's expert deadline, upon her request, to December 30, 2011. Blackston thereafter moved the Court, again, to extend her expert deadline on June 19, 2012. Shortly thereafter, on July 5, 2012, HMA moved for summary judgment, asserting, *inter alia*, that Blackston failed to provide expert support for her breach-of-warranty claim. On July 19, 2012, the Court (1) denied HMA's motion for summary

[10] Plaintiff's Amended Complaint.

[11] Blackston's Amended Complaint also asserts that the Vehicle had various problems, beginning at the time of purchase, including, *inter alia*, the air conditioner not working properly and the Vehicle's axle needing be replaced twice. Additionally, based on the numerous allegations against Castle despite it not being a defendant in this case, it appears to the Court that Blackston blames HMA for many of the actions allegedly taken by Castle.

[12] The Court notes that, in the alternative to seeking $3,000 and labor costs, Blackston seeks this Court to have HMA replace her Vehicle's engine. First, the Vehicle cannot be found, which prevents the engine from being replaced. Second, and more importantly, this Court does not have the equitable power to compel HMA to act, as this Court can only grant legal remedies.

judgment without prejudice, (2) ordered Blackston to provide the name, address, and phone number of any expert upon which she intended to rely at trial within ten days, explaining "failure to do so will result in dismissal of the action,"[13] and, accordingly, (3) granted Blackston's motion to extend the discovery deadline.

Blackston subsequently submitted an expert disclosure in which she identified Seeney. Thereafter, HMA filed a letter with the Court on September 26, 2012, in which HMA asserted that, despite Blackston's contention that Seeney would serve as her expert witness, Seeney has clearly indicated that he wants nothing to do with this case. Together with its September 26 letter, HMA attached handwritten correspondence drafted by Seeney, on Carl King letterhead, in which Seeney states: (1) he does "not want any involvement in this fac[ti]tious lawsuit Ms. Blackston has created"; (2) he "never made any comment to . . . Blackston that would suggest neglect by Hyundai [or] the employees"; (3) he has not spoken to Blackston concerning a deposition and never made any request for compensation; (4) he will not be an expert witness for Blackston because he feels her lawsuit is "unjust and ridiculous"; and (5) the only party he feels has been neglectful is Blackston. HMA's September 26 letter explained that it wanted to "proceed with [deposing Seeney] out of an abundance of caution and in order to comply with the Court's order," but requested an emergency office conference to discuss the case.

[13]The Delaware Supreme Court has explained that "to substantiate a *prima facie* claim for breach of warranty, a plaintiff must present either expert testimony that the product was defective, or such circumstantial evidence as indicates a manufacturing defect is the only reasonable cause of the defect." *McLaren v. Mercedes Benz USA, LLC*, 2006 WL 1515834, at *4 (Del. Super. Mar. 16, 2006) (citation omitted). As the Court has explained previously, the circumstantial evidence in the case *sub judice*—which is essentially limited to Blackston testifying, in a conclusory manner, that she is not at fault for her Vehicle's engine damages and instead blaming HMA and Castle—does not support that a manufacturing defect is the only reasonable cause of her Vehicle overheating. Rather, there is significant testimony that Blackston's Vehicle overheated and the engine ultimately failed as a result of Blackston failing to properly maintain the Vehicle's coolant levels. Accordingly, expert testimony is required to support Blackston's claims against HMA.

On October 5, 2012, the Court held an office conference. At the conference, the Court explained, again, that the case could not proceed without Blackston securing an expert witness. The Court provided Blackston with sixty days "to get back to the Court regarding her expert," specifically, stating that "[a] letter must be sent from Plaintiff to [the] Court regarding either the reconciliation with Mr. Seeney, or the introduction of a new expert."

Plaintiff filed a letter with the Court on December 5, 2012, in which she represented that she spoke with many experts, attached a *Curriculum Vitea* of Jason Jones, and stated that she would file a report with the Court by January 5, 2013. However, rather than providing an expert report from Mr. Jones, Blackston filed a letter with the Court on January 7, 2013, in which Blackston stated (1) HMA and its attorney have "sabotaged" the case, (2) "[w]ith or without additional time, it is impossible to find an expert witness to write a diagnosis" because the Vehicle went missing, and (3) defense counsel has made it impossible for her to rely on the only witness who reviewed her Vehicle, *i.e.*, Seeney, to testify.

D. Parties' Cross-Motions for Summary Judgment

i. Blackston

Shortly after writing to the Court, on January 17, 2013, Blackston filed a Motion for Summary Judgment, which is presently before the Court, in which Blackston asserted that she has no choice but to either (1) proceed with the case without an expert witness because HMA and its counsel have prevented her expert witness from testifying or (2) move for summary judgment. Blackston's Motion contends the undisputed facts support her recovering (a) $5,500 for the value of her Vehicle at the time it disappeared and (b) all out-of-pocket expenses she has incurred, because HMA "took away any opportunity" to have her Vehicle repaired. Blackston asserts that, in her view, a reasonable recovery would be at least $17,000.

ii. HMA

HMA sought leave from the Court, which was granted, to file its response in opposition to Blackston's Motion together with its own Motion for Summary Judgment. HMA disputes Blackston's suggestion that the undisputed facts support her being entitled to summary judgment. Regarding its own Motion for Summary Judgment, which is also currently before the Court, HMA asserts summary judgment should be granted in its favor. HMA asserts, *inter alia*, that Blackston cannot support a *prima facie* case without expert support, which has not been provided despite this Court granting numerous deadline extensions to permit Blackston adequate time to provide the necessary expert support. Blackston responded in opposition to HMA's Motion on February 13, 2013.

The Court held a hearing regarding Plaintiff's Motion for Summary Judgment on February 14, 2013. The Court deferred deciding Blackston's Motion for Summary Judgment and stated the following: (1) "[i]f there is no expert witness, the case must be dismissed as a matter of law"' (2) "Plaintiff must either get Mr. Seeney to provide an expert report or have him appear in Court"; and (3) "[i]f this is not done within 60 days (4/15/2013), the case will be dismissed."

A scheduling conference was held on May 9, 2013, resulting in the Court mandating that a deposition of Seeney be scheduled within thirty days. HMA properly noticed a deposition Seeney to be held on June 5, 2013; however, Blackston claimed she was not properly notified and the deposition was rescheduled. Additional delays resulted in Seeney not being deposed until November 4, 2013.[14]

[14] Def.'s Nov. 19, 2013 Letter to the Court Ex. A (Deposition of Joseph M. Seeney (Nov. 4, 2013)) (hereinafter "Seeney Dep.").

E. Seeney's Deposition

At his November 4 deposition, Seeney was asked whether he had "any reason to believe that [the crack in the Vehicle's engine] was caused by a manufacturing defect," and he answered, "I can't say that. . . . You know, that would be speculation."[15] Indeed, throughout his deposition, Seeney reiterated that he lacked any factual basis to determine what caused the engine in Blackston's Vehicle to malfunction.[16] Further, Seeney testified that he does not know at what point the Vehicle's engine malfunctioned. Importantly, Seeney confirmed that he never made any suggestion, to Blackston or otherwise, that Hyundai was neglectful in any way.[17]

F. HMA Renews Dismissal Request

HMA filed a letter with the Court, dated November 19, 2013, in which HMA provided the Court with a status report concerning Seeney's deposition testimony. HMA's November 19 letter highlights portions of Seeney's deposition in which Seeney asserts, *inter alia*: (1) he never agreed to serve as Blackston's expert, (2) he wants no affiliations with the present case, (3) he is not an expert on Hyundai vehicles, (4) he does not perform internal engine repairs, and (5) he is unable to identify the cause of the Vehicle's engine malfunctioning. As a result of Seeney's testimony, HMA's November 19 letter requests the Court dismiss this case as a result of Blackston failing to secure a necessary expert witness.

Blackston filed a letter with the Court, dated December 5, 2013, in which Blackston contends that Seeney lied under oath, the stenographer who transcribed the deposition

[15] Seeney Dep., at 14:16-19.
[16] *Id*. at 13:11 ("I could not say what caused the crack [in the Vehicle's engine]"); *id*. at 13:18-23 ("[Question] But it sounds like you were never able to determine what caused the initial crack? [Answer] No. Not the initial crack, no. All I know is it came in cracked and it was repaired."); *id.* at 17:13-18 ("I feel I should have no involvement in [this case] based on the fact that all I did was look at the results of the car. I don't know who did it. You know, I could speculate on how it got that way, but who am I to speculate?"); *id*. at 14:20-22 (indicating there is "absolutely no way" for Seeney to tell what caused the crack in the Vehicle's engine).
[17] *Id*. at 17:20-18:2.

testimony was colluding with Seeney and defense counsel, and makes various other assertions—for example, that defense counsel and Seeney were exchanging "eye signals" throughout the deposition proceeding. In short, Blackston's December 5 letter discusses at length why the deposition testimony and HMA have been "unfair to [her] and [her] case."[18]

III. DISCUSSION

This Court may grant summary judgment when "the pleadings, depositions, answers to interrogatories, 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."[19] A motion for summary judgment, however, should not be granted when material issues of fact are in dispute or if the record lacks the information necessary to determine the application of the law to the facts.[20] A dispute about a material fact is genuine when "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[21] Thus, the issue is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law."[22]

Blackston asserts HMA breached her Vehicle's warranty by refusing to repair or otherwise correct her Vehicle after it overheated, causing engine damage. This Court has repeatedly instructed Blackston that she needs expert testimony to support her breach-of-warranty claim, indicating otherwise the case must be dismissed. Pursuant to the Trial Scheduling Order, Blackston had until November 2011 to provide any expert reports. As

[18]Pl's Letter to the Ct. Regarding Joe Seeny's Dep., at 4 (Dec. 6, 2013).
[19]Super. Ct. Civ. R. 56(c).
[20]*Bernal v. Feliciano*, 2013 WL 1871756, at *2 (Del. Super. Ct. May 1, 2013) (citing *Ebersole v. Lowengrub*, 180 A.2d 467, 468 (Del. 1962)).
[21]*Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 243 (1986).
[22]*Id.*

recited in detail above, this Court granted numerous expert deadline extensions upon Blackston's request in an attempt to have this case resolved on the merits.[23] Further, despite Blackston's failure to meet the extended deadlines on every occasion, the Court deferred dismissing the case in order to permit Blackston time to depose Seeney.

Notwithstanding Blackston's representations to the contrary, it is evident to the Court from Seeney's deposition testimony that Seeney is unable to serve as Blackston's expert witness in this case. Seeney made clear that he lacks any factual basis to determine what caused the engine in Blackston's Vehicle to malfunction.[24] Without a proper factual basis, Seeney cannot provide the necessary causation opinion to the jury in order to explain how HMA is liable to Blackston for breaching the Vehicle's warranty. While Blackston has, at times, indicated that others can serve as her expert witness, *i.e.*, Jason Jones, she nonetheless concedes that "[w]ith or without additional time, it is impossible to find an expert witness to write a diagnosis" as a result of the Vehicle no longer being available for inspection, as it went missing without explanation. Thus, Blackston's case depended on Seeney being able to serve as her expert witness, which, for the reasons discussed above, he cannot. Without the necessary expert testimony,[25] Blackston's claim against HMA must fail.

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[23]Judicial Action Form (Nov. 3, 2011) (extending expert deadline from November 3, 2011 to December 30, 2011); Judicial Action Form (Jul. 20, 2012) (extending the expert deadline to permit Blackston ten days to provide the name, address, and phone number of any expert upon which she intended to rely at trial, explaining "failure to do so will result in dismissal of the action"); Judicial Action Form (Oct. 5, 2012) (providing Blackston with sixty days to provide the Court with an update regarding her purported expert witness); Judicial Action Form (Feb. 14, 2013) (providing Blackston with an additional sixty days to provide expert support, noting the case would otherwise be dismissed). *See also* Judicial Action Form (May 13, 2013) (mandating that Joe Seeney's deposition be scheduled by June 9, 2013).

[24]*Id*. at 13:11 ("I could not say what caused the crack [in the Vehicle's engine]"); *id*. at 13:18-23 ("[Question] But it sounds like you were never able to determine what caused the initial crack? [Answer] No. Not the initial crack, no. All I know is it came in cracked and it was repaired."); *id.* at 17:13-18 ("I feel I should have no involvement in [this case] based on the fact that all I did was look at the results of the car. I don't know who did it. You know, I could speculate on how it got that way, but who am I to speculate?"); *id*. at 14:20-22 (indicating there is "absolutely no way" for Seeney to tell what caused the crack in the Vehicle's engine).

[25] *See supra* note 14 (explaining why expert testimony is required in the case *sub judice*).

IV. CONCLUSION

Given the numerous expert-deadline extensions,[26] the fact that Seeney is unable to provide an expert opinion, and the fact that Blackston has otherwise failed to identify any competent expert opinion to support her claims against HMA, HMA's Motion for Summary Judgment is **GRANTED**. Accordingly, Blackston's Motion for Summary Judgment is **MOOT**.

IT IS SO ORDERED.

_____/s/_____
M. Jane Brady
Judge

[26] *See supra* note 23.