STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0328

Victor H. Arteaga, et al.,
Appellants,

vs.

Rihm Kenworth,
Respondent,

PACCAR Financial Corporation,
Respondent.

Filed December 19, 2022
Affirmed
Wheelock, Judge

Dakota County District Court
File No. 19HA-CV-20-3482

Patrick C. Smith, St. Paul, Minnesota (for appellants)

David C. Morine, Keith J. Kerfeld, Tewksbury & Kerfeld, P.A., Minneapolis, Minnesota (for respondent Rihm Kenworth)

Anju Suresh, Hinshaw & Culbertson LLP, Minneapolis, Minnesota; and

Benjamin J. Court, Stinson LLP, Minneapolis, Minnesota (for respondent PACCAR Financial Corporation)

Considered and decided by Wheelock, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

NONPRECEDENTIAL OPINION

WHEELOCK, Judge

Appellant-plaintiff appeals from the district court's summary judgment in favor of respondent-defendants on his breach-of-contract claim, arguing that the district court erred as a matter of law and that material facts are in dispute. We affirm.

FACTS

In December 2019, appellant Victor Arteaga[1] purchased a truck from respondent Rihm Kenworth (Rihm) to haul scrap metal. Rihm is authorized to sell trucks manufactured by the Kenworth Truck Company (Kenworth). Arteaga met with a Rihm sales representative and requested that the truck possess a double frame to maintain the integrity of the truck while hauling heavy loads of scrap metal. The Rihm sales representative inputted the load requirements Arteaga relayed to him into a computer program, and the program indicated that a double frame was not required to meet the hauling needs Arteaga described. Arteaga agreed to purchase a single-frame truck.

Arteaga required financing to purchase the truck. Respondent PACCAR Financial Corporation (PFC) agreed to finance the purchase. The financing agreement between Arteaga and respondents contained the following clause:

> 8. NO WARRANTY. If the Vehicle is new, there is no warranty other than that of the manufacturer. If the Vehicle is used, it is sold "AS IS" and "WITH ALL FAULTS." SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. UNLESS SET

[1] Arteaga is the sole owner and operator of V & A Core Supply, LLC, the other appellant in this case. We refer only to Arteaga in this opinion as his actions were all on behalf of V & A.

> OUT IN WRITING AND SIGNED BY THE SELLER, THERE ARE NO OTHER WARRANTIES EXPRESS OR IMPLIED.

The purchase agreement—a separate document signed by Arteaga and Rihm—also indicated that the truck would be covered by the manufacturer's warranty. The manufacturer's warranty covered the repair or replacement of any defects provided that they occurred within a set time period and did not result from the use or misuse of the truck. The warranty explicitly stated that it did not cover alignments resulting from the use of the truck.

Arteaga received his vehicle in January 2020. Around April 2020, Arteaga began noticing issues with the truck, including its ability to drive straight. He brought the truck to two different Kenworth dealerships to get the truck fixed and realigned, but neither dealer would agree not to charge Arteaga for the work, asserting that the manufacturer's warranty did not apply because the issues with the truck related to Arteaga's use and modification of the vehicle and not an inherent defect.

In October 2020, Arteaga filed his complaint alleging breach of contract, fraudulent nondisclosure and negligent misrepresentation, and unjust enrichment and quasi-contract/quantum meruit. During discovery, experts hired by respondents inspected the truck and concluded that there was no inherent defect with its design or construction. Each expert hypothesized that an issue with the "lift axle" occurred when Arteaga was using the truck and caused the truck to have the problems Arteaga experienced. Respondents filed separate motions for summary judgment on all claims. The district court granted both motions. Arteaga appeals.

DECISION

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party." *Leeco, Inc. v. Cornerstone Bank*, 898 N.W.2d 653, 657 (Minn. App. 2017), *rev. denied* (Minn. Sept. 27, 2017). A material fact is one that will affect the outcome or result of a case. *O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996).

We review a grant of summary judgment de novo, "view[ing] the evidence in the light most favorable to the nonmoving party and resolv[ing] all doubts and factual inferences against the moving part[y]." *Maethner v. Someplace Safe, Inc.*, 929 N.W.2d 868, 874 (Minn. 2019) (quotation omitted). And we will affirm a district court's grant of summary judgment if it can be sustained on any grounds. *Edwards v. Hopkins Plaza Ltd. P'ship*, 783 N.W.2d 171, 175 (Minn. App. 2010). Summary judgment is "not intended as a substitute for trial," and "its use should be limited to cases in which it is perfectly clear that no issue of fact is involved." *Foley v. WCCO Television, Inc.*, 449 N.W.2d 497, 506 (Minn. App. 1989) (quotations omitted), *rev. denied* (Minn. Feb. 9, 1990).

Like the district court, we construe Arteaga's breach-of-contract claim as one based on the breach of a warranty. Although Arteaga argues that material questions of fact exist that preclude summary judgment, he failed to identify in his brief or at oral argument what those facts are. We discern no material facts in dispute. Thus, we treat his challenge as one based purely on the district court's application of the law.

To establish a breach-of-warranty claim, a plaintiff must show the existence of a warranty, a breach of that warranty, and a causal connection between that breach and damages incurred. *Peterson v. Bendix Home Sys., Inc.*, 318 N.W.2d 50, 52-53 (Minn. 1982). Arteaga argues that respondents breached the manufacturer's warranty by not covering the realignment of his truck. We disagree.

Kenworth, not respondents, issued the manufacturer's warranty covering Arteaga's truck; respondents merely relayed that warranty to Arteaga. A dealer who relays a manufacturer's warranty to a customer with no other act or ceremony adopting the warranty as its own is not liable for a breach of that warranty. *State v. Patten*, 416 N.W.2d 168, 171 (Minn. App. 1987); *see also Pemberton v. Dean*, 92 N.W. 478, 478-79 (Minn. 1902). Arteaga has not identified any record evidence showing that either respondent took actions to adopt this warranty as its own; the warranty references only Kenworth, not its dealers or financing company. The purchase agreement between Rihm and Arteaga states that only the manufacturer's warranty would cover the vehicle. The agreement does not state that Rihm made this warranty; instead, it states that Rihm would be *delivering* the warranty to Arteaga at the time of sale. Although a dealer representative signed off on the warranty and relayed the information to Arteaga, the warranty itself is clear that it is being made only by Kenworth. Because respondents did not issue or adopt the manufacturer's warranty, they cannot be held liable for any alleged breach.

Even assuming that respondents did adopt the manufacturer's warranty, the record indicates that summary judgment would still be appropriate because the breach Arteaga alleged is not covered under the warranty. Arteaga based his warranty claim on the

Kenworth dealers' refusal to cover the costs to realign his truck. But the manufacturer's warranty expressly disclaims any coverage of alignments resulting from the use of the truck. The warranty also disclaims any repairs necessitated by the owner's use or misuse of the vehicle. Each of the respondents' experts concluded that Arteaga's use or misuse of the truck in its first three months of use caused the issues with the truck. While Arteaga argues that these expert reports are inaccurate, he points to no other record evidence to refute these findings. *See Gradjelick v. Hance*, 646 N.W.2d 225, 230-31 (Minn. 2002) (stating that nonmoving parties cannot defeat summary judgment with unverified or conclusory allegations and must present sufficient evidence to allow reasonable persons to draw differing conclusions). Because the manufacturer's warranty does not cover realignments resulting from Arteaga's use or misuse of the truck, Arteaga has failed to establish that a breach of the manufacturer's warranty occurred.

Arteaga also seems to imply that respondents made other warranties to him separate from the manufacturer's warranty about the nature and capabilities of his truck and that his truck should have had a double frame. Even if these other warranties existed, they were expressly disclaimed by respondents. The financing agreement Arteaga signed expressly disclaimed all other warranties besides the manufacturer's warranty, and the record does not include any additional written warranties signed by respondents upon which Arteaga

could rely. Arteaga makes no argument on appeal that the disclaimer clause contained in the financing agreement is invalid or inapplicable.[2] Thus, Arteaga's argument fails.

Affirmed.

[2] Arteaga argues that the financing agreement contained a usurious interest rate, but he did not include this claim in his complaint, nor did he argue it before the district court. Because he did not raise this argument in the district court, it is waived, and we do not consider it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).