

Martin Reyes

CAUSE NO. DC-18-03659

Donald Loughran and	§	IN THE DISTRICT COURT
Linda Loughran, Individually and as	§	
Next Friend to M.L., a minor,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	
	§	
Jimmy Sanders, Jr.,	§	162 nd JUDICIAL DISTRICT
Otmane Barre d/b/a	§	
Complete Auto Group,	§	
LKQ Auto Parts of North Texas, L.P.,	§	
Lorentz Automotive, Inc., and	§	
Classic K Carrollton LLC d/b/a	§	
Classic Kia of Carrollton,	§	
<i>Defendants.</i>	§	DALLAS COUNTY, TEXAS

**DEFENDANT LKQ AUTO PARTS OF NORTH TEXAS, L.P.’S
NO EVIDENCE MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant LKQ Auto Parts of North Texas, L.P. (“Defendant” or “LKQ”) in the above-styled and numbered cause and files this No Evidence Motion for Summary Judgment on all of Plaintiffs’ claims against it, and would respectfully show the Court as follows:

I. SUMMARY OF ARGUMENT

Plaintiffs have asserted claims for negligence, gross negligence, and fraud against Defendant LKQ in connection with a single-vehicle accident which resulted in the death of Plaintiffs’ daughter, Sarah Loughran (the “Deceased”). Defendant LKQ is entitled to summary judgment, however, on each such claim because, despite having an adequate time for discovery, Plaintiffs have no evidence of at least one of the essential elements necessary for a finding against Defendant LKQ for negligence, gross negligence, or fraud.

II. BACKGROUND

This lawsuit arises from a single-vehicle accident that occurred on or about January 11, 2017. The Deceased was driving a 2013 Kia Soul when she lost control of the vehicle and struck a tree head-on. The Deceased sustained fatal injuries as a result of the accident and Plaintiffs filed the instant lawsuit on March 20, 2018, bringing claims for negligence, gross negligence, and fraud against the Defendants. Specifically, Plaintiffs have alleged that each Defendant, including Defendant LKQ, was negligent and grossly negligent in one or more of the following manners:

1. Making representations and/or failing to inform (failure to warn) Plaintiffs regarding the vehicle;
2. Negligent in the vehicle's repair;
3. Negligent in modifications to the vehicle;
4. Negligent in supervision;
5. Negligent in quality control;
6. Negligent in maintenance;
7. Negligent in service
8. Failing to properly inspect the safety of the vehicle;
9. Failing to properly inspect for, repair, and/or report safety hazards; or
10. Failing to properly inspect the safety systems on the vehicle.

Defendant LKQ is entitled to summary judgment, however, on all of Plaintiffs claims because Plaintiffs have no evidence that Defendant LKQ engaged in any conduct amounting to negligence, gross negligence, or fraud.

III. NO EVIDENCE SUMMARY JUDGMENT STANDARD

After an adequate time for discovery, the party without the burden of proof may, without presenting evidence, move for summary judgment on the ground that there is no evidence to support an essential element of the non-movant's claims or defenses. Tex. R. Civ. P. 166a(i). The no evidence motion for summary judgment must specifically identify the elements for which there is no evidence. *Id.*; *Timpte Indus., Inc. v. Gish*, 286 S.W.3d 306, 310 (Tex. 2009). Unless the non-movant produces more than a scintilla of summary judgment evidence establishing the

existence of the challenged elements, the motion must be granted. Tex. R. Civ. P. 166a(i); *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 600 (Tex. 2004). To avoid summary judgment, the non-moving party must show more than conclusory allegations, improbable inferences, speculation, or subjective beliefs and feelings. *Greathouse v. Alvin Indep. Sch. Dist.*, 17 S.W. 3d 419, 425 (Tex. App.—Houston [1st Dist.] 2000, no pet).

IV. ARGUMENTS & AUTHORITIES

A. AN ADEQUATE TIME FOR DISCOVERY HAS PASSED

A no evidence motion for summary judgment may be filed after the non-movant has had an adequate time for discovery. Tex. R. Civ. P. 166a(i); *Morehouse v. Chase Manhattan Bank*, 76 S.W.3d 608, 612 (Tex. App.—San Antonio 2002, no pet.). Discovery need not be completed in order for a court to grant such a motion. *See Ling v. BDA&K Bus. Servs., Inc.*, 261 S.W.3d 341, 349 (Tex. App.—Dallas 2008, no pet.). Rather, a no evidence motion for summary judgment motion may be granted after an adequate time for discovery has passed. *See LMB, Ltd. v. Moreno*, 201 S.W.3d 686, 688 (Tex. 2006). Whether a non-movant has had an adequate time for discovery is case specific. *Restaurant Teams Int'l, Inc. v. MG Sec. Corp.*, 95 S.W.3d 336, 339 (Tex. App.—Dallas 2002, no pet.). Among the factors a court may consider in determining whether a non-movant has had an adequate time for discovery are the nature of the claims and the evidence necessary to controvert the motion. *Id.*

In the present case, an adequate time for discovery has passed because Plaintiffs filed this lawsuit over eight months ago on March 20, 2018, and the parties have conducted various forms of discovery, including written and expert discovery. Despite conducting such discovery, Plaintiffs do not have sufficient evidence to support at least one essential element of each of their

claims. As such, Defendant LKQ is entitled to summary judgment on all of Plaintiffs' claims against it.

B. PLAINTIFFS HAVE NO EVIDENCE OF NEGLIGENCE

Defendant LKQ is entitled to summary judgment on Plaintiffs' negligence claim because an adequate time for discovery has passed and Plaintiffs have no evidence of at least one of the essential elements of such a claim. To establish a claim for negligence against Defendant LKQ, Plaintiffs must prove each of the following elements: (1) Defendant LKQ owed a legal duty to Plaintiffs; (2) Defendant LKQ breached that duty; and (3) Defendant LKQ's breach proximately caused Plaintiffs' injuries. *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 404 (Tex. 2009).

Prior to the underlying incident of this lawsuit, Defendant LKQ had no contact with the subject vehicle. In fact, Defendant LKQ's sole and exclusive connection with the vehicle is an air bag control module that Defendant LKQ sold to J&S Auto Service and that was installed in the subject vehicle by another individual or entity wholly unrelated to Defendant LKQ. Defendant LKQ is entitled to summary judgment on Plaintiffs' negligence claim because Plaintiffs have no evidence that: (1) Defendant LKQ owed Plaintiffs a legal duty; (2) Defendant LKQ breached that duty; and (3) any such breach proximately caused Plaintiffs' injuries. Specifically, Plaintiffs have no evidence that Defendant LKQ was negligent in any of the following manners, as claimed in their petition:

11. Making representations and/or failing to inform (failure to warn) Plaintiffs regarding the vehicle;
12. Negligent in the vehicle's repair;
13. Negligent in modifications to the vehicle;
14. Negligent in supervision;
15. Negligent in quality control;
16. Negligent in maintenance;
17. Negligent in service
18. Failing to properly inspect the safety of the vehicle;

19. Failing to properly inspect for, repair, and/or report safety hazards; or
20. Failing to properly inspect the safety systems on the vehicle.

Accordingly, Defendant LKQ is entitled to summary judgment on Plaintiffs' negligence claim.

C. PLAINTIFFS HAVE NO EVIDENCE OF GROSS NEGLIGENCE

Defendant LKQ is entitled to summary judgment on Plaintiffs' gross negligence claim because an adequate time for discovery has passed and Plaintiffs have no evidence of at least one of the essential elements of such claim. To establish gross negligence against Defendant LKQ, Plaintiffs must establish each of the necessary elements of negligence—duty, breach, causation/damages—as well as two additional elements: (1) that Defendant LKQ's engaged in an act that involved an objectively extreme degree of risk; and (2) that Defendant LKQ had actual, subjective awareness of the risk involved, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others. *See Ford Motor Co. v. Miles*, 967 S.W.2d 377, 390 (Tex, 1998). As such, a preliminary finding of negligence is required in order to find Defendant LKQ grossly negligent. *J.P. Morgan Chase Bank, N.A. v. Texas Contract Carpet, Inc.*, 302 S.W.3d 515 (Tex. App.—Austin 2009). Because, as discussed above, Plaintiffs have no evidence of at least one of the essential elements of their negligence claim, Plaintiffs' gross negligence claim also fails as a matter of law.

Alternatively, Plaintiffs also have no evidence of the two additional elements necessary to establish gross negligence. Specifically, Plaintiffs have no evidence that: (1) Defendant LKQ engaged in an act that involved an objectively extreme degree of risk; and (2) that Defendant LKQ had actual, subjective awareness of the risk involved with such an act, if any, but nevertheless proceeded in conscious indifference to the rights, safety, or welfare of others.

Accordingly, Defendant LKQ is entitled to summary judgment on Plaintiffs' gross negligence claim.

D. PLAINTIFFS HAVE NO EVIDENCE OF FRAUD

To the extent that Plaintiffs have pled a claim for fraud against Defendant LKQ, Defendant LKQ is entitled to summary judgment because an adequate time for discovery has passed and Plaintiffs have no evidence of at least one of the essential elements of such a claim. To establish a claim for fraud against Defendant LKQ, Plaintiffs must prove each of the following elements: (1) Defendant LKQ made a representation to Plaintiffs; (2) the representation was material; (3) the representation was false; (4) when Defendant LKQ made the representation, Defendant LKQ knew the representation was false, or made the representation recklessly, as a positive assertion, and without knowledge of its truth; (5) Defendant LKQ made the representation with the intent that Plaintiffs act on it; (6) Plaintiffs relied on the representation; and (7) the representation caused Plaintiffs injury. *See Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 153 (Tex. 2015).

However, Plaintiffs have no evidence that: (1) Defendant LKQ made a representation to Plaintiffs; (2) the representation was material; (3) the representation was false; (4) when Defendant LKQ made the representation, Defendant LKQ knew the representation was false, or made the representation recklessly, as a positive assertion, and without knowledge of its truth; (5) Defendant LKQ made the representation with the intent that Plaintiffs act on it; (6) Plaintiffs relied on the representation; and (7) the representation caused Plaintiffs injury. Accordingly, to the extent Plaintiffs have pled a claim for fraud against Defendant LKQ, Defendant LKQ is entitled to summary judgment.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED Defendant LKQ Auto Parts of North Texas, L.P., prays the Court grant Defendant LKQ summary judgment on each of Plaintiffs' claims against it, and for such other and further relief, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

MCCATHERN, PLLC

/s/ Paul A. Grinke

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**ATTORNEYS FOR DEFENDANT
LKQ AUTO PARTS OF NORTH
TEXAS, L.P.**

CERTIFICATE OF SERVICE

I hereby certify that I have forwarded a true and correct copy of the foregoing *Defendant LKQ Auto Parts of North Texas, L.P.'s No Evidence Motion for Summary Judgment* on this the 14th day of December, 2018, to all parties and/or counsel of record, pursuant to the Texas Rules of Civil Procedure.

/s/ M. Collin Quigley

Paul A. Grinke/M. Collin Quigley