

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

CAITLIN HAMAN,	:	DOCKET NO. 12-02,27
Plaintiffs,	:	
	:	CIVIL ACTION-LAW
vs.	:	
	:	
ARTIC CAT, INC.,	:	
Defendant.	:	SUMMARY JUDGMENT

**OPINION AND ORDER**

AND NOW, this 7<sup>th</sup> day of **January 2014**, following oral argument on the defendant's motion for summary judgment held January 3, 2014, and after review of the argument, pleadings, motions and briefs, the Court finds that summary judgment is warranted. This matter arises from the purchase of a new snowmobile and involves a breach of express written warranty claims under the Magnuson-Moss Federal Trade Commission Warranty Improvement Act, (Magnuson-Moss), 15 U.S.C. § 2301, *et. seq.*, the Pennsylvania Uniform Commercial Code, (UCC), 13 P.S. § 1101, *et. seq.*, and the Unfair Trade Practices and Consumer Protection Act, (UTCPA), 75 P.S. § 201-1, *et. seq.* The Court enters the following Opinion and Order.

**Procedural and Factual Background**

Ms. Haman filed her complaint on October 22, 2012. Arbitration was held on July 29, 2013 and the arbitrators found in favor of the defendant. Plaintiff appealed and the matter was placed on the January 2014 trial term. The matter was scheduled for jury selection on January 7, 2014 and trial on January 15, 2014. In accordance with the requirements for analyzing summary judgment motions, the Court provides the following procedural and factual background in the light most favorable to the plaintiff as the non-moving party.

On November 22, 2011, plaintiff, Caitlin Haman (Ms. Haman), purchased a new 2012 Arctic Cat, Snow Pro 1200 Turbo for \$12,817.00 with several warranties outlined in the warranty booklet. Ms. Haman purposefully selected a snowmobile with reverse functions, over

other models without those functions, because she would not be able to lift a 600 pound snowmobile if it went off trail. With a reverse function, Ms. Haman could reverse the snowmobile if she misjudged a narrow trail and needed to back out of the trail. Defendant stipulated that the same model snowmobile had a reverse function problem, but not every snowmobile of that model had the problem.

Ms. Haman contends that, at the time of purchase, her snowmobile had a reverse function problem. Ms. Haman first learned that her snowmobile had a problem in March 2012 during a Canada trip. On that trip, plaintiff was stuck in a snow bank. When she tried to reverse the snowmobile, Ms. Haman heard a grinding noise. In accordance with notices by the defendant, Ms. Haman ceased using the reverse function to avoid causing damage to the snowmobile. However, Ms. Haman continued to use the forward function of the snowmobile. Ms. Haman drove an additional 900 miles on that trip. Ms. Haman contacted the dealer where she purchased the snowmobile about the problem, but learned that she needed to wait for a kit to become available to upgrade the reverse function. Ms. Haman asserts that it took 8 months for the repairs to be completed. Ms. Haman was not charged for the repairs.

Defendant had the snowmobile inspected on March 18, 2013 by a mechanic at which time the snowmobile meter showed it had traveled 1111 miles. That mechanic found that the “reverse function operates within Arctic Cat specifications” and that “the snowmobile is in great overall condition.” While Ms. Haman has not conceded that the snowmobile has been fully remedied, Ms. Haman has not provided **any evidence** of continued problems with the reverse function on her snowmobile. Ms. Haman did not provide any evidence of monetary damages from special circumstances in this case. The only monetary figure of damages submitted by Ms. Haman was the full purchase price of the snowmobile, i.e., \$12,817. Ms. Haman also sought attorney fees pursuant to Magnuson-Moss and UTCPA and treble damages (three times the

purchase price) under the UTPCPA. Ms. Haman provided no evidence of the amount of her actual loss. Ms. Haman did not provide any evidence of the difference between the value of the snowmobile as accepted and the value of the snowmobile as warranted.

## **Conclusions of Law**

### **Summary Judgment**

1. Pursuant to Pa. R.C.P. 1035.2, the Court may grant summary judgment at the close of the relevant proceedings if there is no genuine issue of material fact or if an adverse party has failed to produce evidence of facts essential to the cause of action or defense. *Keystone Freight Corp. v. Stricker*, 31 A.3d 967, 971 (Pa. Super. Ct. 2011).
2. A non-moving party to a summary judgment motion cannot rely on its pleadings and answers alone. Pa. R.C.P. 1035.2; 31 A.3d at 971.
3. When deciding a motion for summary judgment, the Court must view the record in the light most favorable to the non-moving party, with all doubts as to whether a genuine issue of material fact exists being decided in favor of the non-moving party. 31 A.3d at 971.
4. If a non-moving party fails to produce sufficient evidence on an issue on which the party bears the burden of proof, the moving party is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971 (citing *Young v. Pa. Dep't of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)).

### **Magnuson-Moss, 15 U.S.C. § 2301, et. seq., UCC, 13 P.S. § 1101, et. seq., and UTPCPA, 73 P.S. § 201-1, et. seq.**

5. Magnuson-Moss provides in relevant part the following.

(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims.

(1) Subject to subsections (a)(3) and (e), a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title [15 USCS §§ 2301 et seq.], or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief--

(A) in any court of competent jurisdiction in any State or the District of Columbia; \*\*\*

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

6. “[A] resort to state law is proper in determining the applicable damages under the [Magnuson-Moss] Act.” *Price v. Chevrolet Motor Div.*, 765 A.2d 800, 810 (Pa. Super. 2000). In Pennsylvania such claims fall under the state law breach of warranty action under the UCC, 13 Pa. C.S.A. § 2714.
7. Under state law, to prevail in an express warranty claim, the plaintiff must establish that the defendant breached or failed to meet its warranty promise, that the breach was the proximate cause of the harm to plaintiff, and the amount of the ensuing damages. *Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 74-75 (Pa. 2011), citing, *Price v. Chevrolet Motor Div.*, 765 A.2d 800, 809 (Pa. Super. 2000).<sup>1</sup>
8. The UCC provides for damages of buyer for breach in regard to accepted goods as follows.
  - (a) Damages for nonconformity of tender. --Where the buyer has accepted goods and given notification (section 2607(c)) he may recover as damages for any

---

<sup>1</sup>This Court notes that *Samuel-Bassett*, *supra*, involved a class of plaintiffs rather than an individual plaintiff. Nonetheless, this Court believes that *Samuel-Bassett* sets forth the applicable elements for breach of warranty which applies to the instant case and as set forth in *Price*. Therefore, this Court is relying upon those elements.

nonconformity of tender the loss resulting in the ordinary course of events from the breach of the seller as determined in any manner which is reasonable.

(b) Measure of damages for breach of warranty. --The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(c) Incidental and consequential damages. --In a proper case any incidental and consequential damages under section 2715 (relating to incidental and consequential damages of buyer) may also be recovered. 13 Pa.C.S. § 2714.

9. In general, the measure of damages is “the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted.” *Price v. Chevrolet Motor Div.*, 765 A.2d 800, 810-811 (Pa. Super. 2000).
10. Like the UCC, the UTPCPA, 73 P.S. § 201-9.2, requires plaintiff to prove an “ascertainable loss of money or property” \*\*\* “to bring a private action to recover actual damages or one hundred (\$100) whichever is greater.” 73 P.S. § 201-9.

### **Discussion**

Plaintiff has the burden of establishing the elements of its claim, which includes providing evidence of her lawfully recoverable damages. *Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 74-75 (2011), citing, *Price v. Chevrolet Motor Div.*, 765 A.2d 800, 809 (Pa. Super. 2000). In the instant case, like the plaintiff in *Price*, the only evidence of damages provided by Ms. Haman was the purchase price of the vehicle. In *Price*, the Superior Court reversed the failure of the trial court to enter judgment notwithstanding the verdict because the plaintiff failed to provide sufficient evidence of damages where the only damages provided was the purchase price. Ms. Haman failed to provide any evidence regarding the measure of damages recoverable, i.e., “the difference at the time and place of acceptance between the value of the

goods accepted and the value they would have had if they had been as warranted” or that circumstances were so special and different than that of the Plaintiff in *Price* as to warrant an alternative measure of damages such as the purchase price. Rather, Ms. Haman asserted that no economic loss was required by citing a New Jersey case which interpreted New Jersey law.<sup>2</sup> Without any testimony or documentary evidence as to the recoverable damages in this case, the jury would be forced to speculate as to Ms. Haman’s actual loss, which was clearly deemed improper in *Price*. Since plaintiff Ms. Haman bears the burden of proving damages, and failed to produce sufficient evidence of recoverable damages, the defendant is entitled to summary judgment as a matter of law. *Keystone*, 31 A.3d at 971 (citing *Young v. Pa. Dep’t of Transp.*, 744 A.2d 1276, 1277 (Pa. 2000)).

The Court enters the following Order.

---

<sup>2</sup> In her brief and response, Ms. Haman cites *Kaplan v. Wholesale Automotive Supply Co., et. al.*, 2009 N.J. Super. Unpub. LEXIS 1179 (2009), an unpublished New Jersey Superior Court case, for the proposition that the plaintiff need not prove economic harm as a result of the defect. In *Kaplan* at <http://law.justia.com/cases/new-jersey/appellate-division-unpublished/2009/a2182-07-opn.html>, the New Jersey Court analyzed New Jersey law on warranties and consumer protections and concluded that the plaintiff did not suffer a provable ascertainable loss in that case. This Court does not believe *Kaplan* provides any guidance to this Court in this matter under Pennsylvania law. It should also be noted that plaintiff also cites New Jersey law in its brief when setting forth standards for partial summary judgment.

**ORDER**

AND NOW, this 7<sup>th</sup> day of **January** 2014, it is ORDERED and DIRECTED that summary judgment is entered in favor of Defendant and against Plaintiff on all claims. Plaintiff's complaint is DISMISSED with prejudice. Jury selection scheduled for January 7, 2014 and the jury trial scheduled for January 15, 2014 are cancelled and the matter is removed from the trial list.

BY THE COURT,

**January 7, 2014**

Date

\_\_\_\_\_  
Richard A. Gray, J.

cc: David J. Gorberg, Esq. & Emma Chianpou, Esq. – Counsel for Plaintiff  
DAVID J. GORBERG & ASSOCIATES  
32 Parking Plaza, Suite 700  
Ardmore, PA 19003

Paul C. Troy, Esq. & Donald J. Belfie, Jr. Esq. – Counsel for Defendant  
KANE, PUGH, KNOELL, TROY & KRAMER, LLP  
510 Swede Street  
Norristown, PA 19401