

## STATE OF DELAWARE THE COURTS OF THE JUSTICES OF THE PEACE 820 NORTH FRENCH STREET, 11TH FLOOR

WILMINGTON, DELAWARE 19801

NORMAN A BARRON CHIEF MAGISTRATE TELEPHONE: (302) 571 - 6001

LEGAL MEMORANDUM 87-162

TO:

ALL JUSTICES OF THE PEAG

STATE OF DELAWA

FROM:

NORMAN A. BARRON

CHIEF MAGISTRATE

DATE:

MARCH 30, 1987

RE:

THE AUTOMOBILE LEMON LAW

Recently, in the case of Marcus Beal v. Volkswagon of America, Inc. et al., CCP, Civil Action No. 249-11-1985, consolidated with Marcus Beal v. Smith Volkswagen, Ltd., CCP, Civil Action No. 185-08-1984, Judge Arthur Disabatino allowed plaintiff Beal a recovery against defendant Volkswagon of America, Inc., under Delaware's recently enacted "Lemon Law." The decision follows:

"For reasons expressed herein, I find the plaintiff, Marcus Beal, is entitled to judgment against Volkswagon of America, Inc. Further, I find in favor of the defendant, Smith Volkswagen, Ltd.

On or about June 15, 1984 plaintiff purchased a new volkswagon. Volkswagon of American is the manufacturer.

Although the fact is in dispute, I find that the vehicle has a leak, which the defendants have been unable to repair successfully, which causes water to invade the passenger compartment of the vehicle during some but not all rainstorms. The

water settles on the floor of the vehicle. In addition to the abvious problems of carpet saturation and wet flooring, water penetration is also responsible for window fogging during the summer months.

Delaware has recently enacted a so-called automobile Lemon Law. 6 <u>Del.C.</u>, Chapter 50 became law on July 13, 1983 and therefore covers this transaction.

## 6 Del.C., §5002 provides:

a new automobile does not conform to the manufacturer's express warranty, and the consumer reports the nonconformity to the manufacturer or its agent or dealer during the term of the warranty or during the period of l year following the date of original delivery of an automobile to the consumer, whichever is earlier, the manufacturer shall make, or arrange with its dealer or to make, within a reasonable agent period of time, all repairs necessary to conform the new automobile to warranty, notwithstanding that repairs or corrections are made after expiration of the term of the the warranty or the 1-year period. Del.Laws, c. 173, §1.)'

## 6 Del.C., §5003 provides:

- '(a) If the manufacturer is unable to conform the new automobile to the warranty by repairing or correcting a defect or condition which substantially impairs the use, value or safety or the new automobile to the consumer after a reasonable number of attempts, the manufacturer shall accept return of the automobile from the consumer and either:
- (1) Replace the automobile with a comparable new automobile and the consumer shall pay the manufacturer a reasonable allowance for his use of the automobile being returned and shall not pay, on the new replacement automobile, the taxes, preparation fees or any other charges or fees usually paid by a consumer; or

(2) Refund to the consumer the full purchase price of the original automobile, including all taxes, preparation fees and any other charges or fees paid by the consumer, less a reasonable allowance for the consumer's use of the original automobile.'

Smith attempted to repair the vehicle on at least four occasions, thereby creating a presumption that a reasonable number of attempts have been undertaken to conform the automobile to the manufacturer's express warranty. 6 Del.C., \$5004.

The Court specifically finds that the leak in question substantially impairs the value of the vehicle. The plaintiff did not offer any evidence as to the diminution and value of the vehicle as a result of the leak. However, I am nevertheless convinced by a preponderance of the evidence that the fair market value of the vehicle is substantially diminished as a result of the water penetration problem. Accordingly, I find that plaintiff has established a right of recovery against Volkswagon of America.

The Lemon Law does not create a right of action against the seller of the vehicle. Accordingly, judgment is entered in favor of the defendant, Smith Volkswagen.

Damages are established as follows:

- (1) The purchase price of the vehicle was \$15.403.00.
- (2) Pursuant to 6 Del.C., §5003(a) (2), the consumer use allowance is fixed at 21 cents per mile.
- (3) Interest will be awarded on the judgment from June 15, 1984.
- (4) Plaintiff will be permitted to recover the cost of this action.

Plaintiff should tender possession of the vehicle to the defendant, Volkswagon of America, through its dealer Smith Volkswagen, not later than twenty-one days from the date of this opinion. At that time, the vehicle's mileage can be ascertained and identified by all parties.

Once the mileage of the vehicle is ascertained, the parties are directed to confer and prepare and submit a final order to the Court.

Plaintiff will not be obligated to deliver title to the vehicle until payment of the judgment is forthcoming.

Finally, in the event there are one or more liens on the vehicle, the parties are directed to review the statute and make appropriate allowance to satisfy any outstanding liens."

## NAB:pn

CC: The Honorable Andrew D. Christie
The Honorable William T. Allen
The Honorable Albert J. Stiftel
The Honorable Robert H. Wahl
The Honorable Robert D. Thompson
The Honorable Alfred R. Fraczkowski
The Honorable Charles M. Oberly, III
Lawrence M. Sullivan, Esquire
Eugene M. Hall, Esquire
Joseph M. Kwiatkowski, Esq., Pres., Delaware Bar Assoc.
Professor William J. Conner, Delaware Law School
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