

Before the Court is a Motion for Partial Summary Judgment on the Issue of Prejudgment Interest filed by Plaintiffs Trisha and Robert Lamourine (“Lamourines”). Having considered the parties’ briefs and the record below, the Court finds that the Lamourines’ application for prejudgment interest is premature and will not be considered at this early stage of litigation. Furthermore, there is an issue of fact on the amount due. Mazda does not stipulate to the entry of judgment as to prejudgment interest and in fact contends that the Lamourines are not entitled to an award of prejudgment interest. For these reasons, the Motion for Partial Summary Judgment is therefore **DENIED**.

I. Statement of Facts

On September 27, 2003, the Lamourines purchased a new 2004 Mazda RX8 6Spd automobile. The vehicle was manufactured, distributed and warranted by Defendant Mazda Motor of America, Inc. (“Mazda”) and sold to the Lamourines by Hertrich Family of Automobile Dealerships, Inc., d/b/a Hertrich’s Capitol (“Hertrich”). The Defendant, Mazda, allegedly warranted that the vehicle would be free from defects in materials or workmanship for a period of four years or 50,000 miles, that the vehicle was fit for ordinary purposes for which it was intended to be used and that it was

of good merchantable quality. Mazda also warranted that any authorized dealer would repair or replace defective parts without charge.

The Lamourines made a down payment of \$1,000.00 to Hertrich on September 27, 2003, to purchase the vehicle and continued to make monthly payments of \$672.71. Shortly after the purchase, the Lamourines experienced a number of problems with the vehicle. During its first 25,250 miles, the vehicle exhibited a “condition” that causes the check engine light to remain illuminated and the engine to hesitate or buck unexpectedly. During the first year after the purchase, the Lamourines returned the vehicle to Mazda dealers on five occasions for repairs and the vehicle was out of service for approximately thirty-eight days. The Lamourines claim that these repair attempts were futile and that the condition substantially and adversely impairs the use, value, and safety of the vehicle. On August 5, 2005, the Lamourines sent a notice letter to Defendants.

On August 24, 2005, the Lamourines filed a complaint against Mazda and Hertrich. They allege violations of the Delaware Automobile Warranty Act,¹ the Magnuson Moss Warranty Act,² the Delaware Consumer Fraud Act,³ the Delaware Deceptive Trade Practices Act,⁴ breach of

¹ 6 *Del. C.* §§ 5001-09.

² 15 *U.S.C.* §§ 2301-11.

³ 6 *Del. C.* §§ 2511-27.

manufacturer's express written warranty, breach of implied warranty of merchantability, breach of dealer's express written labor warranty, breach of dealer's implied warranty of good workmanship, and breach of dealer's implied labor warranty of fitness for intended purpose. The Lamourines' complaint demands a judgment comprising of compensatory damages in the amount of a refund of the full purchase price paid for the vehicle, including all taxes, preparation fees, and other charges; general, incidental, and consequential damages; punitive damages pursuant to the Delaware Consumer Fraud Act; treble damages pursuant to 6 *Del. C.* § 2533; prejudgment and post-judgment interest; attorney's fees pursuant to 6 *Del. C.* §§ 5005, 2533 and 15 *U.S.C.* § 2310(d); and costs.

On January 4, 2006, Mazda offered to repurchase the vehicle without offering any sum for prejudgment interest, aggravation and inconvenience and with the sum of \$4,500.00 in counsel fees.

II. Parties' Contentions

The Lamourines now move for partial summary judgment on the issue of prejudgment interest for violation of the Delaware Automobile Warranty

⁴ *Id.* §§ 2531-36.

Act⁵ and for breach of warranty pursuant to 6 *Del. C.* §§ 2-313, 2-314, 2-711, 2-714, and 2-715 of the Uniform Commercial Code.

Defendant Mazda dispute that the Lamourines are entitled to the recovery of prejudgment interest and dispute the method of calculating that interest. In particular, the parties disagree on the date the interest should begin to accrue. The Lamourines argue that prejudgment interest should accumulate from September 27, 2003, the date the vehicle was purchased. Whereas, Mazda contends that interest should accrue from the time that the Lamourines revoked their acceptance and surrendered the vehicle.

At the status conference on May 17, 2006, the Court directed counsel to submit supplemental memorandum of law concerning the “ripeness” of the issue of prejudgment interest since no order or stipulation of judgment had been entered. Citing to *Ubiquitel Inc., v. Sprint Corporation, et al.*,⁶ the Lamourines argue that the issue of prejudgment interest is ripe. Specifically, the Lamourines contend that the issue is ripe because without a decision they will be forced to litigate this issue, a judicial decision on the issue will allow the case to settle, and there is no chance that facts will develop that will change the need for the determination of this issue since the warranty has already been breached. In its response to the supplemental memorandum on

⁵ *Id.* §§ 5001-09.

⁶ 2006 WL 44424 (Del. Ch.).

ripeness, Mazda does not dispute that the issue of prejudgment interest is ripe for determination; however, they again reiterate that they do not stipulate to the entry of judgment as to prejudgment interest and in fact contend that the Lamourines are not entitled to an award of prejudgment interest. In addition, Mazda asserts that the Lamourines' interest in resolution of the prejudgment interest issue does not include offsetting the "allowance for use" permitted by the Lemon Law as the Lamourines argue.

III. Standard of Review

A motion for summary judgment is properly granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.⁷ After the moving party makes this initial showing, the burden then shifts to the non-moving party to demonstrate that issues of material fact do exist.⁸ The Court must view the facts in a light most favorable to the non-moving party and will accept as established all undisputed factual assertions.⁹ The Court will then draw all rational inferences that favor the non-moving party.¹⁰ Summary judgment will not be granted where there is a reasonable indication that a material fact is in

⁷ *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

⁸ Super. Ct. Civ. R. 56(e); *Lum v. Anderson*, 2004 WL 772074 (Del. Super.)(citing *Moore v. Sizemore*, 405 A.2d 679 (Del. 1979)).

⁹ *Merrill v. Crothall-American, Inc.*, 606 A.2d 96 (Del. 1992).

¹⁰ *Id.*

dispute, or where a more thorough inquiry into the facts is desirable to clarify the application of the law to the circumstances.¹¹

IV. Discussion

10 *Del. C.* § 6501 outlines the power of the courts regarding declaratory judgments:

Except where the Constitution of this State provides otherwise, courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.

The principal purpose of a declaratory judgment is to promote preventive justice, in a situation where an injury has not yet occurred.¹² This section does not create any substantive rights but merely provides a procedural means for securing judicial relief in an expeditious and comprehensive manner.¹³ A court will exercise its discretion to grant declaratory relief when the benefit outweighs the risk of premature judgment.¹⁴ A court may,

¹¹ *Ebersole v. Lowengrub*, 180 A.2d 467 (Del. 1962).

¹² *Stabler v. Ramsay*, 89 A.2d 544 (Del. 1952); *Hampson v. State*, 233 A.2d 155 (Del. 1967).

¹³ *Hoechst Celanese Corp. v. National Union Fire Ins. Co.*, 623 A.2d 1133 (Del. Super. Ct. 1992).

¹⁴ 10A Wright, Miller & Kane, *Federal Practice & Procedure: Civil 2d* § 2759.

therefore, refuse to render a declaratory judgment if it will not terminate the uncertainty.¹⁵

A declaratory judgment is appropriate only if there is an actual controversy between the parties.¹⁶ The prerequisites of a controversy, such as will warrant consideration of a declaratory judgment action, are summarized as follows: (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.¹⁷

As stated above, one of the determining factors is the dispute's ripeness for adjudication. The ripeness of a dispute is a matter entrusted to the discretion of the trial court.¹⁸ Delaware courts have articulated five important factors relevant to making the practical judgment of whether a particular issue is ripe for judicial resolution:

¹⁵ 10 *Del. C.* § 6506.

¹⁶ *Stroud v. Milliken Enter., Inc.*, 552 A.2d 476, 479 (Del. 1989).

¹⁷ *Schick Inc. v. Amalgamated Clothing and Textile Workers Union*, 533 A.2d 1235, 1238 (Del.Ch. 1987)(quoting *Rollins Int'l, Inc. v. Int'l Hydronics Corp.*, 303 A.2d 660 (Del. 1973));

¹⁸ *N. Am. Philips Corp. v. Aetna Cas. & Surety Co.*, 565 A.2d 956, 961 (Del. Super. 1989) (“When deciding whether an issue is ripe for adjudication the Court must do a balancing test. The Court must use its judicial discretion based on the factors of each case”)

(1) A practical evaluation of the legitimate interests of the plaintiff in a prompt resolution of the question presented; (2) the hardship that further delay may threaten; (3) the prospect of future factual development that might affect the determination made; (4) the need to conserve scarce resources; and (5) a due respect for identifiable policies of law touching upon the subject matter in dispute.¹⁹

In analyzing whether an issue satisfies the ripeness requirement courts must weigh the reasons “for not rendering a hypothetical opinion ... against the benefits to be derived from the rendering of a declaratory judgment.”²⁰

“This weighing process requires ‘the exercise of judicial discretion which should turn importantly upon a practical evaluation of the circumstances’ of the case. In determining, whether an action is ripe for judicial determination, a ‘practical judgment is required.’”²¹ In *Stroud v. Milliken Enterprises, Inc.*, the Delaware Supreme Court explained why Delaware courts decline to render “hypothetical opinions”:

First, judicial resources are limited and must not be squandered on disagreements that have no significant current impact and may never ripen into legal action [appropriate for judicial resolution]. Second, to the extent that the judicial branch contributes to law creation in our legal system, it legitimately does so interstitially and because it is required to do so by reason of specific facts that necessitate a judicial judgment. Whenever a court examines a matter where facts are not fully developed, it runs the risk not only of granting an incorrect judgment, but also of taking an inappropriate or premature step in the development of the law.²²

¹⁹ *Schick Inc.*, 533 A.2d at 1238.

²⁰ *Stroud.*, 552 A.2d at 480 (Del. 1989).

²¹ *Id.* (quoting *Schick*, 533 A.2d at 1238-1239).

²² *Id.* (internal citations and quotations omitted).

Thus, when “future events may obviate the need for declaratory relief, [] the dispute is not ripe, and declaratory relief should not be granted.”²³

Courts have declined to enter a declaratory judgment with respect to indemnity until there is a judgment against the party seeking it.²⁴ For instance, *Dana Corp. v. LTV Corp.*,²⁵ was a declaratory judgment action in which Dana Corporation sought indemnification from The LTV Corporation and certain of its subsidiaries for products liability claims. The claims arose from personal injuries that occurred on oil rigs that had been manufactured by Dana’s subsidiary, Wilson-Wichita, Inc. Prior to any finding of liability on the part of LTV to the Texas products liability plaintiffs, Dana brought suit in the Delaware Chancery Court to obtain a declaratory judgment that it did not have to indemnify LTV for any judgment in the post-1984 suits. Vice Chancellor Balick dismissed Dana’s complaint on the basis that the issue presented was not ripe for resolution. His decision to do so turned on several important factors.

²³ *Ubiquitel Inc.*, 2006 WL 44424 at *3 (citing *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 872 A.2d 611, 631-32 (Del. Ch. 2005)(dismissing claim for declaratory judgment with respect to right to indemnification because party seeking declaration did not yet have a judgment against it)(internal citation omitted)).

²⁴ *Cunningham Brothers, Inc. v. Bail*, 407 F.2d 1165 (7th Cir. 1969), *cert. denied*, 395 U.S. 959 (1969).

²⁵ 668 A.2d 752 (Del. Ch. 1995), *aff’d*, 1995 WL 715514 (Del. Supr.).

Paramount was the fact that the need to decide whether Dana was required to indemnify LTV was “contingent on a claimant’s future recovery from LTV.”²⁶ Vice Chancellor Balick noted that “[c]ourts have declined to enter a declaratory judgment with respect to indemnity until there is a judgment against the party seeking it.”²⁷ He then followed this approach by declining to hear Dana’s claim, noting that it was “unlikely that a product liability claimant will recover against LTV.”²⁸ In this regard, Vice Chancellor Balick cited as relevant that only a small minority of jurisdictions imposed successor liability on asset transferees for claims relating to product defects arising before the transfer, that LTV was not likely to be sued in states following the minority rule, and that courts who had handled claims against LTV appeared to be ruling in its favor on the successor liability issue.²⁹ Vice Chancellor Balick also found significant the potential applicability of another state’s tort law, rather than Texas contract law or Delaware corporation law, to Dana’s indemnity claim. He also expressed concern that Dana’s broad request for declaratory relief seemed less motivated by a fear of potential indemnity liability to LTV than by a fear of direct liability to the products liability claimants, claimants who were not

²⁶ *Id.* at 756.

²⁷ *Id.* (citing *Cunningham Bros., Inc.*, 407 F.2d 1165).

²⁸ *Id.*

²⁹ *Id.*

before his court. “It is fair to infer that Dana’s main motivation is to obtain precedent that will be useful against those claimants. A court will not grant declaratory relief to a party whose primary purpose is to achieve an unfair procedural advantage.”³⁰ Finally, Vice Chancellor Balick was reluctant to rule, without necessity to do so, on Dana’s claim because it raised difficult issues involving the interplay of products liability law, indemnity law, and corporation law. He found it prudent to defer resolution until such time as the need for a decision was clear.³¹

In the present case, after considering and balancing the legal question sought to be determined, the Lamourines’ interest in resolution of this question, the particular hardship that would inure to them if the Court declined to address the issue of prejudgment interest, and the Court’s interest in avoiding premature consideration of this issue, the Court concludes that this issue is not presently ripe for adjudication. As to the first and second factors, it appears that the Lamourines’ concerns are real and that some hardship will occur if this Court does not adjudicate its claims now. Nonetheless, the Court does not believe that the hardship is substantial. The Lamourines simply contend that without a decision, they will be forced to litigate the prejudgment interest issue, as well as liability. While a prompt

³⁰ *Dana Corp.*, 668 A.2d at 757.

³¹ *Id.*

resolution may be advantageous, it does not appear vital, to the Lamourines at this early stage of litigation. In evaluating the third factor, the prospect for future factual development that might affect the determination to be made, the Court recognizes that the parties have stipulated to facts for determination of prejudgment interest. Nonetheless, this factor only tepidly supports the ripeness of the prejudgment interest issue. The fourth and fifth factors, respectively, the need to conserve scarce resources and a due respect for identifiable policies of law touching upon the subject matter in dispute, must also be considered. The Lamourines argue that “there is little danger of an incorrect decision or error in the development of the law, since prejudgment interest law is well developed by the Delaware Supreme Court and statutes.”³² However, no case has been cited as authority for this proposition. The Lamourines also claim that “deciding the issue now will conserve judicial resources since the case will not require litigation to judgment; nor trial.”³³ After careful consideration of the Lamourines’ argument, the Court determines that the fourth and fifth factors do not weigh in favor of ripeness. Upon a practical evaluation of all the circumstances of this case, the Court determines that postponing the determination of prejudgment interest until the question arises in some more concrete and

³² Pl.’s Supplemental Memorandum of Law Concerning “Ripeness” at 4.

³³ *Id.*

final form is necessary. Postponing review at this early stage of litigation does not deny the parties justice. In the event that Mazda suffers liability in the suit for violation of the Delaware Automobile Warranty Act³⁴ and breach of warranty or the question arises in some more concrete and final form, the Lamourines will have the opportunity to seek an order for prejudgment interest. The Court concludes that the Larmourines' application for prejudgment interest will not be determined at the present time because the risk of premature judgment outweighs the benefit of declaratory relief.

Moreover, the Court determines that there is an issue of fact on the amount due in the present case. Mazda does not stipulate to the entry of judgment as to prejudgment interest and in fact contends that the Lamourines are not entitled to an award of prejudgment interest.

V. Conclusion

For the foregoing reasons, the Lamourines' Motion for Partial Summary Judgment is hereby **DENIED**.

IT IS SO ORDERED.

Judge Calvin L. Scott, Jr.

³⁴ 6 *Del. C.* § 5001-09.