

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
03/19/2002

03/14/2002

CLERK OF THE COURT  
FORM V012

HONORABLE ROBERT L. GOTTSFIELD

M. Johnson  
Deputy

CV 2001-002745

FILED: \_\_\_\_\_

KATHY PAPASAVAS

MARSHALL SCOTT MEYERS

v.

DAIMLERCHRYSLER CORPORATION

NEGATU MOLLA

TRIAL MINUTE ENTRY  
DAY 2

9:30 a.m. Trial to Court continues from March 13, 2002. Plaintiff is present and represented by Marshall Scott Meyers. Counsel Negatu Molla is present on behalf of Defendant. Also present is Dennis Perta a representative of Chrysler.

Court Reporter, Lorraine Chalkey, is present.

Plaintiff's case reopens.

Frank Papasavas is sworn and testifies.

The witness is excused.

Plaintiff rests.

Defense counsel makes an oral motion Rule 20 to the Court as stated on the record.

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Defendant's motion for judgment is denied without prejudice on the air conditioning repair problem.

Defendant's motion is granted with respect to the failure to repair alleged pulling of vehicle on application of brakes, because Defendant (through Pitre) never requested to make such a repair or, if requested, the same was repaired without further complaint. Also motion granted with respect to the transmission leak as Defendant (through Pitre) never requested to make any additional repair for the condition (after the first and only repair for this condition on 5/19/00 Exhibit 4) which was an apparently proper repair.

Defense case.

Michael Stegina is sworn and testifies.

The witness is excused.

Dennis Peart is sworn and testifies.

The witness is excused.

11:03 a.m. Court stands at recess.

11:17 a.m. Court reconvenes with respective counsel and parties present.

Court Reporter, Lorraine Chalkey, is present.

Richard Horna is sworn and testifies.

11:48 a.m. Court stands at recess.

1:30 p.m. Court reconvenes with respective counsel and parties present.

Court Reporter, Lorraine Chalkey, is present.

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Plaintiff's exhibits 19-24 is marked and are received in evidence.

Richard Horna resumes the stand and testifies further.

The witness is excused.

Defense rests.

Plaintiff's case reopens.

Kathy Papasavas resumes the stand and testifies further.

The witness is excused.

Both sides rest.

Closing arguments.

2:36 p.m. Court stands at recess.

2:47 p.m. Court reconvenes with respective counsel and parties present.

Court Reporter, Lorraine Chalkey, is present.

Closing arguments continue.

3:24 p.m. Trial concludes.

LATER:

The Court Finds, Determines, and Orders as follows:

1. Plaintiff purchased a 1999 Jeep Wrangler Sport on May 18, 1999 from Pitre Chrysler.

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2. At the time of purchase Daimler Chrysler issued its standard written limited warranty on the vehicle, the duration of which was 36 months or 36,000 miles, whichever occurred first. The basic warranty in pertinent part covered "the costs of all parts and labor needed to repair any defective item on your vehicle" except for tires.
3. The evidence adduced at trial shows there were four repairs to the air conditioning/heating until wherein Plaintiff complained that the unit was not working. On 9/14/99 (Exhibit 2) the first repair was made at 10,000 (approx.) miles (control head replaced because of a short); 6/3/00 (Exhibit 5) second repair at 23,000 miles (approx.) (short in blower wiring-repaired pinched wire between heater case and bulkhead); 7/11/00 (Exhibit 6) third repair at 24,000 miles (approx.) (replace blower motor); and 7/27/00 (Exhibit 7) fourth repair at 24,000 miles (approx.) (replace A/C control head).
4. The first and fourth repairs were for the same condition, a defective A/C control head which was replaced. While the second and third repairs are different from the first and fourth, both the second and third repairs deal with a blower that was inoperative. On all four occasions the A/C was not working. The testimony of Mr. Norris, Plaintiff's expert was that the defects in the A/C control head (first and fourth repairs) were exceptional circumstances. For the A/C control head to go out at 10,000 and then at 23,000 miles was out of the ordinary and may indicate, along with the history of other repairs to the A/C, there was and continues to be an electrical problem.
5. Defendant was given a reasonable number of attempts to diagnose and repair the A/C as outlined above. Defendant (through Pitre its authorized dealer)

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breached its written warranty with Plaintiff after the third repair and certainly after the fourth repair proved unsuccessful. It was at those times that a "reasonable number of attempts" and opportunity to cure had been given to the Defendant in this case with a written limited warranty. 15 U.S.C. §2304(a)(4). The defective A/C condition continues to this day.

6. Plaintiff had the right, because a breach had already occurred, to refuse an offer of an extended limited warranty at no cost to her as well as an offer to further repair the vehicle, after the third and certainly after the fourth repair to the A/C.
7. Counts 2 (breach of implied warranty pursuant to M-MWA) and 3 (revocation of acceptance under M-MWA) has been eliminated from the case by Defendant's successful Motion for Partial Summary Judgment. Plaintiff has no legal right to require a repurchase of the vehicle, or to a revocation of the purchase contract or to incidental and/or consequential damages.
8. Count 1 (breach of limited written warranty under M-MWA) remains and the Court has determined above that Defendant breached its warranty. The measure of damages applied by the Court is diminution of value meaning the difference between the current value of the car to Plaintiff and the value of the vehicle had it been as warranted. The Court determines from the evidence adduced that the diminution in value of the vehicle is \$4,500. The Court specifically finds that cost of repairs would be an unreasonable measure of damages under the circumstances. Cf. Downs, 18 Ariz. App.225.
9. The Court specifically denies any objection made by any party to the evidence if not specifically ruled on during the trial. The Court did grant a partial

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judgment to the Defendant at the end of Plaintiff's case as set forth above.

10. Plaintiff did not have to first resort to Defendant's informal and voluntary dispute procedure before filing suit.
11. Plaintiff is further awarded her reasonable attorney fees and taxable costs to be submitted by affidavit and statement of costs. A telephonic hearing in connection therewith shall be held on **May 10, 2002 at 8:45 a.m.** Defense counsel is to call the Court for this hearing. (Because this Court cannot place long distance calls if Mr. Molla is calling from Tucson he should call the Court (602)506-3132 and staff will then call Mr. Meyers.)