Claim No: SCCH - 461264

# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

**Citation:** *Molnar v. BMW Canada Inc.,* 2017 NSSM 24

BETWEEN:

REBECCA MOLNAR

Claimant

- and -

BMW CANADA INC.

Defendant

## REASONS FOR DECISION AND ORDER

**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on May 15, 2017

Decision rendered on May 16, 2017

**APPEARANCES**

For the Claimant self-represented

For the Defendant Ibrahim Badawi, counsel

**BY THE COURT**:

1. The Claimant is the owner of a 2009 Mini Cooper automobile, which she purchased used in 2014 from one Mr. Jon Gale, in a private sale. It appears that Mr. Gale was not the original owner. The Claimant is likely the third owner of this vehicle.

2. Mini Coopers were originally designed and made in the U.K. The brand was bought by BMW some years ago, and the Defendant BMW Canada Inc. is (for all intents and purposes) the manufacturer of these vehicles.

3. The Claimant has had bad experiences with her vehicle. Between 2014 and 2016, she estimates that she spent about $7,000.00 on repairs. In late 2016 the engine seized up and the vehicle has not been on the road since then. In January 2017 she towed it in to the Halifax BMW dealership for assessment. It appears that the engine either needs to be replaced, or repaired. There is no firm evidence on what this would cost. The Claimant believes it would take $10,000.00 to repair her vehicle, and seeks this from the Defendant.

4. The Claimant has done some research which has disclosed that there is some controversy in Canada and the US about this make and model of vehicle. There was apparently a class action lawsuit in the US concerning alleged defects. Other dissatisfied owners have proceeded through consumer advocates to try to convince BMW Canada to address their concerns. In some cases, BMW Canada has extended financial relief as a goodwill gesture.

5. The Claimant is convinced that her car is a “lemon” and believes that there should be some legal relief available.

6. The Defendant takes the position that the Claimant has not shown that she has any reasonable cause of action, and moves to have the claim dismissed.

7. A few other facts are useful to give this claim some context. When the Claimant bought it in 2014, the vehicle had been driven 73,240 kilometres. By the time the engine gave out, it was up to 135,570.

**Legal history and analysis**

8. Historically, consumers of any sort of goods were able to hold their sellers responsible for the quality of what they sell. That is because there is a legal, contractual relationship of buyer and seller. If A sells a defective item to B, the purchaser B can claim breach of contract against A on the basis that the contract assumed (or expressly stated) that the item sold would be of a certain quality. Statutes such as the *Sale of Goods Act* were introduced to add implied warranties into contracts of sale, and strengthen the buyer’s rights. The Nova Scotia *Consumer Protection Act* does a similar thing in cases where the seller of the item in question is a professional seller, or “dealer.” It implies warranties such as a warranty of fitness and reasonable durability.

9. When the seller is not also the manufacturer, this creates a wrinkle. Car dealerships, by way of example, have no control over the quality of what they sell, and cannot necessarily afford to promise that the cars they sell will meet quality standards. The solution to this problem was the creation

of manufacturers' warranties. Because the manufacturer does not have a direct contractual relationship with the eventual buyer, and dealers cannot be expected to take full responsibility, the manufacturer provides a warranty that bridges that gap, and holds the manufacturer responsible to the buyer.

10. Even so, there are limits on that responsibility, typically involving the age of the vehicle and kilometres driven. The strength of the warranty is often a selling point. Some manufacturers boast of their superior warranty. All things being equal, consumers will prefer a 5-year, 120,000 km. warranty to a 3-year, 60,000 km. warranty.

11. Beyond the limits of manufacturers warranties, the entire field of extended warranties has been developed to give the consumer extra protection, at a price.

12. All of these warranties exist precisely because the consumer typically has no legal recourse against the manufacturer. Why? Because there is no contractual relationship between the consumer and the manufacturer.

13. It is not enough to say that I am an owner of a vehicle you manufactured, therefore you owe me a duty akin to a contractual duty. The answer is that the warranty sets out the limits of that duty. If the car is out of warranty, then the legal duty of the manufacturer is at an end. No manufacturer will extend warranty protection indefinitely.

14. Of course, that is a simplistic view and there are always exceptions.

15. The law of tort, and specifically negligence, may enter into the picture. The law of negligence does not require that the parties be in a contractual relationship.

16. The law of negligence says that everyone owes a duty of care to those who might be harmed by a product that is created. A manufacturer owes a duty of care to produce a reasonably safe and reliable product. This law comes into play where, for example, a car has defective brakes and this causes an accident which injures a complete stranger.

17. In the development of the law, the courts in the common law world (UK, US, Canada etc.) have shown a concern that tort liability for defective products only go so far. Thus they developed the doctrine that says that one cannot claim damages for "pure economic loss." There must be some sort of personal injury.

18. To use the faulty brakes example, the person injured can make a claim for the injuries suffered, but the owner of the faulty car may not claim for the cost of repair. This may sound arbitrary, but it is totally ingrained in the law. The case of *Rivtow Marine Ltd. v. Washington Iron Works and Walkem Machinery & Equipment Ltd.* [1974] S.C.R. 1089, sets out that proposition. That has been the law in Canada for more than 40 years.

19. The Claimant's case before me is, at its highest, a claim for economic loss against a manufacturer arising from an allegedly defective vehicle. On the *Rivtow* principle, the case cannot possibly succeed.

20. The Claimant cannot make out a case in contract or tort, which leaves little else. There are no statutory remedies available, because there are no so-called “lemon laws” in Nova Scotia that would provide a remedy.

21. The Claimant’s case has factual, as well as legal difficulties. While there is anecdotal evidence of this model of vehicle having problems, there is no real proof of a defect in manufacturing or design, such as an engineer’s report. I realize that it would ask a lot of someone such as the Claimant to provide that proof, but still there is nowhere near enough evidence before me to conclude that the problems with the vehicle were due to a defect in manufacture. I cannot lose sight of the fact that the Claimant bought a 5-year old vehicle and drove it for 60,000 km. over the next two years before it broke down. There are many other reasons why it may have failed other than an initial defect in manufacture.

22. I recognize that the Claimant had higher expectations for this vehicle, partly because BMW is a prestige brand, and in cases such as this manufacturers often extend some good will in order to keep their customers happy and protect their brand reputation. That is outside my sphere of authority.

## ORDER

23. In the result, I find that there is no viable cause of action shown, and the claim must be dismissed.

**Eric K. Slone, Adjudicator**