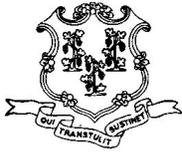


In the matter of arbitration entitled:

Bennett v. Polaris

2017-1960



**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrators, Brian Mund, Alda Yuan and Roseanna Sommers, having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decide the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Michael Bennett and Joanna Bennett (collectively the “Consumer”) purchased a 2016 Polaris Slingshot (the “Vehicle”) from MotorSports Nation (the “Dealer”), an authorized dealer of Polaris Industries Inc. (the “Manufacturer”) located at 110 Cross Road in Waterford, Connecticut, 06385.

The Consumer took delivery of this Vehicle on September 18, 2015. The registration is “motorcycle,” as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

After reviewing the allegations, these arbitrators deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. Polaris Industries Inc. (the “Manufacturer”) did not contest the initial eligibility of the Vehicle in this case. Said arbitration hearing was held on November 2, 2017 in Hartford, Connecticut. Mr. Timothy Clark served as the State’s Technical Expert. Also appearing at the hearing were one of the Consumers Mr. Michael Bennett, Mr. Roshan Rajkumar, National Counsel for the Manufacturer, Paul Erickson, Local Counsel for the Manufacturer and Mr. Patrick Cheever, Service Engineer for the Slingshot Product Line for the Manufacturer. The record closed on November 2, 2017 without a request for the submission of additional evidence or the submission of additional evidence concerning unrepaired body damage to the Vehicle.

A. The Consumer first brought the Vehicle to the Dealer on March 10, 2017 to address a defect pertaining to a headlight jumper harness installation pursuant to a recall. At the time, the Vehicle had less than 3,369 miles on the odometer. This repair attempt and subsequent repair attempts for this defect and others occurred on:

Repair Date	Miles	Defect
03-10-16	<3,369	defective headlights; headlight installation pursuant to recall. Exact number unavailable from the record and unknown to the parties. The Consumer submission did not report this repair attempt. The Manufacturer’s submission did report the repair attempt but did not list the mileage at that time. Neither party had an additional evidence for submission. When asked, neither party knew what the mileage would have been. The Dealer, who might have this information, did not cooperate with the Manufacturer and was not at the hearing.

06-27-16	3,369	subwoofer replacement for “blown” speakers
06-02-17	<5,625	defective fuel line and routing clip; swingarm with double axle nut; steering shaft pinch bolt and set screw; and secondary brake replaced and adjusted pursuant to product recall. Exact number unavailable from the record and unknown to the parties. . The Consumer submission did not report this repair attempt. The Manufacturer’s submission did report the repair attempt but did not list the mileage at that time. Neither party had an additional evidence for submission. When asked, neither party knew what the mileage would have been. The Dealer, who might have this information, did not cooperate with the Manufacturer and was not present at the hearing.
07-25-17	5,625	Vehicle making noise while driving and differential (rear angle drive) leaking
08-10-17	6,205	“howling” noise in rear-end

The Consumer alleges that the howling noise continues to date of arbitration. The Manufacturer claims that the howling noise has been addressed and the Vehicle currently operates consistent with normal “humming” vehicle sound. The other defects were fixed by the time of the hearing. The Consumer reports that the Vehicle’s current mileage is 6,257 miles, and the Manufacturer did not dispute this.

B. The Vehicle has been out of service by reason of repair for a cumulative total in excess of 30 days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).

C. Two repair attempts during the first 12 months and the defect still exists that is life threatening or likely to cause serious bodily injury, if the vehicle is driven. The defects occurred as follows:

II. REASONING

Nonconformity

Consumer complained of the following nonconformities with the subject Vehicle: two speaker blow outs, a loud noise coming from the rear of the Vehicle and multiple recalls affecting headlights, swingarm, fuel lines, secondary brakes and the steering column.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the Vehicle was subject to multiple recalls as listed above. The vehicle was delivered to the Dealer on June 2nd, 2017 and repairs were completed on July 25th, 2017 for a total of 53 days out of service during the statutory period. Given that the car was out of service by reason of repair for over 30 days, Consumer was found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

According to Connecticut General Statutes Chapter 743b, the presumption that there has been a reasonable number of repair attempts can be satisfied by either of two prongs: “if (1) the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers during the period of two years following the date of original delivery of the motor vehicle to a consumer or during the period of the first twenty-four thousand miles of operation, whichever period ends first, but such nonconformity continues to exist or (2) the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during the applicable period, determined pursuant to subdivision (1) of this subsection.” Under the second prong, the nonconformity need not continue to exist; so long as the vehicle has been out of service by reason of repair for a cumulative total of thirty days, the presumption is satisfied. Here, where the vehicle was out of service for over fifty days, we find that reasonable attempts at repair were made. We need not reach the question of whether the defect continued to exist or persists to this day.

Substantial Impairment and Factual Discussion

In the present matter, the arbitrators hold that a substantial impairment to use existed in the form of vehicular defects which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate eligibility under Connecticut General Statutes Chapter 743b.

Consumer Michael Bennett appeared and testified at the arbitration hearing. The Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the Vehicle defects experienced by the Consumer and the multiple repair attempts by the Dealer.

As shown in Part I of this decision, Consumer first brought the Vehicle in for repair on March 10, 2017 for a headlight jumper harness installation pursuant to a recall. At that time, there were less than 3,369 miles on the odometer. Three months later, on June 27, 2016 the speakers blew out and the Consumer brought in his Vehicle for a replacement under the warranty.

In April 2017, the Consumer called the Dealer to schedule routine maintenance. At that time, the Dealer notified the Consumer that there was a “stop drive” notice on the Vehicle due to a number of recalls, some of which had been issued in October of 2016. The Dealer informed the Consumer that the dealership did not yet have all the parts necessary to complete the recall repairs but because of the “stop drive” notice, would not be able to release the vehicle back to the Consumer if he brought it in for maintenance. To avoid having the Vehicle sit on the Dealer’s outdoor lot, the Consumer kept the Vehicle in his indoor garage and did not drive it due to the safety warnings, until he learned that the requisite parts had arrived at the dealership.

The Consumer brought his Vehicle to the Dealer on June 2, 2017. The Vehicle remained at the Dealer until July 25, 2017 for a period of 53 days waiting for parts and then receiving repairs addressing the following recalls: fuel line replacement, steering column, swing arm, and brake replacement. The arbitration panel finds that these defects substantially impaired the use of the Vehicle, and that the consumer had made reasonable attempts at repair once the vehicle had been out of use for repairs for 30 days. Due to repairs, the Vehicle was inoperable during the summer months of June and July, prime months of use for this seasonal Vehicle.

When the Consumer picked up his Vehicle on July 25th, he immediately noticed it made a screeching sound when driven. He returned the Vehicle that same day. The mechanic initially diagnosed a leaking

(See Section IV of this decision, entitled “Refund Award,” on the following page.)

IV. REFUND AWARD

The arbitrators find that the Consumer is entitled to a refund of the contract price, including charges for any undercoating, dealer preparation and transportation, and dealer installed options, if applicable. (The contract price is less the \$0.00 credit/rebate given to the purchaser.) The total Vehicle price, as delivered, was \$28,495.13.

Allowance for use

- The contract price shall not be reduced by taking into account the mileage on the vehicle.
- The contract price **shall be** reduced by an allowance for the Consumer's use of the vehicle. It shall be calculated pursuant to §743b(d) using the total mileage driven **at the time of the final repair attempt** (at 6,205 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$28,495.13 \times 6,205 \text{ miles}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the Vehicle shall be: **\$1,473.44.**

Finance Charges to be Reimbursed by Manufacturer

- The Consumer shall be reimbursed for finance charges incurred on the following dates:
- The Consumer shall be reimbursed for finance charges incurred from: _____ to _____.
- The Consumer shall be reimbursed for all finance charges incurred.
- The Consumer **shall not be** reimbursed for finance charges.

Total Refund Award and Conditions

The total refund amount is **\$27,021.69** (twenty seven thousand twenty one dollars and sixty nine cents).

If the Vehicle is financed and the loan has an outstanding balance, the Manufacturer shall prepare one check payable to the lien holder as its interest may appear, and one check payable to the Consumer in the amount of the balance of the refund. The Consumer shall sign an authorization that will assign the Consumer's right, title, and interest of the Vehicle to the Manufacturer upon receipt of the refund. The Consumer shall surrender the Vehicle at the time of the refund.

The Manufacturer shall provide the total refund to the Consumer within **30** days of the Manufacturer's receipt of this arbitration decision. The Consumer shall surrender the Vehicle to the manufacturer upon receipt of the refund, but if the Vehicle is in the possession of the Manufacturer or their agent, the Vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at: Motor Sports Nation, 110 Cross Road in Waterford, Connecticut, 06385 OR at the local manufacturer-authorized dealership of the Consumer's choice.