

In the matter of arbitration entitled:

Malek vs. Mercedes-Benz

Case Number: 2017-666



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



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Jerry P. Padula, Esq., having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decides the following in regard to the above captioned matter:

I. FINDINGS OF FACT

David J. Malek (the "Consumer") purchased a **2016 Mercedes GLC 300** (the "Vehicle") from **New Country Motors** located at **1 Weston Street in Hartford, Connecticut, 06120** (the "Dealership"). The Consumer took delivery of this Vehicle on **May 16, 2016**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The manufacturer of the subject Vehicle, Mercedes-Benz USA, LLC (the "Manufacturer") did not contest the initial eligibility of the Vehicle in this case. Said hearing was held on **Monday, May 15, 2017**, during which Mr. Tim Clark served as the State's Technical Expert. Attorney Michael Gregg served as third party representative of the Manufacturer. Mr. Mike Conlon, the Service Manager from the Dealership, attended as a witness for the Manufacturer. Mr. Kevin Canty, the After Sales Operations Manager employed by the Manufacturer, appeared as a witness for the Manufacturer. Sherill Pineda-Malek appeared as a witness for the Consumer.

II. VEHICLE COMPLAINT & ELIGIBILITY

The Consumer's Request for Arbitration set forth the following complaint with the subject Vehicle: An intermittent loud squeaking noise emanating from the braking system. Said noise was most noticeable when applying the brakes after the brake components had been allowed to cool, such as overnight. The Consumer claimed that the alleged defect continued to exist as of the date of the hearing. This condition caused the Consumer and his wife, Sherill Pineda-Malek, to become apprehensive when either of them called upon the Vehicle to decelerate. It was stated by the Consumer and his wife that, with the loud squeal, the natural tendency was to take your foot off the brake, thereby creating a dangerous condition.

As a result of the complaint, the Consumer made multiple visits to the Dealership for diagnosis, testing, and repair. Said Vehicle concern met the statutory presumption for eligibility for a loss of use and as a safety-related issue, as it was subject to a six repair attempts during the first year of ownership. A listing of the visits to the Dealership for this complaint follows below:

| <u>Repair Date</u> | <u>Miles</u> | <u>Complaint</u> |
|--------------------|---------------|---|
| 08-30-2016 | 8,235 | Brakes squeaking |
| 11-14-2016 | 11,566 | Brakes squeaking (brake parts on back-order) |
| 12-08-2016 | 12,481 | Brakes squeaking (brake parts on back-order) |
| 01-09-2017 | 13,121 | Brakes squeaking (brake parts on back-order) |
| 03-27-2017 | 15,189 | Brakes squeaking |
| 05-09-2017 | 16,871 | Brakes squeaking |

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It is noted that the Manufacturer had specifically re-designed some brake components for its GLC model, including the Vehicle, as part of an internal review of customer feedback. The Dealer ordered these new components during the second repair attempt, but the Consumer was notified that said parts were on back-order until April 2017. The Consumer continued to document the Vehicle's brake system squeal in each subsequent repair visit. But given the back-order, the Dealership was unable to install those parts until the fifth repair visit, on March 27, 2017. The Consumer introduced additional evidence into the record at the start of the hearing, indicating that the revised brake components were installed again on May 9, 2017, together with new brake rotors. As of the time of the hearing, it was unclear to the Consumer whether this final repair had served to lessen or eliminate the brake squeal.

Given the facts presented, the Consumer's concern that a defect existed was reasonable. This is indicated by the Dealership verifying that the brake system exhibited a squeaking noise, and the ordering and installation of newly-designed brake components. I note that the Manufacturer did not contest the initial eligibility of the Vehicle in this case. The Consumer was therefore found to have met the eligibility requirements of the statute in order to initiate an arbitration hearing in accordance with Chapter 743b of the Connecticut General Statutes for a loss of use, and for a safety-related concern.

III. DECISION

The arbitrator **rules adversely to the Consumer**. **No action** shall be taken by the Manufacturer.

IV. REASONING

The documents in the record and the testimony presented at the arbitration hearing do not indicate a violation of Connecticut General Statutes Chapter 743b. In analyzing the facts in this matter, this arbitrator carefully reviewed and considered the Consumer's Request for Arbitration, the Manufacturer's Statement, the written repair records, the Technical Expert's comments and two written submissions, and the oral testimony and closing statements that the parties and witnesses provided at the hearing.

The Consumer claimed a substantial impairment to the use and safety due to the Vehicle's braking system exhibiting a loud squeaking noise when applying the brake pedal. The alleged braking defect was said to appear at random times, but most notably after the Vehicle was parked and the brakes were allowed to cool, such as after the Vehicle was parked overnight. The noise appeared when the Vehicle was driven forward as well as in reverse. This arbitrator construed all of the Consumer's claims in his favor, including all claims made within the Request for Arbitration, together with all statements at the hearing. However, even in giving heightened deference to all of the Consumer's assertions and arguments, there is no actionable claim for relief pursuant to Chapter 743b.

The Manufacturer's witness, Mr. Canty, testified that he had driven a similar Mercedes-Benz GLC 300 for three months and that it also experienced a brake squeal condition. However, the condition had always remedied itself with the first or second application of the brakes. This was judged to be a normal condition. The Manufacturer did open an "Investigation" into the braking noise of the GLC 300 model, and then re-designed the brake pad material and created a new grease to be applied to certain braking components. Bulletins for the front and rear braking systems were updated a few times by the Manufacturer through the date of the hearing, and the latest copies of each were submitted into the record by Mr. Clark.

The Manufacturer argued that the braking system was operating as designed, and that the voluntary installation of these updated, improved parts to help lessen the noise was a customer satisfaction effort. Lists of customers created by local dealerships began to be notified in March of 2017, when the new components were available for installation. Additionally, the Manufacturer argued it was under no obligation

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to improve a design, only to warranty against defects in materials or workmanship, so the Vehicle is not impaired pursuant to the statute. Said arguments were convincing.

Although the Consumer's concern about the intermittent noise was not unfounded, by all measures the braking system is operating normally and safely. The record contained substantial evidence, including responses to this arbitrator's questioning, that the Vehicle's brakes were actuated with normal brake effort and produced a normal stopping distance. According to the oral testimony of the Consumer, the braking squeal was said to disappear after one to three forward braking applications, and periods of days could go by without any braking squeal. The intermittent noise itself is not found to be a "substantial impairment" to the use or safety of the Vehicle. Given the ample testimony of the Manufacturer that the Consumer's Vehicle is operating as designed, I find that the subject Vehicle is not deemed to be "substantially impaired" in any way under the definition provided Chapter 743b of the Connecticut General Statutes.

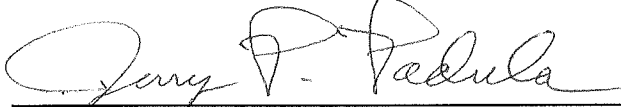
Therefore, convincing evidence that the claimed defect caused a substantial impairment to the use or safety of the Vehicle was not presented in this case. Relief pursuant to Chapter 743b is not warranted in this case. I remind the parties that the Vehicle remains under warranty in the circumstance that any issue arises that may cause a substantial loss of use, value, or safety.

It was obvious that the Consumer and his wife were inconvenienced in both their work duties and in their personal lives because of the loud noise, as well as the number of visits to the Dealer for repairs. However, the inconveniences or embarrassment (this term was used by the Consumer in his Request for Arbitration, at page 9) experienced by the Consumer due to the intermittent noise cannot be the basis for relief pursuant to the statute.

V. CONCLUSION

Given the above facts, the Consumer did not present substantial evidence that the claimed defect or defects caused a substantial impairment to the Vehicle's use, value, or safety. Based upon the evidence, I do not find a violation of Chapter 743b. I agree with the Manufacturer's assessment of the Vehicle, as presented during the arbitration hearing and as listed in their Manufacturer's Statement, and hold that the Consumer's application will not allow relief pursuant to Chapter 743b. Accordingly, no action is being ordered on this application.

The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat.2183 (1975), U.S.C. 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to Connecticut Superior Court within 30 days of receiving this decision to have the decision vacated, modified, or corrected, or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, 52-419, and 52-420 of the Connecticut General Statutes.


Jerry P. Padula, Esq. - Arbitrator **06-01-2017**
Date