

**Trell, Inc. v Fresh Aircraft Sales, LLC**

2020 NY Slip Op 33646(U)

January 31, 2020

Supreme Court, Westchester County

Docket Number: 58580/2017

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER  
PRESENT: HON. SAM D. WALKER, J.S.C.

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Trell, Inc.

Plaintiff,

**DECISION & ORDER**  
Index No. 58580/2017

-against-

Fresh Aircraft Sales, LLC; Centerline Aircraft, LLC; and Norman Heldman, d/b/a Air America Atlantic,

Defendants.

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The Court conducted a non-jury trial in the above captioned matter which commenced on October 16, 2019 and ended on October 17, 2019. At completion of the trial, counsels were instructed to submit post-trial memorandum. Submissions from counsel for both sides were considered by the Court in arriving at Decision and Order.

Plaintiff seeks damages pursuant to an express engine warranty contained in an Aircraft Purchase Agreement. Plaintiff, a New York based aircraft purchaser, purchased a 1980, single engine, 4 seat Cessna airplane from Fresh Aircraft Sales, LLC. Plaintiff alleges that it had to perform certain repairs and made certain replacements to correct defects and/or discrepancies in the aircraft engine, which arose during the warranty period after the plane was delivered in New York. The warranty was for a period of twelve months or three hundred hours and governed under the laws of the State of Arizona. The Agreement also provided that in the event any action is filed in relation to

the Agreement, the unsuccessful party shall pay the successful party a reasonable sum for the successful party's attorney fees.

Plaintiff testified that warranty repairs and replacements were done to the engine in the amount of \$3,736.89. Plaintiff further testified that it notified Fresh Aircraft of the defects and discrepancies numerous times, by email, telephone and written letter. Plaintiff also offered the testimony of an aircraft mechanic who verified that the claimed repairs were engine related.

Defendant argues that the scope of the trial was limited by the order of Hon. Lawrence Ecker, JSC entered on March 2019, where he ruled that based upon Arizona's UCC, two issues remain for trial. Whether there had been a breach of the engine warranty and damages. He defined the measure of damages pursuant to Arizona Law (A.R.S. § 47-2714(8)) as:

The difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

Arizona UCC requires notice to the seller if the buyer claims some defect after the product has been accepted. To establish notice, Plaintiff testified that he notified Defendant by e-mail, telephone and written letter identifying the problems with the aircraft. No response was received. To support notice, Plaintiff offered a copy of a letter sent to Defendant by registered mail return receipt and a copy of the envelope in which it was mailed, stamped unclaimed. This letter referenced prior attempts by Plaintiff to contact Defendant to no avail. It is the finding of this Court that Plaintiff met the notice requirement.

The next question is whether or not the defects identified by Plaintiff were covered by the warranty. There is no dispute that there were repairs and replacements done on the airplane after it was delivered. The question, however, is whether these repairs were done to the engine. There is little dispute between the parties as to what constitutes the engine. The Court will, therefore, review the repair and replacements and determine whether they constitute repairs or routine maintenance.

To support its contention that the repairs and replacements were done to the engine, Plaintiff offered testimony from an expert who testified that he examined the aircraft and found discrepancies. A discrepancy occurs when either a mechanic or a pilot finds something wrong with a airplane. The expert identified the following discrepancies:

- |   |          |
|---|----------|
| 1. The vacuum pump was broken - Part of the engine  | \$393.87 |
| 2. Crank shaft seal leaks oil - Part of the engine  | \$796.00 |
| 3. Lots of loose wires - Part of the engine         | \$470.35 |
| 4. Alternator Mount Bracket - Part of the engine    | \$382.18 |
| 5. Engine Idle adjustment - Not part of engine      | \$190.50 |
| 6. Oil Temperature gage inoperative - Engine repair | \$466.50 |
| 7. Electric Fuel Pump leaking - Not part of engine  | \$147.40 |
| 8. Rocker arm gasket torn - Part of engine          | \$132.30 |
| 9. Intake gasket torn - Part of engine              | \$129.94 |
| 10. EGT (exhaust gas temperature) inoperative       | \$373.33 |

The testimony of Plaintiff's expert that the engine defects and discrepancies existed, was unopposed and is incontrovertible since Defendant called no expert to

controvert the testimony. Both defense witnesses were not airport mechanics. The Court, however, does not agree with Plaintiff that any part of the aircraft, whether attached to the engine or not, but which is necessary to the proper operation of the engine, should as a matter of common understanding, be deemed to be covered by the engine warranty. Engine has been defined by both Plaintiff and Defendant as the casing, the cylinders with the pistons in them and the crank shaft. Therefore, several of the items identified by Plaintiff's expert, even though necessary for the operation of the aircraft cannot be considered part of the engine.

In fact, upon careful examination, none of the items listed above falls within the definition of engine. The items listed seem more like routine maintenance repairs than warranty repairs and the warranty specifically applied to the engine. This is a 1980 Cessna 172, which was purchased in 2016. It is undisputed that the warranty is limited to the engine which is defined as the casing, the cylinders with the pistons in them and the crank shaft. The Court agrees with Defendant that replacements of seals and gaskets are routine maintenance and the remaining discrepancies could easily be argued as not being a part of the engine. Items such as loose wires in the engine compartment, repair of the alternator mounting bracket safety clip; engine idling too rapidly which was adjusted with a screw driver; repair/replacement of the oil temperature gauge, which is part of the instrument panel in the cockpit, are not part of the engine. The final two items repaired were a leaking electric fuel pump and an inoperative exhaust gas temperature gauge. Plaintiff's expert testified that these repairs were not part of and does not pertain to the engine.

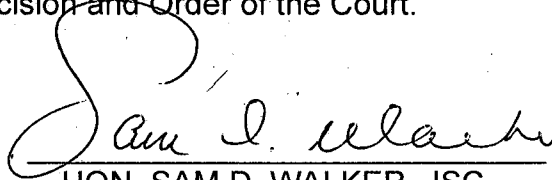
Even if this Court were to accept the measure of damages laid out by Judge Ecker in his Decision entered on March 20, 2019, where he limited damages to the difference in value of the aircraft when it was delivered, and the value it would have had if it had been warranted, unless special circumstances show proximate damages of a different amount, Plaintiff still would not have met its burden. All that Plaintiff established through testimony was the repair cost for each item of discrepancies, without establishing how the value of the aircraft was affected (difference in value).

Finally, even though the Aircraft Purchase Agreement provides that the unsuccessful party in a legal action shall pay to the successful party a reasonable sum for the successful party's attorney fees, Defendant has not set forth an amount or how such amount was arrived at by setting forth the time spent on various tasks, whether by counsel or paralegal and the hourly rate for each. That being the case, the Court is unable to ascertain what amount would be reasonable in light of the work performed.

Plaintiff has failed to establish that Defendant breached the engine warranty.

The foregoing constitutes the Opinion, Decision and Order of the Court.

Dated: White Plains, New York  
January 31, 2020

  
HON. SAM D. WALKER, JSC