SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. KATHLEEN WATERMAN-MARSHALL** **PART** **31M**

Justice

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FRANS T VAN SCHAIK,

Plaintiff,

- v -

MERCEDES-BENZ USA, LLC,MERCEDES-BENZ MANHATTAN, INC.

Defendant.

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INDEX NO. 653125/2024

MOTION DATE 08/28/2024

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 22, 27

were read on this motion to/for DISMISSAL.

Upon the foregoing documents and following on-the-record oral argument on July 16, 2025, the motion by defendants Mercedes-Benz USA. LLC ("MBUSA"), and Mercedes-Benz Manhattan, Inc. ("MBM") for an order, pursuant to CPLR § 3211(a)(7), dismissing the fourth, fifth, sixth, seventh, ninth, tenth, and eleventh causes of action, is granted.

Brief Background

Plaintiff Frans T. Van Schaik ("Mr. Van Schaik") commenced this action to recover damages allegedly arising out of his December 2022 purchase of a brand-new 2024 Mercedes-Benz ESQ 580 X3 SUV, which is an electric-powered vehicle ("the SUV").

The complaint alleges that on December 13, 2022, Mr. Van Schaik purchased the SUV from MBM, pursuant to a Vehicle Purchase Agreement which contains, *inter alia,* standard warranties. Mr. Van Schaik paid additional sums for a supplemental warranty and for a pre-paid maintenance agreement with MBUSA (Complaint, ¶ 6). He paid the total purchase price of $151,025.85 in cash, together with the trade-in of his 2015 Ford Explorer (*id.*). Mr. Van Schaik told MBM that he would be using the SUV to commute between his home in Vermont and his apartment in Manhattan (Complaint ¶ 7). The SUV "began malfunctioning soon after delivery, including in ways that present significant safety hazards" (Complaint at 1, ¶¶ 9-12). Among other things, Mr. Van Schaik alleges that the navigation system malfunctioned, the brakes malfunctioned "result[ing] in a failure to stop in time to avoid a collision, damaging the front" of the SUV, and that the sunroof randomly and suddenly opened while he was driving in a rainstorm (*id.*). After several attempts to have the issues addressed, Mr. Van Schaik ultimately brought the SUV to MBM for service on December 16, 2023 (Complaint, ¶¶ 13-18). To date and despite due and consistent demand over the course of several months, MBM and MBUSA have failed to communicate with Mr. Van Schaik about the status of the necessary repairs and have

not returned the SUV to him (Complaint, ¶¶ 19-27). According to the complaint, the problems with Mr. Van Schaik's SUV "are not unique to it, but have been reported by other purchasers of similar vehicles" (Complaint, ¶28).

The complaint alleges eleven separate causes of action, to wit: 1st cause of action against MBM, for breach of the Vehicle Purchase Agreement; 2nd cause of action against MBUSA, for breach of the pre-paid maintenance agreement; 3rd cause of action against MBM and MBUSA, for fraud and nondisclosure; 4th cause of action against MBM and MBUSA, for deceptive business practices under GBL §349; 5th cause of action against MBM and MBUSA, for product liability/design defect; 6th cause of action against MBM and MBUS, for product liability/manufacturing defect; 7th cause of action against MBM and MBUSA, for product liability/marketing defect; 8th cause of action against MBM and MBUSA, for breach of warranty of merchantability; 9th cause of action against MBM and MBUSA, for breach of implied warranty of fitness for particular purpose; 10th cause of action against MBM and MBUSA, for negligence; and 11th cause of action against MBM and MBUSA, under the Lemon Law. Mr. Van Schaik seeks unspecified compensatory damages (his "actual damages"), plus punitive damages, interest, costs and attorneys fees.

At bottom, MBM and MBUSA ask this Court to dismiss all but the breach of contract (1st and 2nd causes of action), fraud (3rd cause of action), and breach of warranty of merchantability (8th cause of action) claims. Mr. Van Schaik opposes the motion, but conceded that the 11th cause of action, for violation of the Lemon Law, should be dismissed as against MBM only.

Discussion

On a motion to dismiss for failure to state a claim under CPLR § 3211(a)(7), the complaint is afforded the benefits of liberal construction, a presumption of truth, and any favorable inference *(see e.g. M & E 73-75, LLC v 57 Fusion LLC,* 189 AD3d 1 [1st Dept 2020]; *Askin v Department of Educ. of City of N.Y.*, 110 AD3d 621, 622 [1st Dept 2013]). The motion must be denied if, from the four corners of the pleadings, "factual allegations are discerned which taken together manifest any cause of action cognizable at law" (*Polonetsky v Better Homes Depot*, 97 NY2d 46, 54 [2001] [internal quotation omitted]). A complaint should not be dismissed so long as, "when the plaintiff's allegations are given the benefit of every possible inference, a cause of action exists," and a plaintiff may cure potential deficiencies in its pleading through affidavits and other evidence (*R.H. Sanbar Projects v Gruzen Partnership,* 148 AD2d 316, 318 [1st Dept 1989]). However, bare legal conclusions and factual allegations which are inherently incredible or contradicted by documentary evidence are not presumed to be true (*Mark Hampton, Inc. v Bergreen*, 173 AD2d 220 [1st Dept 1991]).

Presuming the truth of the allegations in the complaint and affording it a liberal construction, the gravamen of the complaint is simply the breakdown and breach of a purely private contract between Mr. Van Schaik on the one hand, and MBM and MBUSA, separately, on the other (*see Preston v Northside Collision-Dewitt, LLC,* 158 AD3d 1127 [4th Dept 2018] [complaint alleging breach of contract to repair vehicle does not state GBL 349 claim because "private contract disputes, unique to the parties, . . . [do] not fall within the ambit of the statute"]). The allegations that the navigation system, brakes, and sunroof in Mr. Van Schaik's SUV malfunctioned do not satisfy "the objective definition of deceptive acts and practices, whether representations or omissions. . . likely to mislead a reasonable consumer acting reasonably under the circumstances" (*Oswego Laborers' Loc. 214 Pension Fund v Marine*

Midland Bank, N.A., 85 NY2d 20, 26 [1995]). Notably, the complaint does not allege that MBM or MBUSA failed to furnish Mr. Van Schaik, or the public at large, with all material information about the SUV such that he or the public would be misled into purchasing the SUV. To the contrary, Mr. Van Schaik points to publicly available information about the functions and issues with the SUV and other Mercedes-Benz vehicles provided by Mercedes-Benz on its website (*compare Oswego Laborers' Loc. 214 Pension Fund*, 85 NY2d at 27 [question of fact as to whether "plaintiffs possessed or could reasonably have obtained the relevant information they now claim the Bank failed to provide"]). Consequently, the 4th cause of action, for deceptive practices under GBL § 349, is subject to dismissal.

The 5th, 6th, and 7th causes of action, sounding in products liability, are subject to dismissal because Mr. Van Schaik, a downstream purchaser from the manufacturer (which is not named in the complaint), did not sustain personal injuries as a result of the alleged defects and suffered only economic loss in the form of damage to the SUV – losses which are covered by the Vehicle Purchase Agreement and the additional warranties and maintenance Mr. Van Schaik purchased from MBM and MBUSA (*see Bocre Leasing Corp. v General Motors Corp.*, 84 NY2d 685 [1995]; *7 World Trade Co. v Westinghouse Elec. Corp.*, 256 AD2d 263, 264 [1 st Dept 1998] ["Because plaintiffs allege losses of only an economic nature resulting from the explosion, we agree with defendant that, under the Court of Appeals' 1995 decision in *Bocre Leasing Corp. v. General Motors Corp.*, 84 N.Y.2d 685, 621 N.Y.S.2d 497, 645 N.E.2d 1195, plaintiffs were not entitled to maintain an action for negligence and strict liability in the absence of allegations of bodily injury or damage to property other than the allegedly defective product."]).

The complaint also fails to state a cause of action for breach of implied warranty of fitness for particular purpose (9th cause of action). Mr. Van Schaik alleges that he told MBM that he intended to use the SUV to commute from Vermont, which experiences cold temperatures, to Manhattan – in other words, that he intended to drive the SUV from point A to point B, the very – indeed, ordinary and expected – purpose for which the SUV was made (*see Fiuzzi v Paragon Sporting Goods Co., LLC*, 212 AD3d 431, 433 [1st Dept 2023] [implied warranty of fitness claim "requires allegations that defendants had 'reason to know any particular purpose for which the goods' are used and that plaintiff relied on defendants' 'skill or judgment to select or furnish [those] suitable goods' (id.). The SAC, however, did not allege any particular purpose of the exercise band other than its ordinary purpose for exercise']; UCC § 2-315, Comment 2 ["A 'particular purpose' differs from the ordinary purpose for which the goods are used in that it envisages a specific use by the buyer which is peculiar to the nature of his business whereas the ordinary purposes for which goods are used are those envisaged in the concept of merchantability and go to uses which are customarily made of the goods in question"]).

The 10th cause of action, for negligence, must be dismissed as duplicative of the breach of contract causes of action; Mr. Van Schaik fails to allege that MBM and MBUSA breached any duty distinct from their contractual obligations (*see Ho v Star Contractors, Inc.*, 226 AD3d 511 [1st Dept 2024]). Mr. Van Schaik's allegation that MBM and MBUSA failed to ensure that the SUV was designed in a manner to be safe and functional, standing alone, does not state a separate duty apart from their contractual obligations (and echoes the products liability claims, which fail to state a cause of action).

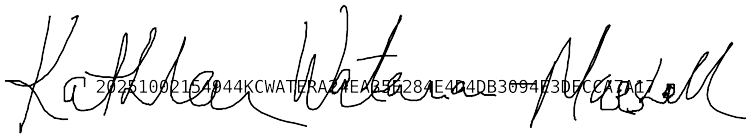
Finally, as noted above, the 11th cause of action brought under the Lemon Law, is dismissed as to MBM, which is a motor vehicle dealership and not a manufacturer, and, thus NY GBL § 198-a(c)(1) does not apply to it.

Accordingly, it is hereby

ORDERED that the instant motion is granted in its entirety; and it is further

ORDERED, ADJUDGED, AND DECREED that the fourth cause of action, for deceptive practices under GBL § 349; the fifth, sixth, and seventh causes of actions, for products liability; the ninth cause of action, for breach of implied warranty of fitness for particular purpose; the tenth causes of action, for negligence, are dismissed in entirety; and the eleventh cause of action, under the Lemon Law, is dismissed as to defendant Mercedes-Benz Manhattan, Inc. only; and it is further

ORDERED that this matter is scheduled for a **Preliminary Conference on October 22, 2025 at 10:00 a.m.** Counsel are reminded of the Part Rules, specifically those governing conferences and conference orders.



10/2/2025
DATE

KATHLEEN WATERMAN-MARSHALL, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**		**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**		**REFERENCE**