

Wenqing He v BMW of N. Am., LLC

2025 NY Slip Op 34739(U)

December 10, 2025

Supreme Court, New York County

Docket Number: Index No. 653747/2023

Judge: Arlene P. Bluth

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

-----X

WENQING HE, AIWU BU,

Plaintiffs,

- v -

BMW OF NORTH AMERICA, LLC,

Defendant.

-----X

INDEX NO. 653747/2023

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 were read on this motion to/for SUMMARY JUDGMENT.

Defendant’s motion for summary judgment is granted in part and the cross-motion by plaintiffs for summary judgment is denied.

Background

This action concerns a BMW owned by plaintiffs and purchased at BMW of Bayside¹. Plaintiffs allege that they purchased a brand new 2023 BMW X7 in September 2022. They claim that the contract price totaled more than \$133,000 and included an express 4 year/50,000-mile warranty. Plaintiffs maintain that due to ineffective repairs made by an authorized dealer, the car is essentially unusable and worthless. They detail how the chassis malfunction light continued to be illuminated despite continually bringing this brand-new car in for service and that the driver assistance light also went on constantly.

¹ The Court will refer to defendant and BMW of Bayside interchangeably in this motion.

Defendant contends that following the first-time plaintiffs brought the car in because the chassis control malfunction light was on in September 2022, BMW of Bayside tested the car, found a software fault and repaired the car. Plaintiffs next brought in the car in two months later, in November 2022, because the chassis control malfunction light was on again. Defendant claims that the dealership found an issue with the vehicle's ride height sensor and did the necessary repair. It emphasizes that a courtesy rental BMW was provided to plaintiff during this repair, which was ready a few days later.

Plaintiffs brought the car in again two months after that, on January 18, 2023, for a third time in five months in connection with the chassis control malfunction light. Defendant claims it performed a software update and resolved the issue. It also observes that during this repair, it identified recalls for front lamps and high-beam assistant and did this work as well.

The car was brought in again two months later on March 7, 2023 because the driver assistance restricted light was on. Defendant claims it required a fix to the ride height sensor again and the appropriate repair was performed. It argues that plaintiff Bu, the main driver of the vehicle, did not express any issues with the car other than that this service light was on. This repair was done on the same day.

The next month plaintiffs had to bring the car in again because the same driver assistance restricted light was on in late April 2023 and BMW of Bayside made the same repair; the car was ready the next day. The next date of service was on November 7, 2023, when plaintiffs complained that there was an emergency call malfunction message and that the car "jerked" while driving in slow speeds and while accelerating. Defendant claims BMW of Bayside reset the head-unit to fix the emergency call malfunction and found no signs of the jerking movements during a test-drive.

The car was brought in again three months later, on February 28, 2024, because the check engine light was on, which revealed that the electrical connection was not fully engaged—a problem that defendant says was rectified. Defendant claims that plaintiffs were in a car accident in April 2024 in which the front right passenger’s side was damaged although, allegedly, plaintiffs did not make an insurance claim or get an estimate to repair this damage.

Four months after the last time the check engine light came on, it came back on and plaintiffs brought the car in for service on June 11, 2024 although defendant claims that the dealership did not see the light illuminated upon inspection nor were any issues identified. Plaintiffs maintain that they brought the car in again to be looked at due to the check engine light the next month, in early July 2024, and BMW of Bayside replaced all of the spark plugs, which apparently fixed the problem.

Defendant insists that it is entitled to summary judgment because plaintiffs have not met their burden to sustain a claim entitling them to a full refund of the purchase price of the car. It points out that a handful of software updates covered under the relevant warranty is not a substantial impairment of the value of the car. Defendant contends that its dealership inspected, diagnosed and repaired the car under warranty at no cost to plaintiffs. It claims that most of plaintiffs’ complaints arose out of necessary software updates but did not actually affect the drivability of the car.

Defendant attaches the affirmation of Craig Baumann, a technical support engineer, who claims that the issues were “not the type of concerns that ever implicated the safety or drivability of the Vehicle, and they certainly would not have any bearing on the current trade or resale value of the Vehicle” (NYSCEF Doc. No. 26, ¶ 19).

In opposition and in support of their cross-motion for summary judgment, plaintiffs emphasize that they took the car in for service 6 times during the 2 year/18,000 mile Lemon Law period and then four more times the following year. Plaintiffs attach the affidavit of an ASE certified technician who claims that when he scanned the car, he found 89 fault codes and that the problems are wholly the fault of defendant (NYSCEF Doc. No. 42, ¶¶ 16, 17). The technician claims that the “vehicle’s use, value and safety have been substantially impaired” (*id.* ¶ 23). He adds that he would characterize this car as fair on the Kelley Blue Book “scale,” which means that there should be 9.8% deducted from the purchase price (*id.* ¶¶ 34, 35). The technician emphasized that upon his inspection, there was no evidence of any accident (*id.* ¶ 17).

Discussion

Plaintiffs bring causes of action under General Business Law § 198 (also called the “Lemon Law”), a breach of implied and express warranties, including a reference to the Magnuson-Moss Warranty Improvement Act, and a claim under General Business Law § 349.

Lemon Law

“In 1983, the Legislature enacted the New Car Lemon Law (General Business Law § 198–a) to provide New York consumers greater protection than that afforded by automobile manufacturers' express limited warranties or the Federal Magnuson–Moss Warranty Act. The statute obligates manufacturers to repair, without charge, any new motor vehicle which fails to conform to all express warranties during the first 18,000 miles of operation or for two years immediately following delivery of the vehicle, whichever comes first. If, within this time frame, a manufacturer is unable to correct a defect that substantially impairs the value of the vehicle after a reasonable number of attempts,” the manufacturer—at the consumer's option—must either replace the vehicle or accept the return of the vehicle in exchange for a refund of the purchase price” (*Matter of DaimlerChrysler Corp. v Spitzer*, 7 NY3d 653, 657, 827 N.Y.S.2d 88 [2006] [internal quotations and citations omitted]).

The Lemon Law also provides that:

“a presumption that the consumer has met the reasonable number of attempts requirement arises in two circumstances: if the same defect has been subject to repair four or more times but continues to exist—commonly termed the repair presumption; or if the vehicle has been out of service for a total of 30 or more days—referred to as the days-out-of-service presumption. The triggering of either presumption does not ensure that a consumer will recover. A manufacturer may attempt to rebut the presumption and is afforded an affirmative defense when it can show either that the defect does not substantially impair the vehicle's value or the condition resulted from abuse, neglect or unauthorized modifications or alterations of the motor vehicle” (*id.* at 657-58).

Moreover, it does not matter if the car is repaired by the time the case is commenced (*id.* at 658).

The Court denies both defendant's motion and plaintiffs' cross-motion for summary judgment on this cause of action. In this Court's view, there is clearly an issue of fact surrounding whether the repeated warning lights constituted a defect that substantially impairs the value of the car. The countless repair orders show that the car was brought in constantly right after plaintiffs bought what was supposedly a brand-new car—well within the requirements of the Lemon Law. And defendant does not really contest that there were items to fix as is evidenced by the repair orders (*see e.g.*, NYSCEF Doc. Nos. 31-40). For instance, on the second visit in November 2022, defendant “found fault with the ride height sensor” (NYSCEF Doc. No. 32). In other words, defendant does not claim that plaintiffs kept bringing the car in for no reason. Clearly, there were malfunction lights illuminated and defendant addressed various issues.

That brings the Court to the question of whether these constant issues rise to the level of a “defect.” As noted above, a defect must substantially impair the value of the car or the condition. Plaintiffs raised an issue of fact on this point through the affidavit of their technician who rated the car as “fair” and noted it would reduce the value of this relatively new car by at

least 9.8%. A fact finder must assess whether or not they credit this technician's conclusions. The Court cannot simply dismiss this view because defendant argues that the car is driving perfectly.

Of course, this gets to the heart of the matter. Defendant minimizes the repairs as mere software updates and reprogramming that were not a manufacturing defect. It insists that warning lights are not the same as a car that fails to meet industry standards. Defendant maintains that plaintiffs should have known that software updates would be required on occasion.

But, as plaintiffs emphasize, receiving a serious warning light directing someone to take the car in for service is not a minor issue. Even according to defendant, the car was often in for service for days at a time; it was not "in and out" the same day every time. Had plaintiffs ignored these warning lights and let a possible issue get worse, it is unlikely defendant would overlook a car owner's delay in bringing the car in for service. In fact, the warranty requires that the car be brought in "upon discovery of a defect" (NYSCEF Doc. No. 30 at 6 of 35).

The big risk inherent in buying a used car is ending up with someone else's unreliable headache; a new car is supposed to eliminate that risk. Certainly, a jury might conclude that constant warning lights, which required the owner of a brand new car to constantly run to the dealer, makes a car unreliable. The defendant suggests that it is normal for every owner to keep running into the dealer for software updates; the defendant will have to convince the jury on that point. This Court is unable to find as a matter of law that it is perfectly normal and reasonable, as defendant appears to suggest, that a brand-new car should receive repeated warning lights directing the purchaser to bring the car in for service. A fact finder will have to decide whether or not it constitutes a defect that substantially impairs the vehicle's value where, although it had

only a few miles on it, plaintiffs had to take it in repeatedly over the first couple of years they owned it.

The Court adds that it cannot grant plaintiffs summary judgment on this point because they did not show as a matter of law that the value of the car is substantially impaired—defendant’s affirmation from their technical support engineer raises a material issue of fact that the car is entirely adequate to drive and there are no valuation issues despite the many repairs. Again, the jury (or other fact finder) will have to weigh the testimony and decide who and how much to believe on this point as well.

Magnusson-Moss Warranty Improvement Act

In this claim, plaintiffs allege that defendant failed to comply with the express written warranty.² The Court severs and dismisses this claim because plaintiffs did not raise a material issue of fact. The record and, particularly, each of the repair orders makes clear that defendant completed all of the repairs at no cost. That is, defendant complied with the terms of the applicable warranty—plaintiffs even got the use of a loaner car without charge. Plaintiffs did not sufficiently address how they can pursue this cause of action where defendant honored the terms of the contract (the warranty) by making repairs and where plaintiff was able to drive the car away each time. In this Court’s view, this cause of action required defendant not to abide by the terms of a warranty, not simply that the car had repeated issues. The constant issues are covered under the Lemon Law, discussed above.

² Plaintiffs contend in their papers that they did not assert a claim for breach of implied warranty in their complaint and only address the express warranty (NYSCEF Doc. No. 28, n1).

General Business Law §349

Plaintiffs also bring a claim under General Business Law § 349. “GBL § 349(a) declares unlawful all “[d]eceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state” (*Himmelstein, McConnell, Gribben, Donoghue & Joseph, LLP v Matthew Bender & Co., Inc.*, 37 NY3d 169, 176, 150 NYS3d 79 [2021]). “The requisite elements of the cause of action are well established. A plaintiff must allege that: (1) the defendant's conduct was consumer-oriented; (2) the defendant's act or practice was deceptive or misleading in a material way; and (3) the plaintiff suffered an injury as a result of the deception” (*id.*).

The Court grants the branch of defendant’s motion for summary judgment to dismiss this claim because plaintiff did not raise a material issue of fact with respect to the second element. “[A]n act or practice is consumer-oriented when it has a broader impact on consumers at large” (*id.* at 177 [internal quotations and citations omitted]). Instead, the instant dispute is a private one which is unique to plaintiffs and defendant, and which requires the Court to dismiss this cause of action. Plaintiffs did not sufficiently establish that there are other BMX X7 purchasers who are all facing the same issues or even that the problems plaintiffs faced constitute a “deceptive” practice. Simply because there are issues with the car does not automatically mean that defendant engaged in a deceptive practice that impacts consumers at large.

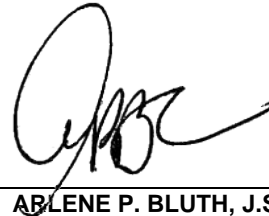
Summary

Much of this case is actually undisputed. All parties agree that various warning lights kept coming on in a brand-new BMW and plaintiffs kept bringing the car in for service in response to those warning lights. Almost every time, defendant made some repair and plaintiffs

drove it away in acceptable condition only to get another warning light soon thereafter. The question, one that this Court cannot decided as a matter of law, is whether these repeated maintenance visits substantially devalued the car such that plaintiffs are entitled to relief under the Lemon Law. It may be that a jury devalues the car because it has needed constant attention and dealer visits since it was purchased. Or the jury may agree with defendant that the car has experienced no drivability issue and so the value was not substantially impaired in spite of the extensive repair history.

Accordingly, it is hereby

ORDERED that defendant’s motion for summary judgment is granted only to the extent that defendant’s second (warranty) and third (GBL § 349) causes of action are severed and dismissed and plaintiffs' cross-motion is denied.



12/10/2025
DATE

ARLENE P. BLUTH, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE
			<input type="checkbox"/>	DENIED		