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Porsche case sent back to trial court

COA rules trial court erred in directed verdict decision

By: Thomas Franz in News Stories February 27, 2019

A case involving a defective Porsche is heading back to the Ingham Circuit Court after a recent decision by a Michigan Court of Appeals panel.

In *Meyering v. Porsche Cars North America* (MiLW No. 08-99438, 8 pages), the majority determined the circuit court erred in granting a motion for a directed verdict by failing to consider the evidence of the case in a light most favorable to the plaintiff.

Judges Kirsten Frank Kelly and Elizabeth L. Gleicher were the majority in the unpublished case, while Judge Patrick M. Meter dissented.

"I think the main thing was the trial court judge didn't seem to be willing to give us the inferences that were available from the evidence," said plaintiff's attorney Daniel J. Broxup of Mika Meyers PLC in Grand Rapids. "On a directed verdict motion, the inferences have to be looked at in a light most favorable to the nonmoving party. That was the main factor."

Background

Jane Meyering purchased a Porsche Cayenne in 2015 from Okemos Auto Collection. In January 2016, she took it back to the dealer with a complaint that the climate control blower wasn't working, according to the COA opinion.

Meyering said cold air would pour out of the front vents while she was driving and she was not able to stop the flow or turn it down. A dealer representative confirmed the complaint by stating that he "froze on the ride over" when he picked up Meyering's car from her home and drove it to the shop.

The dealer kept the car for four days but found no problem with the blower unit. A few days later, Meyering again brought the car into the shop with the same complaint, and that time, a mechanic did find faults with the blower motor assembly. The mechanic replaced the necessary parts and returned the car to Meyering.

Three weeks later, Meyering brought the car in again with blower motor issues. A dealer technician contacted a Porsche techline representative who said to investigate whether the harness for the car's HVAC system had corroded.

There was corrosion on the harness and one of the vent motors. Those parts were replaced after about a month of waiting on parts delivered from Germany.

At that time, the dealership's notes showed that this situation had the potential for a lemon-law buyback.

In May 2016, Meyering brought her car in for a fourth time with a complaint that she couldn't get the climate control blower to come on at times and that made the car uncomfortable.

This time, a mechanic named Marlon Olivas did not find any faults with the vehicle initially, and he also contacted the Porsche technical team.

A tech representative noted the vehicle's previous problems and recommended those issues be rechecked. However, Olivas did not recall having rechecked those issues and stated he couldn't confirm the issue Meyering had reported. He considered it an open issue and nothing more was done to the car.

Meyering refused to drive the Porsche anymore. Her husband drove it occasionally without detecting any problems, but he didn't recall whether he ever tried to use the air conditioning.

The Ingham Circuit Court ruled in favor of the defendant by stating, "There is no evidence that the car wasn't fixed. I think that's the essential element."

Legal context

The COA panel summarized at the start of its opinion that Michigan's lemon law allows for the replacement of a vehicle or a full refund if an unhappy purchaser reports the car's defect in a timely manner and the manufacturer cannot fix it in a reasonable amount of time.

A statute shows that the magic number for a reasonable number of repair attempts is four within two years for the same problem.

Analysis

In granting a motion for a directed verdict, the trial court found that Meyering failed to establish that the defect in her car's heating and cooling system continued after the fourth fix attempt.

The COA panel determined that's where the circuit court erred. While Meyering and Olivas provided conflicting statements about the state of the car after the fourth visit, the COA said the trial court was obligated to believe Meyering.

"Time and again, our Supreme Court has reiterated 'a well-established principle of law: The jury, not the trial judge, is the trier of fact. Whenever a fact question exists, upon which reasonable persons may differ, the trial judge may not direct a verdict,'" the COA wrote while citing case law. "Moreover, in deciding the motion, the trial court was obligated to disregard evidence that conflicted with Meyering's testimony about the defect."

In citing previous cases, the COA panel determined that the circuit court erred in disregarding Meyering's testimony about the fourth repair in granting a directed verdict. The panel reversed the ruling and said the court must consider Meyering's version of events. The case was remanded for a new trial.

Dissent

In his dissent, Meter wrote that Meyering presented no evidence that the blower issue continued after the fourth repair attempt. Therefore, that lack of evidence negated the plaintiff's lemon law claims.

"I agree with the majority that, at the directed verdict stage, the trial court is required to resolve credibility determinations in the nonmoving party's favor. That being said, credit need not be given to plaintiff's inaccurate interpretation of the evidence," Meter wrote.

Meter stated that Olivas' testimony showed that the blower issue was resolved after the fourth try by confirming afterward that the entire HVAC system was operating correctly.

Meter also wrote that Meyering's husband's testimony showed that he drove the car for about 1,300 miles after the last repair.

"The majority points out that plaintiff's husband testified that he possibly never turned on the blower system during this time. Nonetheless, the fact that plaintiff's husband may not have used the blower is not evidence that the blower system was defective," Meter wrote.

Plaintiff's perspective

Broxup said the plaintiff's side was confident in the appeal of the directed verdict motion.

"I felt that this was a pretty straightforward case of the court stepping in when it shouldn't have," Broxup said. "It's a shame we didn't get to a jury the first time. I felt like we had done enough to persuade the jury in that case."

On the most significant inferences, Broxup said the result of the fourth attempt at a fix reflected case law related to the inference of continuity.

"Our position was that it was defective when it came in and they did nothing to correct the defective condition, and therefore there's an inference that the defect continues to exist," Broxup said. "I think the dissenting judge was not willing to look at inferences that could be drawn from the evidence. He was only willing to consider direct evidence."

With the case moving back to the circuit court, Broxup said the plaintiff has a blueprint from the COA for how to proceed.

"We can literally do exactly what we did in the original trial and be guaranteed to get to the jury," Broxup said. "Whether or not we'll want to bolster that this time around with some additional evidence, it's possible, but we haven't looked at that too closely."

Defense counsel Ross Bartolotta did not return requests for comment for this story.

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P.O. Box 70388

Rochester, MI 48307

(800) 678-5297 fax: (248) 865-3117