

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

FRANK YANTEK,	:	APPEAL NO. C-080112
	:	TRIAL NO. A-0402603
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
COACH BUILDERS LIMITED, INC.,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

On December 1, 2000, Frank Yantek bought a 2000 Cadillac Eldorado from Camargo Cadillac (“Camargo”). General Motors had manufactured the Eldorado’s chassis. Coach Builders Limited, Inc., (“Coach”) had modified the Eldorado into a convertible. Coach extended a one-year or 12,000-mile written warranty from the date of purchase on parts and labor for all soft goods. Parts and labor for all steel structures were covered under a one-year or 12,000-mile written warranty, and parts only were covered for four years or 50,000 miles. The owner’s manual issued by Coach instructed the purchaser to call Coach or return the car to the dealer if problems with the customized convertible conversion occurred. Camargo is one of the dealerships that Coach allows to perform and receive reimbursement for warranty work on its convertible conversions.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Yantek began to experience problems with the Eldorado, including water leaking into the car. Beginning in February 2001, Yantek took the car to Camargo for a series of repairs. The water leaks worsened, resulting in several inches of water in the car's back seat. The water leaks caused mold to form and ruined the carpet. The leaks were caused by a defective water-management system installed by Coach. The water-management system was insufficient to direct water away from the interior of the car.

Yantek filed suit for breach of warranty and "Lemon Law" violations. Coach filed a counterclaim alleging that Yantek had improperly filed a breach-of-warranty claim. The parties agreed to a jury trial before a magistrate.<sup>2</sup> The magistrate denied Coach's motion for a directed verdict. Yantek's motion for a directed verdict on Coach's counterclaim was granted. The jury found in favor of Yantek and awarded damages of \$12,817. The jury specifically found that Coach had breached an implied warranty because the Eldorado was not fit for the ordinary purpose for which it was intended at the time of sale. Coach's motions for judgment notwithstanding the verdict and remittitur were denied. Yantek was awarded \$20,728.40 for attorney fees and costs.

Coach's first assignment of error essentially alleges that the jury's finding on interrogatory number two precluded Yantek from recovering for breach of an implied warranty.

The jury answered three interrogatories. The jury specifically found that Camargo was acting as an agent of Coach when Camargo performed repairs on the car, and that the agency continued beyond February 2002. The jury found in interrogatory number two that Coach had not breached its written warranty to Yantek by failing or refusing to repair "any and all defects in its materials or workmanship within a

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<sup>2</sup> See Civ.R. 53(C)(1)(c).

reasonable number of attempts or a reasonable amount of time.” The jury found in interrogatory number three that Coach had breached its implied warranty to Yantek because “its product was not fit for the ordinary purpose for which it was intended at the time of sale.”

Yantek argues that the jury’s finding that Coach had not breached its written warranty by failing or refusing to repair the defects precluded a finding that Coach had breached its implied warranty of fitness. We disagree. The issue in a case for breach of an implied warranty of merchantability is not whether a specific defect or defects caused the breach.<sup>3</sup> The issue is whether the seller sold a product that was not fit for the ordinary purpose for which such goods are used.<sup>4</sup>

Coach, through its repair agent Camargo, was unable to satisfactorily repair the Eldorado in spite of various attempts. The jury found that even though Coach had not breached its express written warranty because it had attempted to repair the car, the warranty nonetheless failed “of its essential purpose.” Therefore, Yantek could pursue a claim for breach of the implied warranty of fitness. The jury found that Coach had breached the implied warranty because the convertible conversion was not fit for the ordinary purpose for which it was intended at the time of sale. The record supports the jury’s determination. The assignment of error is overruled.

The second assignment of error, alleging that Yantek had failed to give Coach timely notice of a claimed breach of warranty and that therefore Yantek was precluded from recovering damages, is overruled. Coach’s warranty instructed Yantek that if he experienced problems, he was to take the car to the dealership for repairs. Camargo

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<sup>3</sup> See *Urso v. Compact Cars, Inc.*, 11th Dist. No. 2006-T-0062, 2007-Ohio-4375; *McGuire v. American Suzuki Motor Corp.*, 7th Dist. No. 03 CO 40, 2004-Ohio-6799.

<sup>4</sup> See *id.*

was Coach's authorized agent for warranty-repair work on the Eldorado. Coach's authorized agent had notice of the problems with the car. In addition, the evidence showed that Camargo had contacted Coach regarding the problems with the Eldorado.

The third assignment of error, which alleges that the magistrate erred in dismissing Coach's counterclaim and allowing the case to go to the jury in the absence of any evidence of privity of contract between Yantek and Coach, is overruled. The evidence showed that Camargo was Coach's agent for warranty-repair work. There was nothing in the record to support Coach's counterclaim that alleged that Yantek had filed a frivolous lawsuit against the wrong party.

Coach's fourth assignment of error, which alleges that the trial court erred in awarding attorney fees to Yantek and in the amount of fees awarded, is overruled. Following a review of the record, we hold that the trial court did not abuse its discretion in awarding attorney fees.<sup>5</sup> We are unable to review the amount of the fee award because Coach has failed to transmit a transcript of the fee hearing. We point out that the court did not award Yantek the full amount of the fees requested.

Therefore, the judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., PAINTER and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on December 31, 2008

per order of the Court \_\_\_\_\_.

Presiding Judge

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<sup>5</sup> See *Gallo v. American Isuzu Motors, Inc.*, 8th Dist. No. 85552, 2005-Ohio-4826.