

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 07-CP-42-03746

Michael L. BANKS,

KIA MOTORS AMERICA, Inc., Farrell Automotive,
Inc., and Wells Fargo Auto Finance, Inc.,

PLAINTIFF(S)

DEFENDANT(S)

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

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SPARTANBURG COUNTY
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IT IS ORDERED AND ADJUDGED: See formal order to follow; Statement of Judgment by the Court:

This matter was before this court on post-trial motions after a jury trial resulting in a verdict in favor of the plaintiff on his claim against KMA pursuant to the S.C. Lemon Law. Defendant moves for JNOV and a New Trial Absolute. Plaintiff moves for an award of cost and expenses including attorney's fees pursuant to S. C. Code Section 56-28-50(D). The parties disagree as to the method for determining the "full purchase price as delivered" in setting the plaintiff's damages pursuant to S. C. Code Ann. Section 56-28-40.

After consideration of the presentations made this Court finds that the defendant's motion for JNOV and New Trial should be and is therefore denied. Plaintiff's motion for an award of cost and expenses should be and is therefore granted in the sum of \$46,026.76. The term "full purchase price as delivered" is deemed to be the sum of \$30,086.11.


J. DERHAM COLE, JUDGE PRESIDING

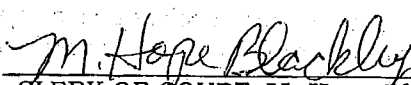

This judgment was entered on the 4 day of February, 2011, and a copy mailed first class this day of February, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

C. Steven Moskos, Esq.
535 Stinson Drive
Charleston, South Carolina 29407

Curtis L. Ott, Esq.
Post Office Box 1473
Columbia, South Carolina 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S) KMA


CLERK OF COURT, M. Hope Blackley


STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
) IN THE COURT OF COMMON PLEAS
)

Michael L. Banks,
Plaintiff,

-vs-

Kia Motors America,
Defendants.

ORDER

C.A. No.: 2007-CP-42-03746

This civil action was tried before a jury on plaintiff's cause of action for violation of the South Carolina Enforcement of Motor Vehicle Express Warranty Act, S. C. Code *Annotated Section 56-28-10, et. seq.* The jury found that; (1) the defendant breached an express warranty relating to the sale and purchase of a motor vehicle by the plaintiff; (2) the defendant failed to provide a conforming vehicle to the plaintiff; (3) the nonconformity substantially impaired the use, value, or safety of the vehicle to the plaintiff; (4) the defendant was timely notified of the nonconformity by the plaintiff; (5) the defendant was provided a reasonable opportunity to repair or correct the nonconformity; (6) the defendant failed to repair or correct the nonconformity within a reasonable time, and (7) the plaintiff is entitled to a refund of the purchase price of the vehicle, pursuant to S. C. Code *Annotated Section 56-28-40.* The parties agreed for the Court to make the determination as to plaintiff's damage award regarding the "full purchase price as delivered" and to determine the appropriateness of any award for attorney fees and costs.

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Refund of Full Purchase Price As Delivered

S. C. Code *Annotated Section 56-28-40* provides in its relevant part that when a consumer is entitled to recover for a violation of the South Carolina "Lemon Law" "the manufacturer shall ... refund to the consumer the full purchase price as delivered including applicable finance charges, sales taxes, license fees, registration fees, and any other similar governmental charges, less a reasonable allowance for the consumer's use of the vehicle." The repurchase price is therefore reasonably determined by taking the sales price of the vehicle as stated in the contract for sale, adding any charges, taxes, and other specified fees connected with the purchase and reflected in the contract for

sale, then deducting any manufacturer or dealer rebates applied which reduces the price of the vehicle to the consumer, and then subtracting a reasonable allowance for use of the vehicle by the consumer prior to his report of the nonconformity. Failing to deduct the manufacturer's rebate from the "full purchase price", as suggested by the plaintiff, would result in the manufacturer paying the rebate twice and providing to the plaintiff a "refund" for a sum he never paid. This would be an absurd result and not one shown to be within the legislative intent.

"A reasonable allowance for use must be that amount directly attributable to the use by the consumer before his first report of the nonconformity to the manufacturer, agent, or dealer, and must be calculated by multiplying the full purchase price of the vehicle by a fraction having as its denominator one hundred twenty thousand and having as its numerator the number of miles that the vehicle traveled before the first report of nonconformity." *S. C. Code Annotated Section 56-28-40*

The record in this case establishes that the sales price of the vehicle was stated to be \$32,844. The applicable sales tax (\$300), title fee (\$15), license fee (\$15), processing fee (\$249), and G.A.P. agreement (\$499) added \$1,073 to the purchase price of the vehicle resulting in a total of \$33,917 from which the manufacturer's rebate of \$3,000 is deducted resulting in a figure of \$30,917. The record further establishes that the plaintiff made his first report of nonconformity to the dealer Farrell King on December 6, 2006 whose employee recorded the mileage shown on the vehicle's odometer at 3,225. The deduction for "a reasonable allowance for use" by the plaintiff is then calculated by multiplying 3,225 (mileage) x \$30,917 (purchase price) and dividing the number by 120,000 which results in a reasonable allowance deduction of \$830.89. Deducting the use allowance from the purchase price, results in a repurchase price and refund to the plaintiff in the sum of \$30,086.11.

This Court has refused to consider other factors suggested by the parties in determination of the "full purchase price", such as trade-in value, debt, negative equity, or loan interest because, while those other factors may have impacted how much money was due from the plaintiff at the time of the transaction, those factors had nothing to do with the actual purchase price of the new vehicle, only with how the plaintiff's purchase was to be arranged and paid.

Attorney's Fees

S. C. Code Annotated Section 56-28-50 (D) provides that "Any consumer who finally prevails in any action brought under this chapter, may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and

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expenses (including attorney's fees based on actual time expended) and other such costs which are directly attributable to the nonconformity of the motor vehicle determined by the court to have been reasonably incurred by the plaintiff for in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate."

In making its determination as to any amount of attorney's fees that are appropriately awarded, the court shall consider (1) the nature, extent, and difficulty of the services rendered; (2) time and labor devoted to the matter; (3) the professional standing of counsel; (4) the contingency of compensation; (5) fees customarily charged in the locality for similar services; and (6) the beneficial results obtained. *Blumberg v. Nealco, Inc.*, 310 SC 492, (1993)

(1) Nature, Extent, and Difficulty of the Legal Services Rendered.

This case was a fairly routine "lemon law" case involving a nonconforming Kia automobile purchased by the plaintiff. While essentially "routine" the handling of "lemon law" cases and this case required specialized knowledge and experience on the part of counsel in order to competently and successfully prosecute the action. The matter was skillfully and vigorously defended by defense counsel and required substantial and deliberative investigation, discovery, preparation, and presentation in order to properly submit the case to the court for resolution.

(2) Time and Labor Devoted to the Case.

Plaintiff counsel's affidavit reflects that he spent 202.1 hours in the preparation of the case for trial out of court and spent 30.4 hours in court time through the end of trial. He subsequently submitted an additional affidavit stating time devoted to the case post-trial and seeks attorney's fees for 48 hours out of court time and 1 hour in court time. Plaintiff's counsel seeks an award of attorney's fees at an hourly rate of \$250 for out of court time and \$300 for in court time. The Court has considered the entirety of the case after having presided over the trial and well as other pretrial contested matters. The Court has also carefully considered the affidavit of plaintiff's counsel and argument of defense counsel. The Court finds that the total of hours reasonably devoted to the case by plaintiff's counsel, pretrial, trial, and post-trial, for which counsel is entitled to compensation, is the total of 225.1 hours. The court declines to award attorney's fees for time devoted to travel, matters unrelated to the defendant Kia, and time considered by the court to be excessive or unnecessary.

(3) The Professional Standing of Counsel.

Plaintiff's counsel is a member in good standing of the South Carolina Bar and the Charleston County Bar Associations. He was admitted to practice law in South Carolina in 1986. His practice has been devoted primarily to civil litigation including the

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handling of consumer law cases. He enjoys a good reputation and is known to have specialized knowledge and skill in the handling of automobile warranty litigation and "lemon law" violation litigation. He often receives referrals of this type of civil litigation and has successfully prosecuted several of these cases to verdict.

(4) The Contingency of Compensation.

There was scant information contained in the record regarding the element of contingency of compensation.

(5) Fees Customarily Charged in the Locality for Similar Services.

Plaintiff's counsel submitted the affidavits of Elliott Barrow, Jr., George Kefalos, Mary Leigh Arnold. These affidavits reflected information relating to a case with venue in Richland County. None of the affiants provided any information relating to the fees customarily charged in the upstate of South Carolina and particularly Spartanburg County. Arnold's affidavit specifically references fees customarily charged in Charleston County. The court takes judicial notice of the fact that generally fees charged by attorneys in Spartanburg County would be considered meager in proportion to fees charged by attorneys in the counties of Charleston and Richland. Plaintiff's counsel also submitted affidavits of Rodney F. Pillsbury, a Greenville, S. C. attorney who handles cases in Spartanburg County. His hourly rate typically ranges between \$225 and \$380 dependent on the complexity of the case and "other issues".

Defense counsel submitted an affidavit of attorney David C. Alford in support of an attorney fee award at the hourly rate of \$175. Mr. Alford is a local attorney who is known by the court to have specialized knowledge, experience, and skill in the handling of consumer law cases including those involving "lemon law" violations. He submitted an attorney's fee affidavit seeking a \$175 per hourly rate in a similar case one handled during the same time frame as the present case.

Having considered the entirety of the case and the submissions made relevant to the issue of fees customarily charged by attorney's in the locality for similar services the Court finds that an hourly rate of \$200 per hour for in court and out of court time is appropriate, fair, and reasonable.

(6) The Beneficial Results Obtained.

The results to the plaintiff were beneficial. The issue of liability to the plaintiff based upon a breach of warranty in the providing of a nonconforming vehicle was zealously contested by the defendant. After the plaintiff prevailed before the jury on the issue of liability the issue of damages and what constitutes "full purchase price as delivered" was also vigorously contested by the defendant. The plaintiff was never offered more than \$10,000 to resolve the matter. The plaintiff prevailed and has been awarded

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\$30,086.11 by the court. The results achieved by plaintiff's counsel were without question beneficial applying any reasonable standard.

Other Costs and Expenses

S. C. Code Annotated Section 56-28-50 (D) provides that "Any consumer who finally prevails in any action brought under this chapter, may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses ... determined by the court to have been reasonably incurred by the plaintiff for in connection with the commencement and prosecution of such action, unless the court in its discretion determines that such an award of attorney's fees would be inappropriate."


Plaintiff's counsel submitted a request for an award of costs and expenses incurred in the preparation and prosecution of this case pretrial, trial, and post-trial in the sum of \$2,793.39. After a review of the schedule of costs and expenses requested by plaintiff's counsel, the Court finds that the sum of \$1,006.76 is appropriate, fair, and reasonable. The Court declines to grant an award for costs and expenses related travel and housing incurred during trial.

Based upon the foregoing it is ordered that the plaintiff shall be awarded

- (1) The sum of **\$30,086.11** determined to be the "full purchase price as delivered of the Kia purchased by the plaintiff,
- (2) The sum of **\$45,020.00** in attorney's fees pursuant to S. C. Code Annotated Section 56-28-50(D), and
- (3) The sum of **\$1,006.76** in costs and expenses pursuant to S. C. Code Annotated Section 56-28-50(D).

It Is So Ordered.

August 4, 2014



J. DERHAM COLE, Presiding Judge

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FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF Spartanburg
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-42-03746

Michael Banks

KIA Motors America, Inc., Farrell Automotive
 Inc., and Wells Fargo Auto Finance, Inc. C.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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 SPARTANBURG COUNTY
 APPEALS CLERK

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.


IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: This matter was before this Court on the plaintiff's "motion for reconsideration" of a final order issued by this Court. After consideration of the argument of counsel the Court finds that the motion should be and is therefore denied.

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


 Circuit Court Judge 2053 12/31/14
Judge Code Date