

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

RITA BROOKS

Plaintiff,

vs.

VELOCITY POWERSPORTS, LLC,
AMERICAN HONDA FINANCE
CORPORATION and AMERICAN HONDA
MOTOR CO., Inc.

Defendants

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.- 2012-CP-08-2981

) **ORDER OF FINAL JUDGMENT**

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SC Court of Appeals

The above entitled case came before the Court for hearing on August 28, 2018. Present were the Plaintiff, Rita Brooks, her attorney, Edward J. Dennis, IV, and the Defendant, Velocity Powersports, LLC, with its Counsel, Mary Leigh Arnold. All issues as to Defendants American Honda Finance Corporation and American Honda Motor Co., Inc. have been resolved and a Stipulation of Dismissal filed on August 3, 2015. Said Defendants did not appear at the hearing.

A review of the file establishes that the Defendant, Velocity Powersports, LLC, hereinafter "Defendant", was duly served with the Summons and Complaint in this action on November 1, 2012. Defendant filed and served an Answer and Counterclaim dated November 23, 2012. Thereafter Plaintiff made her Reply thereto. This matter was referred to the Master-in-equity by Order filed with the Court on May 16, 2018.

Testimony was received by the Court and documentary evidence adduced by the parties in support/defense of the claims/counterclaim as plead before the Court. Based upon a preponderance of the evidence before me, I make the following findings of Fact and Conclusions of Law:

1. **I FIND AND CONCLUDE** that the Plaintiff resides in Berkeley County and that the Defendant is a corporation organized and licensed under the laws of the State of South Carolina with its principal place of business in the County of Berkeley, South Carolina; and,

2. **I FIND AND CONCLUDE** that that on April 24, 2010, the Plaintiff purchased a Honda Aqua Jet Ski, hereinafter “watercraft”, from the Defendant at its business located at 151 Gateway Drive, Ladson, in Berkeley County, South Carolina; and,
3. **I FIND AND CONCLUDE** that the Plaintiff returned to the Defendant's place of business on April 9, 2012, and delivered the watercraft into the care, custody and control of the Defendant for purposes of certain repairs, and a “summerization” or “tune up”; and,
4. **I FIND AND CONCLUDE** that the Defendant was unable or unwilling to perform the repairs to the watercraft and after determination of such did accomplish the “summerization” or “tune-up” and charged or billed the Plaintiff for parts and labor attendant to the performance of such “summerization” or “tune-up”; and,
5. **I FIND AND CONCLUDE** that Plaintiff declined to pay the Defendant for the services billed or charged without the performance of certain necessary repairs by the Defendant as originally requested by the Plaintiff; and,
6. **I FIND AND CONCLUDE** that the Defendant refused to permit the Plaintiff to pick up the watercraft without payment for the services performed; and,
7. **I FIND AND CONCLUDE** that the Defendant notified the Plaintiff of its intention to charge for storage fees by letter dated May 22, 2012; however, the Defendant failed to report the watercraft as unclaimed to the Department of Motor Vehicles; and,
8. **I FIND AND CONCLUDE** that all claims, liens or costs for storage by the Defendant are forfeit as in such cases made and provided by S.C. Code of Law, Section 56-19-840; and,
9. **I FIND AND CONCLUDE** that the Defendant wrongfully charged the Plaintiff for storage fees and its refusal to release the watercraft without payment of the storage fees constitutes an unfair trade practice, capable of repetition which affects the public interest and that the Defendant's actions were wilful and wanton in that the Defendant knew or should have known that it's conduct was unfair and deceptive and therefore a violation of this States' statutes concerning unfair and

deceptive acts and practices; and,

10. **I FIND AND CONCLUDE** that as a result of the Defendant's conduct in violation of the Unfair Trade Practices Act, the Plaintiff has lost the use of the watercraft since April, 2012 and until the present or a period seventy-seven (77) months; and,
11. **I FIND AND CONCLUDE** that that the Plaintiff 's monthly payment under the Retail Instalment Contract and Security Agreement between the Plaintiff and the Defendant was \$191.14; and,
12. **I FIND AND CONCLUDE** that the uncontroverted testimony as to the reasonable value of loss of use of the watercraft to the Plaintiff was equal to her monthly payment in the amount of \$191.14; and,
13. **I FIND AND CONCLUDE** that the sum of \$191.14 multiplied by seventy-seven (77) months or a total of \$14,717.78 to be the actual damages suffered by the Plaintiff; and,
14. **I FIND AND CONCLUDE** that the amount of actual damages should/must be trebled pursuant to the Unfair Trade Practices Act and that the total amount of damages then equals \$44,153.34 plus reasonable attorney fees and costs; and,
15. **I FIND AND CONCLUDE** that the amount of attorney fees and costs shall be determined at a later hearing to be scheduled by the Court; and,
16. **I FIND AND CONCLUDE** as to the remaining causes of action asserted by the Plaintiff that the preponderance of the evidence favors the Defendant; and,

THEREFORE, it is

ORDERED that judgment be entered against the Defendant, Velocity Powersports, LLC., in the amount of \$44,153.34, actual and treble damages, in favor of the Plaintiff under her Unfair Trade Practices Act cause of action; and it is

FURTHER ORDERED that the Plaintiff be denied relief under her Breach of Warranty, Violation of Magnuson-Moss Warranty Act, Negligence, Constructive Fraud and Fraud causes of action; and it is

FURTHER ORDERED that the attorney fees and costs to be awarded to the

Plaintiff be scheduled for hearing and determination by the Court at a later date; and it is

SO ORDERED!

Dale E. VanSlambrook
Master-In-Equity, Berkeley County
Ninth Judicial Circuit

Dated: _____
Moncks Corner, SC



Berkeley Common Pleas

Case Caption: Rita Brooks VS Velocity Powersports, Llc , defendant, et al
Case Number: 2012CP0802981
Type: Master/Order/Other

AND IT SO ORDERED!

s/Dale E. Van Slambrook #3079

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