Cars Still Under Warranty Can Be Classified as “New” for Purpose of Lemon Law—For Now

California's Second Appellate District joins Third District in opinion upholding lemon law for pre-owned vehicles still under warranty. by Maureen Rubin, J.D.

LOS ANGELES, CALIFORNIA, UNITED STATES, May 20, 2024 /EINPresswire.com/ -- California enacted the Tanner Consumer Protection Law (Cal. Civ. Code 1793.22) as a supplement to the state’s “Lemon Law” in 1970. The law gives consumers the right to either a refund or a new car if their vehicle cannot be repaired after a reasonable number of attempts. Although the law is over 50 years old, questions remain about whether used cars, as well as new ones, are covered. A new ruling from the State’s Second District Court of Appeal says that both are eligible. Other appellate courts, including the Third District, have held similarly. But the Fourth District circuit has disagreed and the California Supreme Court has already granted review.

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The original Lemon Law, which is now codified as California Civ. Code, 1 § 1790, et seq. began as a section within the Song-Beverly Consumer Warranty Act (Song-Beverly). Plaintiffs Brandi Stiles and Abel Gorgita (the Stiles) bought a 2011 Kia Optima in April 2013. At the time of purchase, certain basic and drivetrain warranties were still in effect. They soon discovered the car had other “serious defects,” affecting the transmission, electrical system, brakes, engine, suspension, and steering, which they said were also still covered by warranties.

The Stiles took their car to a Kia dealer who was unable to fix the problems, but who refused to replace the car or make restitution, as required by Song-Beverly in Section 1793.2. They sued Kia Motors America, Inc. (KIA), but Ventura Superior Court Judge Mark S. Borrell sustained the auto company’s demurrer without leave to amend. The Stiles appealed to Division Six of California’s Second District Court of Appeal, which reversed Borrell in a unanimous 3-0 decision by Presiding Justice Arthur Gilbert on May 2. The case is Brandi Stiles v. Kia Motors America, Inc. (2d. Civ. No. B325798).

In reversing the trial court, Justice Gilbert wrote, “Here we hold that a previously owned motor

vehicle purchased with the manufacturer's new car warranty still in effect is a "new motor vehicle" as defined by the law." Thus the district court concluded that the "replace or refund" remedy of section 1793.2, subdivision (d)(2) applies. This section says, in part, "If the manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle…or promptly make restitution…"

The opinion then explained that Civil Code §1793.22 (e) (2) says "New motor vehicles include…a dealer owned vehicle and demonstrator or other motor vehicle sold with a manufacturer's car warranty. In other words, if the warranty on a used car is still in effect at the time of purchase, the Tanner Protection Act classifies it as a new car even if it is purchased from a private party instead of a dealer.

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Judge Borrell had cited Rodriguez v. FCA US, LLC (2022) 77 Cal. App.5th 209, to justify his ruling. Rodriguez ruled that "a used motor vehicle with an unexpired warranty is not a "new motor vehicle" under the Song-Beverly Act. In Rodriguez, Justice Marsha S. Slough wrote, "The sole issue in this case is whether the phrase 'other motor vehicle sold with a manufacturer's new car warranty' covers sales of previously owned vehicles with some balance remaining on the manufacturer's express warranty…We conclude it does not and that the phrase functions instead as a catchall for sales of essentially new vehicles where the applicable warranty was issued with the sale."(Italics in original.)

Borrell also noted that "dealer-owned vehicles and demonstrators are basically (italics in original) new vehicles because they have never been previously sold to a consumer and they come with full express warranties." The judge further added, "Given this context, we think the most natural interpretation of the phrase 'other motor vehicle sold with a manufacturer's new car warranty" is that it, too, refers to vehicles that have never been previously sold to a consumer and come with full express warranties."

Justice Gilbert began his discussion of the conflicting laws by defining the requirements for the demurrer that Borrell granted to Kia. He wrote that the function of a demurrer is to test whether, as a matter of law, the facts alleged in the complaint "state a cause of action under any legal theory." He then turned to §1793.22 (e) (2) and concluded that Stiles, under that definition, "is entitled to the replace or refund remedy of §1793.2, subdivision (d) (2) if the car she

purchased was a “motor vehicle sold with a manufacturer’s new car warranty.” He commented, “That should be the end of the discussion.”

But it was not, because Kia claims the words “new or full” must be added. Gilbert disagreed, stating, “Had the Legislature intended to qualify warranty with “new or full” it would have said so. We may not add words to a clear and unequivocal statute.” He added, “The Legislature has clearly defined ‘new motor vehicle’ for the purposes of the replace or refund remedy…” He went on to argue that Kia’s reliance on Rodriguez is “misplaced,” noting that the phrase ‘or other motor vehicle sold with a manufacturer’s new car warranty’ appears under the definition of new motor vehicles…and the Fourth District said that “dealer-owned and demonstrator vehicles are ‘basically’ new because “they have never been previously sold to a consumer and they come with full express warranties.”

Gilbert concluded that “Fourth District stated the section describes only two types of vehicles—dealer-owned and demonstrator— not three.” Gilbert stated that he “could not argue” with the Rodriguez court’s conclusion that “or other motor vehicle sold with a manufacturer’s new car warranty” does appear under the definition of a new car. However, he stated that the Stiles car meets that definition and is a new motor vehicle under the statute. “More importantly,” he pointed out, “the Rodriguez court adds words to the statute,” words that the legislature could have added if it had wanted to. He said “…the legislature has not amended the meaning of “new motor vehicle” in 1793.22 (e) (2). And neither will we.”

California lemon law attorney Nick Nita of the Nita Lemon Law Firm agrees with the appellate court’s ruling in the Stiles case. “The issue in this case and others like it is the definition of ‘new motor vehicle’ found in California Civil Code section 1793.22, aka the Tanner Consumer Protection Act,” says Nita. “Specifically, these cases turn on a provision in the definition that includes ‘other motor vehicle sold with a manufacturer’s new car warranty,’ which would encompass a used car that is purchased while still under the warranty from the manufacturer. The warranty transfers with the vehicle.”

“The Stiles decision,” Nita explains, “does a good job of explaining the different sides of the debate. The Rodriguez decision says the phrase ‘other motor vehicle sold with a manufacturer’s new car warranty’ only applies to new cars, but the judge in Stiles explains how this rendering defies English grammar and logic and adds words to the definition that aren’t present in the statute. As the court points out, the legislature has had over 30 years to amend the definition if it wanted to but has never done so.” Nita is in agreement with the Court of Appeals Second Appellate District in Stiles and the Court of Appeals Third Appellate District in Jensen v. BMW of North America, Inc. (1995) 35 Cal.App.4th 112, that under the plain words of the statute, a used car sold with a new car warranty still in effect fits the definition of an “other motor vehicle sold with a manufacturer’s new car warranty.” “What else could it be?” Nita asks.

The resolution of the new v. previously owned debate is now with the California Supreme Court in Rodriguez v. FCA US, LLC and without question, many used car buyers who believe they

bought a lemon eagerly await its decision.

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