

ERIC S. FEINBERG  
Plaintiff, appearing Pro Se  
325 West 71 Street - Suite 6D  
New York, N.Y. 10023  
Tel: (212) 875-1331  
Fax: (212) 875-1221

DOC #

JUDGE CASTEL

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

11 CIV 5040

ERIC FEINBERG,

Plaintiff,

VS.

MB MOTORSPORTS

Defendant.

CIVIL ACTION NO.

COMPLAINT AND  
JURY DEMAND

2011 JUN 22 AM 9:19

*ama*

COMES NOW the Plaintiff, Eric Feinberg and for his original complaint against

the defendants, MB Motorsports, hereby says:

INTRODUCTION

1. In this Complaint, Plaintiff seek, inter alia, damages based on defendants violation of New Jerseys' Consumer Fraud Act, fraud in the inducement, and breach of Covenant of Good Faith and Fair Dealing,
2. Defendants intentionally sold plaintiff a used car with knowledge aforethought that said automobile was mechanically unsafe to drive and would not otherwise pass either a NJ motor vehicle inspection nor a New York motor vehicle inspection.
3. But for defendants' intentional and deceptive acts plaintiff would never have purchased said automobile

4. The fraudulent and deceptive conduct on the behalf of defendants did cause plaintiff to expend more than \$2400 that he would not have otherwise had to insure that the car was safe and roadworthy.
5. Plaintiff who had substantial difficulties in purchasing said vehicle as a result of defendants' deceptive and fraudulent acts suffered and suffers substantial mental anguish.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1332 (d) . Plaintiff is a citizen of New York and defendants are corporate citizens of New Jersey. The amount of damages sought is 150,000.00
7. At all times material hereto, the defendants were doing business in the State of New York and some of the transactions which gave rise to this action took place in the State of New York.
8. Venue is proper in this District pursuant to 28 U.S.C. §1391 (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated.

### **THE PARTIES**

9. Plaintiff, Eric Feinberg is a natural person who resides at 325 West 71 Street - Apt. 6D, New York, N.Y. 10023,
10. Defendant is a corporate person whose business is located at 4035 State Route 33, Tinton Falls, NJ.

### **LEGAL AND FACTUAL BACKGROUND**

11. On or about the end of March or beginning of April 2011, plaintiff was in desperate need to purchase a car.
12. Plaintiff had little money to put down for a vehicle and needed to finance any purchase.
13. Although, weary of purchasing any used car in New Jersey because plaintiff lived in New York, plaintiff found an ad on Craigslist New York for a Volvo v40. Defendant at all times intended that specifically a New York resident would see the advertizement in order to sell a car to such resident. Defendant at all times negotiated the deal with plaintiff on the telephone with defendant knowing full well that plaintiff was calling from New York. All of the details including the pricing on the vehicle, the financing for the vehicle was accomplished on the telephone while plaintiff was in New York. The deal for all intents and purposes occurred in the State of New York.
14. Plaintiff spoke to a man named Mike who assured me that they were different from other used car dealerships in New Jersey, that they stood behind their product. Plaintiff paid what he believed was more than \$1000.00 more than what the vehicle was worth based solely on his belief that what defendant's used car dealership offered was substantially greater than any other New Jersey used car

dealership.

15. The car that Plaintiff was interested in Mike claimed had just passed a New Jersey inspection and the advertizement specifically earmarked to New York consumers claimed that the car had just passed a New Jersey inspection. When plaintiff inquired as to whether it would pass a New York inspection, Mike said that it would.
16. Plaintiff told Mike that plaintiff could not afford to put more than \$1000.00 dollars down for the purchase of the vehicle and that the car had to be in a safe and drive worthy condition upon leaving the dealership.
17. After plaintiff purchased the car and as he was leaving the dealership, the “check engine” light went on.
18. Plaintiff knew that when the “check engine” light was on that was in and of itself sufficient evidence that the car could not have passed a New York inspection.
19. Plaintiff returned to the dealership immediately and was told by the salesperson that the reason the “check engine: light went on was because the computer had not been updated..
20. The salesperson reset the computer the car and the check engine light went off.
21. As plaintiff was nearing New York, the check engine light went on again.
22. The following day plaintiff went to a repair shop near his work and asked the mechanic as to what the problem was with the light and was told there were a couple of problems and further discovered that there were other more severe

problems that would have to be cured in order to pass a New York State inspection including substantial problems with the front end involving the shocks.

23. Plaintiff was told that the cost for repairing the front end, alone, could cost more than \$1500. Plaintiff was also informed that a couple of headlights had to be replaced as they were not working.
24. Plaintiff immediately contacted defendant and expressed his outrage. He informed defendant that he wanted to return the car as it was clear defendant knew or should have known about the dangerous defects and that he didn't trust them to do right by him.
25. Plaintiff was told that whatever problems needed to be fixed would be taken care of.
26. Plaintiff was told to come down to defendant's dealership, but they could not fix the problem on the spot until they knew what needed to be done and what parts they would have to get to do the job correctly.
27. Plaintiff, however, would have to come down to New Jersey and see what needed to be done and what parts would be necessary for the repair of his car.
28. Plaintiff went down to New Jersey to defendant's place of business and told defendant specifically about the front end problems and the need minimally for new shocks and alignment, etc.
29. Plaintiff was told that defendant would do a complete check of the car to discover any unresolved problems.

30. Plaintiff told defendant that he did not want to keep coming back and was assured that that would not be the case.
31. Although, Plaintiff had been informed by his New York mechanic that the problems regarding the front end were substantial and costly, he was told by defendant that the front end issues amounted to no more than a broken “bushing”.
32. Defendant was told to come back in a few days when defendant was able to locate the replacement for the bushing. Defendant was told that when he came back they would also deal with the “check engine” light issue which they finally admitted was not a mere computer error.
33. Plaintiff specifically told defendant to make sure that what they claimed was wrong with the car was only the bushing as he had been informed otherwise.
34. Plaintiff was assured that the only thing that was wrong with the front end was the bushing. Plaintiff told defendant again that he did not want to keep coming back and again was assured that this would not be the case.
35. Plaintiff subsequently came back to the dealership some ten days later to have the bushings and “check engine” light repaired.
36. When leaving the dealership once again plaintiff inquired and was told that the only thing wrong with the front end was the bushings but that they had been fixed properly.
37. Plaintiff went back to New York, but was still not happy with the way the car was driving in particular he was still not happy with the performance with regards to the front end.

38. Plaintiff didn't want to go back to the dealership, again and since they were insistent that nothing was wrong with the car other than the bushings he didn't trust them to do the job properly or in a manner that would insure his safety.
39. Plaintiff went to his local mechanic near my home in New York City to get my car inspected and was told that there were several problems with the car that needed to be fixed so as to pass a New York Inspection.
40. Plaintiff was specifically told that the rocker arm was shot and to drive the car would be dangerous.
41. Plaintiff had the car fixed and did not go back to New Jersey for still a fourth time because he did not trust defendants to insure his safety or that what needed to get done to pass a New York inspection would get done by defendant.
42. It cost defendant over \$1100 to fix the car in that instance.
43. When he left his New York City mechanic, Plaintiff was told to drive the car for a few days and see how the front end was handling.
44. It felt better than before but it was still not working right.
45. Plaintiff went back and discovered that there were still further problems with the front end including a broken front right axle and the shocks were shot. All in all it cost another \$1300 to make the car safe and drive worthy. The total to date that plaintiff has paid to fix the car has been more than \$2400.
46. Defendant made material misrepresentations that it knew were false when they were made and which plaintiff relied upon in purchasing said vehicle.

47. But for those misrepresentations and falsehoods, plaintiff would never have purchased the car from defendants in the first place.
48. Plaintiff relied upon the representation that his car would have passed a New Jersey and New York inspection and that the car that was sold him was safe and drive worthy. This representations were false and defendant knew them to be false when made..
49. Defendant was able to falsely secure a New Jersey inspection sticker, knowing that the car should not have passed inspection in an attempt to deceive the plaintiff into purchasing a car that he otherwise would not have purchased.
50. Defendant knew that plaintiff's car that was sold to him would not pass New York inspection but sold the car to him anyway.
51. Because of the distance and inconvenience defendant knew that it would be difficult, and time consuming for plaintiff to make repeated visits to get his car repaired.
52. When defendant claimed that the only problem with the front end was the bushings, even though, was told that the problem might be more serious, defendant knew this to be untrue and sent plaintiff back to New York, hoping that he would never find out the truth about his car until far in the future when it would be too late to associate the fraudulent and deceptive conduct with the mechanical problem.
53. Defendant's acts were intended to deceive, were intended to misrepresent the truth with the hope that plaintiff would never find out until it was too late.



54. Defendant knew that plaintiff did not have the resources or time to continually return to get the car repaired as it should have been when it was initially sold.
55. It was less time consuming and resource depleting for plaintiff to take care of the car in New York. Defendant knew this and knew that in spite of the fact that it agreed to make the repairs, it never had any intent to do so or would feign doing so with the intent of plaintiff giving up on getting the repairs done by defendant.
56. Defendant also charged excessive price and when plaintiff questioned the price he was told that this was what the book value of the car was. It is believed plaintiff knew that the price charged had no relationship to any known book value for a car that defendant claim was safe and in excellent and drive-worthy condition. Plaintiff relied upon the defendant's claim believing that it was not like other New Jersey use car dealers and that it stands behind the cars it sells.
57. Defendant also pulled a form of warranty bait and switch. When he originally came to dealership to purchase the car, there was a 30 day warranty. Defendant then offered a weird service contract that it claimed it would pay for that was somehow a better deal. When signing the papers wherein plaintiff was being offered this service contract, the defendant salesman said plaintiff had to sign this 'as is' document but that it was a formality that was required under New Jersey law, but that plaintiff was being offered something better than the warranty as initially offered and as advertised.
58. Plaintiff has spent much time and resources and was not able to use the car for a period of time while it was being fixed.

59. Defendants deceptive and fraudulent conduct cause plaintiff intense anxiety, depression, and emotional distress that has lasted to this date. Plaintiff has suffered loss of sleep and has impacted his ability to work and has generally left him extremely depressed, agitated and anxious. These feelings have been persistent and ongoing since the beginning of April, 2011 and there are no signs of it abating anytime soon.

## CLAIMS

### FIRST COUNT

#### **(Violation of the New Jersey Consumer Fraud Act)**

60. Plaintiff repeat and reallege all paragraphs above as if fully set forth herein.
61. Plaintiff is a consumer and the product sold by defendants was a product protected by the consumer fraud act
62. New Jersey and other states throughout the nation have enacted laws to protect consumers against unfair, deceptive and fraudulent business practices, unfair competition and false advertising. New Jersey and other states throughout the nation provide consumers with a private right of action under these statutes.
63. In violation of these statutes, Defendant has affirmatively misrepresented knowingly concealed, suppressed and failed to disclose material fact with the intent that plaintiff and others rely upon such concealment and deception in connection with the quality of the car sold, the validity of the price of the car, the nature of the warranty and the services provided above and beyond what other used car dealers provided in the State of New Jersey in furtherance of their scheme to deny plaintiff

the benefit of the bargain.

64. Plaintiff has been harmed by defendant's actions including the unnecessary expenditure of money that he would not have had to pay but for defendant's actions.
65. He would never have purchased the car but for plaintiff's knowing false representations and never had been exposed to the financial and emotional harm caused by defendant's conduct.
66. Plaintiff seeks damages including treble damages to the extent provided by statute, punitive damages and damages for emotional distress and mental anguish plaintiff has suffered and continues to suffer as a result of defendant's conduct in the amount of \$100,000.00.

### **SECOND COUNT**

#### **(Breach of Duty to Act in Good Faith and Fair Dealing)**

67. Plaintiff repeats and realleges all paragraphs above as if fully set forth herein.
68. Defendant entered into a contract to purchase a vehicle with plaintiff and knew that even though the car sold was defective and that the contract allegedly provided plaintiff with remedies to correct said repairs, defendant created a situation where it would be difficult if not impossible for plaintiff to get the car repaired.
69. In the failure to dutifully perform the terms of the agreements detailed above, defendant has violated the duty of good faith and fair dealing that arises in all contracts as more fully set forth in the factual allegations above.
70. Defendant acted at all times relevant with bad motives or intentional and contrary to the reasonable expectations of the plaintiff.

71. Defendant's conduct deprived plaintiff of the benefits of the bargain originally intended by the parties.
72. Plaintiff relied to his detriment on misleading assertions and conduct of the defendant.
73. Plaintiff has suffered damages as a direct and proximate result of the actions of defendant in an amount of no less than \$8000

### **THIRD COUNT**

#### **(Breach of Implied Contract)**

74. Plaintiff repeat and reallege all paragraphs above as if fully set forth herein.
75. Defendants made various oral agreements and representations that plaintiff reasonably relied upon in the purchase of said car.
76. Defendant violated these and other oral representations..
77. As a result of breach of an implied contract plaintiff has been damaged in an amount of no less than \$8000.000

### **FOURTH COUNT**

#### **(Fraud in the Inducement)**

78. Plaintiff repeat and reallege all paragraphs above as if fully set forth herein.
79. Defendant made representations to plaintiff prior to his purchasing his car that defendants knew were materially false and which defendant represented with the intent of causing plaintiff to purchase a car he would not otherwise have purchased but for these falsehoods.
80. Plaintiff has been harmed by this fraudulent behavior in an amount to be determined by this Court including punitive damages and finding that the contract be voided, where appropriate.

**RELIEF REQUESTED**

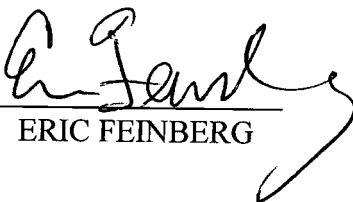
**WHEREFORE**, Plaintiff seeks a judgment as follows:

- a. awarding actual damages in an amount of no less than \$110,000.
- b. awarding punitive damage, if any.
- c. awarding statutory damages, if any.
- d. awarding attorney's fees, if any.
- e. declaring that the contract is void and allowing plaintiff to return the car to the defendant.
- f. granting such other relief as the court deems just and proper.

Dated: July 18, 2011

ERIC FEINBERG  
Plaintiff  
Appearing pro se  
325 West 71 Street - Apt.6D  
New York, N.Y. 10023  
Tel: (212) 875-1331

I certify that the representations made in the above complaint are true to my own knowledge.

  
ERIC FEINBERG