

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SHELBY COUNTY DIVE RESCUE)	
TEAM, a division of Shelby County,)	
Illinois)	
)	
Plaintiff,)	Case No.
)	
v.)	Hon.
)	
GREAT LAKES COACH SALES CO.,)	
a Michigan Corporation)	
)	
Defendant.)	

COMPLAINT

Plaintiff Shelby County Dive Rescue Team (“Plaintiff” or the “Dive Team”), by and through its attorneys Barnes & Thornburg LLP, respectfully files this Complaint against Defendant Great Lakes Coach Sales Co. (“Defendant” or “Great Lakes Coach”), and in support states as follows:

Parties

1. Plaintiff, Shelby County Dive Rescue Team, is a division of the Shelby County government, located in Shelbyville, Illinois, and formed under the authority of the Illinois Water Rescue Act, 50 ILCS 755/1 et seq.

2. Defendant, Great Lakes Coach Sales Co., is a Michigan corporation with its principal place of business in Schoolcraft, Michigan in Kalamazoo County.

Jurisdiction and Venue

3. This Court has personal jurisdiction over Defendant because its principle place of business is located in Kalamazoo County, Michigan. Additionally, the conduct giving rise to Plaintiff’s claims occurred in substantial part in Kalamazoo County, Michigan.

4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1332(a), because the parties are citizens of different states and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

5. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391(a).

General Allegations

6. The Dive Team is a 10-person volunteer team of public safety divers and shore responders trained to respond to surface and underwater rescue and recovery of persons and property. The Dive Team's work is primarily focused on Lake Shelbyville, an 11,000 acre lake in Shelby County.

7. In responding to emergency calls, the Dive Team uses a 1976 Ford E350 van to transport its crew members and equipment. This van is a "hand-me-down" from the Shelby County Rescue Squad, and the Dive Team has used it as a response vehicle since 1990. The van clearly shows its age and has broken down on multiple occasions.

8. In June of 2010, Scott Enkoff, Commander of the Dive Team, learned of a charitable foundation that was willing to provide the funds to replace the Dive Team's van with an updated, custom emergency response vehicle.

9. After securing preliminary funding for this project from the foundation, Commander Enkoff contacted Great Lakes Coach about designing and building this vehicle. Commander Enkoff chose to contact Great Lakes Coach about this project because its website touted its "Specialty Division" and listed a variety of emergency service vehicles it claimed to be able to custom-design for customers, including "dive team vehicles."

10. Commander Enkoff spoke to Great Lakes Coach's Director of Sales and Marketing, Scott Snyder, who assured Commander Enkoff that Great Lakes Coach could design and work with its manufacturer partners to create a custom vehicle that would meet the Dive Team's needs.

11. Mr. Snyder sent Commander Enkoff floor plans and specs from other dive team trucks Great Lakes Coach had designed as examples, including specs from a custom truck designed for a dive team in Wayne County, Michigan.

12. Commander Enkoff also spoke with Great Lakes Coach's President and CEO Gail Haithwaite, who confirmed that Great Lakes Coach could provide the Dive Team with a unit that fit their needs and assured Commander Enkoff that customer satisfaction was their first priority.

13. Commander Enkoff also contacted two dive teams that Great Lakes Coach provided as references (the Wayne County, Michigan dive team and a dive team in Manatee County, Florida) and both were satisfied with the trucks they had received. After these conversations, Commander Enkoff was confident that Great Lakes Coach had the experience necessary to properly design a truck that would meet the Dive Team's needs, and he agreed to work with Great Lakes Coach on the project.

14. Over the course of the summer of 2010, Commander Enkoff corresponded numerous times with Mr. Snyder as Great Lakes Coach developed a design for the Dive Team's truck. During this process, Commander Enkoff informed Mr. Snyder that he would like a lot of guidance in determining what features would be ideal for the vehicle, as he had never ordered a custom dive vehicle before.

15. One of the issues Mr. Snyder and Commander Enkoff discussed was the appropriate chassis on which to build the vehicle.

16. Commander Enkoff inquired about using a Chevrolet chassis, as the only automotive dealership in Shelby County was a Chevy dealer and Commander Enkoff felt it would be easier for on-going service and maintenance to be able to use the local dealership.

17. Great Lakes Coach had built a SWAT team vehicle for Wayne County, Michigan on a Chevrolet Kodiak chassis and was willing to build the Dive Team's vehicle on a Chevy chassis, but neither Commander Enkoff nor Mr. Snyder were able to locate a chassis that would work for the truck.

18. The dive truck Great Lakes Coach had designed for the Wayne County Dive Team had employed an International chassis, and when a suitable Chevy chassis couldn't be located, Commander Enkoff asked about using the International chassis.

19. Mr. Snyder advised that the International 4400 that Great Lakes Coach had used for the Wayne County unit was a larger truck than what they needed. He also informed Commander Enkoff that Great Lakes Coach had encountered some difficulties in building on the International chassis, and he recommended that they use the Ford E450 chassis instead.

20. Mr. Snyder described the Chevy Kodiak chassis used for the Wayne County SWAT vehicle and the Ford E450 chassis as equivalent.

21. Despite Mr. Snyder's assertions of equivalency, and unbeknownst to Commander Enkoff at the time, the Chevy Kodiak chassis had a gross vehicle weight rating of 19,500 lbs. while the Ford E450 had a gross vehicle weight rating of only 14,500 lbs.

22. Upon Mr. Snyder's recommendation, Commander Enkoff agreed to use the Ford E450 chassis.

23. After corresponding with Mr. Snyder and consulting the example specs from the Wayne County Dive Team truck and other dive team trucks Great Lakes Coach had designed,

Commander Enkoff compiled a list of features and accessories he would ideally like included in the truck. This list included an exterior shower system with a 50-gallon on-board water tank, storage for eight air tanks and various other dive gear, a receiver hitch so the Dive Team could tow a trailer with more gear, and seating for four Dive Team members (a driver and passenger in the cab and bench seating for two in the back of the truck).

24. Mr. Snyder confirmed that a truck could be manufactured with Commander Enkoff's requested features. He also suggested some additional features, including adding a roof platform with tie-down points so that the Dive Team would be able to haul additional gear, but Commander Enkoff did not think such a platform was necessary and declined to add it.

25. Once the features of the truck had been confirmed, Mr. Snyder produced a design quote and floor plan sketch for Commander Enkoff's approval.

26. The final design quote reflected an amount of \$119,877.00 for the project. This quote also listed the truck's features, including the exterior shower with 50-gallon water tank, interior cabinetry for storage, rear bench seating for two passengers, and a trailer hitch, among numerous other features. (See Quote attached as Exhibit A.)

27. The final design quote included an express warranty period for Great Lakes Coach's materials and workmanship of 12 months from the date of purchase or 12,000 miles.

28. Commander Enkoff approved this quote and a purchase order was issued on August 19, 2010. (See Purchase Order attached as Exhibit B.) Per the terms of the purchase order, the Dive Team paid \$40,000 as a down payment.

29. The completed truck was delivered to the Dive Team on Saturday, February 19, 2011.

30. Upon delivery, representatives of Great Lakes Coach conducted an orientation of the vehicle's features for the Dive Team members present, final paperwork was completed, and the Dive Team paid the \$79,877 balance owed.

31. After delivery was complete, the Dive Team spent several hours unloading their equipment from their old E350 van and moving things into the new truck. As the moving process was on-going, one of the Dive Team members noticed that the unit's trailer hitch seemed close to floor. Upon further inspection, it was discovered that while only partially loaded, the new truck had very little clearance off the ground and the suspension appeared to be inadequate.

32. With no passengers on board, a quarter tank of gas, and no water in the on-board water tank, the truck's rear bumper step was only about four inches off the ground. Commander Enkoff determined that this level of ground clearance would not be adequate to allow the Dive Team to navigate the roads of Shelby County.

33. As Great Lakes Coach was aware, the Dive Team truck was intended to be used with four passengers, a significant amount of dive gear, a full 50-gallon water tank, a full 55-gallon fuel tank, and towing a trailer.

34. After encountering the problem with the suspension when the vehicle was only partially full, Commander Enkoff could only conclude that fully loading the truck would create even less ground clearance. Because of this, Commander Enkoff made the decision that the truck was unusable for the Dive Team's purposes and all the gear was loaded back into the E350 van.

35. Commander Enkoff contacted Great Lakes Coach via email on February 22, 2011, and explained the suspension issue, as well as noting a number of other smaller problems the Dive Team had encountered while attempting to load the truck. Commander Enkoff

explained that while the smaller issues were fixable, the suspension problem rendered the truck unusable in its current condition. (See Feb. 22 Email attached as **Exhibit C.**)

36. Upon further investigation, Commander Enkoff learned that the curb weight of the Dive Team's new truck was 13,097 lbs. As the gross vehicle weight rating of the Ford E450 chassis was 14,500 lbs, this left just over 1,400 lbs of available payload. (See Pre-Build Weight Data Sheet attached as **Exhibit D.**)

37. However, as Exhibit D establishes, Great Lakes Coach only allotted 300 lbs for passenger weight, or 75 lbs per passenger, and 381.5 lbs of fluid weight, when the weight of full gas and water tanks exceeds 800 lbs.

38. Accordingly, the actual available payload was less than 700 lbs.

39. Great Lakes Coach should have known that the vehicle could not be used for its intended purpose with such a limited available payload.

40. Despite this fact, Great Lakes Coach had suggested during the design process that a roof-top platform be added to carry additional gear for the Dive Team. Had Commander Enkoff taken this advice, the available payload would have been even more reduced. It is clear that Great Lakes Coach did not properly consider the gross vehicle weight rating of the truck prior to building it, and as a result, delivered an unusable vehicle to the Dive Team.

41. Furthermore, the Pre-Build Weight Data Sheet, sent to the Dive Team by Great Lakes Coach on February 27, 2011, establishes that Great Lakes Coach knew of the insufficient weight allotment as early as August 18, 2010, yet it proceeded to build the truck anyway. (See Ex. D, dated Aug. 18, 2010.)

42. After learning of the problems, Great Lakes Coach offered to assist the Dive Team in adding after-market suspension to the truck.

43. While adding after-market suspension may have raised the vehicle further off the ground, it would only have further increased the weight on the truck chassis and likely would have rendered the vehicle illegal to drive on public roads. Because adding after-market suspension would not make the truck usable for the Dive Team, Commander Enkoff declined Great Lakes Coach's offer.

44. Additionally, Great Lakes Coach was unwilling to pay for this proposed additional suspension, and has refused to replace the truck with one that is able meet the Dive Team's needs.

45. During discussions with the Dive Team and the charitable foundation that funded the truck, Great Lakes Coach's President and CEO Gail Haithwaite admitted that the Dive Team's complaints had "merit," yet Great Lakes Coach has been unwilling to compensate the Dive Team in any way for delivering an unusable truck. (See May 17, 2011, Email attached as **Exhibit E.**)

46. The Dive Team has not used the truck in any capacity since it was delivered, and it remains parked outside the Dive Team building in Shelbyville, Illinois.

Count I – Breach of Contract

47. Plaintiff hereby incorporates the allegations contained in Paragraphs 1 through 45 above as if fully set forth herein.

48. The Quote and Purchase Order constitute a valid and enforceable contract between Great Lakes Coach and the Shelby County Dive Rescue Team.

49. The Dive Team fully performed all its obligations under the contract by paying for the truck in full.

50. Great Lakes Coach breached the contract by failing to deliver a truck according to the specifications in the Quote that was usable as an emergency response vehicle by the Dive Team.

51. Great Lakes Coach was notified of this breach by Commander Enkoff's February 22, 2011 email, and has refused to cure it.

52. As a result of Great Lakes Coach's breach, the Dive Team has suffered damages in excess of \$75,000, including the full \$119,877 cost of the unusable truck and incidental and consequential damages.

WHEREFORE, Plaintiff respectfully requests entry of a judgment in its favor and against Defendant in the amount of \$119,877, plus interest and any other such relief as the Court deems just.

Count II – Breach of Warranty

53. Plaintiff hereby incorporates the allegations contained in Paragraphs 1 through 51 above as if fully set forth herein.

54. The description of the Dive Team Vehicle in the Quote and the accompanying warranty language created an express warranty under MCL 440.2313 that a vehicle would be manufactured and delivered according to the listed specifications which could be used by the Dive Team as a response vehicle.

55. By delivering a vehicle that could not be driven when fully loaded according to the Quote's specifications, Great Lakes Coach breached this warranty.

56. Great Lakes Coach was notified of this breach by Commander Enkoff's February 22, 2011 email, within the express warranty's 12-month time period, but has refused to cure it.

57. As a result of Great Lakes Coach's breach of warranty, the Dive Team is entitled to damages under MCL § 440.2714 in the amount of the difference in the value of the truck as delivered and the value the truck would have had if it had been as warranted, as well as incidental and consequential damages under MCL § 440.2715.

WHEREFORE, Plaintiff respectfully requests entry of a judgment in its favor and against Defendant and an award of damages in excess of \$75,000, plus interest and any other such relief as the Court deems just.

Count III – Breach of Implied Warranty of Merchantability

58. Plaintiff hereby incorporates the allegations contained in Paragraphs 1 through 56 above as if fully set forth herein.

59. Great Lakes Coach is a merchant with respect to specialty vehicles under MCL § 440.2104.

60. The truck purchased by the Dive Team was subject to the implied warranty of merchantability under MCL § 440.2314, including that it was fit for the ordinary purpose for which such goods are used.

61. Great Lakes Coach breached this warranty by failing to deliver a truck that was merchantable and that was fit for a dive team's purposes.

62. As a result of the gross vehicle weight issue, the truck is unusable by the Dive Team for the very purposes for which it was purchased.

63. Great Lakes Coach was notified of this breach by Commander Enkoff's February 22, 2011 email, but has refused to cure it.

64. As a result of Great Lakes Coach's breach of warranty, the Dive Team is entitled to damages under MCL § 440.2714 in the amount of the difference in the value of the truck as

delivered and the value the truck would have had if it had been as warranted, as well as incidental and consequential damages under MCL § 440.2715.

WHEREFORE, Plaintiff respectfully requests entry of a judgment in its favor and against Defendant and an award of damages in excess of \$75,000, plus interest and any other such relief as the Court deems just.

Count IV – Breach of Implied Warranty of Fitness for a Particular Purpose

65. Plaintiff hereby incorporates the allegations contained in Paragraphs 1 through 63 above as if fully set forth herein.

66. At the time the Quote and Purchase Order were executed, Great Lakes Coach had reason to know of the particular purposes for which the Dive Team intended to use the truck, including responding to emergency calls with a full cargo load and four passengers.

67. The Dive Team, acting through Commander Enkoff, relied on Great Lakes Coach's expertise in selecting the chassis and other features of the vehicle to conform to their needs and requirements.

68. Great Lakes Coach impliedly warranted that the vehicle would be fit for the Dive Team's intended purposes under MCL § 440.2315.

69. Great Lakes Coach breached this warranty by failing to deliver a vehicle that was usable for the Dive Team's stated purposes.

70. Great Lakes Coach was notified of this breach by Commander Enkoff's February 22, 2011 email, but has refused to cure it.

71. As a result of Great Lakes Coach's breach of warranty, the Dive Team is entitled to damages under MCL § 440.2714 in the amount of the difference in the value of the truck as

delivered and the value the truck would have had if it had been as warranted, as well as incidental and consequential damages under MCL § 440.2715.

WHEREFORE, Plaintiff respectfully requests entry of a judgment in its favor and against Defendant and an award of damages in excess of \$75,000, plus interest and any other such relief as the Court deems just.

Count V – Revocation

72. Plaintiff hereby incorporates the allegations contained in Paragraphs 1 through 70 above as if fully set forth herein.

73. The weight issues with the truck have rendered it unusable to the Dive Team and have substantially impaired the value of the truck to the Dive Team.

74. After numerous discussions with Great Lakes Coach in an attempt to cure the defects in the vehicle, the Dive Team now believes that the non-conformities cannot be cured.

75. Due to Great Lakes Coach's inability or unwillingness to cure the vehicle's defects, the Dive Team is entitled to revoke its acceptance of the vehicle under MCL § 440.2608 and obtain a full refund of the purchase price under MCL § 440.2711 as well as damages for expenses reasonably incurred in the care and custody of the truck.

WHEREFORE, Plaintiff respectfully requests entry of a judgment in its favor and against Defendant and an award of damages in the amount of \$119,877, plus interest and any other such relief as the Court deems just.

Count VI – Rescission

76. Plaintiff hereby incorporates the allegations contained in Paragraphs 1 through 74 above as if fully set forth herein.

77. Great Lakes Coach had an obligation to provide a vehicle according to the specifications in the Quote that was usable by the Dive Team.

78. Great Lakes Coach has failed to perform this obligation, as the vehicle delivered is not able to be safely driven when fully loaded for use by the Dive Team. This failure was a material, indispensable part of the parties' agreement, the failure of which has essentially destroyed the entire agreement.

79. The Dive Team made repeated demands for cure of the vehicle or the return of the purchase price, but Great Lakes Coach has refused to do either of these things.

80. Rescission of the parties' agreement is the appropriate remedy to restore the parties to the condition that existed prior to the agreement, including the return of the vehicle by the Dive Team and the return of the purchase price by Great Lakes Coach.

WHEREFORE, Plaintiff respectfully requests entry of a judgment in its favor and against Defendant and an award of damages in the amount of \$119,877, plus interest and any other such relief as the Court deems just.

JURY DEMAND

NOW COMES Plaintiff, Shelby County Dive Rescue Team, by and through its attorneys, Barnes & Thornburg LLP, and hereby demands trial by jury of all matters pending in this action.

Respectfully submitted,

Dated: June 14, 2011

BARNES & THORNBURG LLP

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