43934-4

No. ~~649394-4-II~~

COURT OF APPEALS - DIVISION TWO
IN AND FOR THE STATE OF WASHINGTON

CHUCK BABB, an individual

Appellant,

v.

REGAL MARINE INDUSTRIES, a foreign corporation

Respondent.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. The trial court erred when it granted summary judgment dismissing Plaintiff's Consumer Protection Act claim for failing to prove that Regal's advertisements were unfair or deceptive.

2. The trial court erred when it granted summary judgment dismissing Plaintiff's warranty claims because the engine was excluded from the warranty and that the advertisements did not create a warranty.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether there was a material issue of fact preventing dismissal whether the advertisements of Regal created a material issue of fact that they are unfair or deceptive as it pertains to the CPA.

2. Whether there was a material issue of fact preventing dismissal whether appellant Babb waived his warranties when he did not sign a warranty waiver and was not provided with Regal's warranty when he purchased the boat.

3. Whether there was a material issue of fact preventing dismissal whether respondent Regal created an express warranty guaranteeing the quality and service of its products when it advertised the same on its website.

STATEMENT OF THE CASE

A. Background

Appellant Chuck Babb filed a complaint alleging breach of contract, violation of the consumer protection act, breach of warranty, breach of good faith and fair dealing, and rescission CP 1-6. Appellant Babb purchased a Regal Marine boat in July 2007. CP103-274. After experiencing numerous problems with the boat from day one, Appellant Babb filed the action against Regal Marine Industries ("Regal"), the boat's manufacturer. CP103-274.

Respondent Regal moved for summary judgment dismissal of all of Appellant Babb's claims. CP 31-102. The court granted partial summary judgment dismissing the breach of contract claims, good faith and fair dealing claims, rescission, and consumer protection act. CP 304-305. The court continued the hearing to allow Appellant Babb to provide further evidence on the breach of warranty claims. CP 304-305. After Babb provided an expert report and further argument, the trial court dismissed the warranty claims. CP 306-350, CP 396-398. The court further denied Appellant Babb's motion for reconsideration on the dismissal of the warranty claims. CP 396-398.

B. Facts

In the spring and summer of 2007, Mr. Chuck Babb was interested in purchasing a new boat for him and his family including grandkids to enjoy. CP 103-274. Appellant Babb conducted extensive research to find a boat that would fit his needs. CP 103-274. Appellant Babb regularly relies on J.D. Power and Associates for product reviews and recommendations prior to making a purchase. CP 103-274. Finding that Regal has high ratings with JD Power, Appellant Babb visited Regal Marine Industries' ("Regal") website for further information. CP 103-274. Appellant Babb was extremely impressed with what was advertised on the website. CP 103-274. Among the selling points on the website was Regal's commitment to excellence telling its customers that they strive to provide exceptional customer service, Regal is a family business that stands by its products, and the owners have strong Christian values. CP 103-274. He also was sold by the advertisement that they have business integrity and the phrase "be honest and do what's right," which accompanies the company's mission "*With God's help and a Steadfast Commitment to Integrity, We will Develop a Team of Exceptional People and Relationships to Provide Exceptional Customer Satisfaction.*" CP 103-274.

With the confidence that he was buying a boat from a reputable company, in July 2007, Appellant Babb went to the Regal dealership that was closest to his home in Lake Stevens, Washington. CP 103-274. That dealership was Powerboats NW ("Powerboats") in Fife, Washington, approximately two hours away. CP 103-274. Appellant Babb went to this dealership solely because it was a Regal dealership. CP 103-274. Appellant Babb inspected a few of the boats, but was then informed by a Powerboats' salesman that a boat that would best fit Appellant Babb's needs was at a Powerboats location in Vancouver, Washington. CP 103-274. Based on his expectation of quality in the Regal products, Appellant Babb provided Powerboats with a $1,000 deposit towards the purchase price of the Regal boat and eventually paid the remaining balance. CP 103-274.

After some delay in getting the boat, it was finally delivered to Appellant Babb's home in Lake Stevens, Washington in August 2007. CP 103-274. The boat did not come with any warranty information, owner's manuals or other documents about the boat. CP 103-274. Appellant Babb has never received warranty information that specifically identifies his boat as the product that is warranted. CP 103-274. Soon after taking possession, Appellant Babb tested the boat in Lake Stevens. CP 103-274. He

immediately noticed that the boat ran rough. CP 103-274. Appellant Babb's son, Jason Babb, was on the maiden voyage and noticed the same performance issues. CP 103-274. Subsequent outings had the same result so Appellant Babb contacted Powerboats. CP 103-274. Powerboats gave Appellant Babb the run-around, first telling him that they would inspect the boat once it hit 25 hours and secondly that the manager would call him. CP 103-274. However, no one ever called Appellant Babb despite repeated calls. CP 103-274. Getting nowhere with the dealership, Appellant Babb contacted Regal. CP 103-274. Regal representative Chuck Rainey initially assisted Appellant Babb. CP 103-274.

In October 2007, Appellant Babb spoke with Mr. Chuck Rainey about not having the title, warranty information, owner's manual and the condition of the boat. CP 103-274. Mr. Rainey told Appellant Babb that he'd get the documentation and gave him some tips on how to remedy the boat performance issues. CP 103-274. Given the late time of the boating season, Appellant Babb did not water test the boat again in 2007. CP 103-274. Instead, Appellant Babb put the boat in a temperature controlled storage facility. Appellant Babb received the MSO soon after the conversation with Mr. Rainey, but never received warranty information. CP 103-274.

When spring came in 2008, Appellant Babb's son-in-law, Shane Hagen, asked to take the boat out. CP 103-274. Mr. Hagen took the boat out, but found that it repeatedly stalled and had to be towed back into shore. CP 103-274. Since the boat still had problems, in July of 2008, Mr. Rainey told Appellant Babb on a phone call to take the boat to CSR Marine and to tell them that Chuck Rainey "ok'ed it." CP 103-274. Appellant Babb took the boat to CSR expecting to get the boat repaired. CP 103-274. The boat sat at CSR for a few months when CSR called Appellant Babb informing him that the boat hadn't been repaired and that he owed thousands of dollars in storage fees. CP 103-274. Appellant Babb then contacted Regal again, but this time was directed to talk with Mark Skryzpek. CP 103-274. Mr. Skryzpek informed Appellant Babb that he had one chance to submit everything to him to prove his claim. CP 103-274. He further told Appellant Babb that if he admitted that he did not winterize the boat properly that he could get a reduction in the repairs. CP 103-274. Appellant Babb refused to admit any wrongdoing. CP 103-274. Regal further refused to perform any of the warranty work that he had requested or to even determine what is wrong with the boat so Appellant Babb instituted this action. CP 103-274.

ARGUMENT

On appeal of summary judgment, the standard of review is de novo, and the appellate court performs the same inquiry as the trial court. Nivens v. 7-11 Hoagy's Corner, 133 Wash.2d 192, 943 P.2d 286 (1997). When ruling on a summary judgment motion, the court is to view all facts and reasonable inferences therefrom most favorably toward the nonmoving party. Weyerhaeuser Co. v. Aetna Cas. & Sur. Co., 123 Wash.2d 891, 874 P.2d 142 (1994). A court may grant summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Lybbert v. Grant County, State of Wash., 141 Wash. 2d 29, 1 P.3d 1124, (2000).

A. CONSUMER PROTECTION ACT

Regal violated the Washington CPA by failing to provide Appellant Babb with the service it claims is paramount to its success.

The trial court erred in ruling that there was no genuine issue of material fact whether the advertisements on Regal's website regarding its satisfaction guarantees was unfair or deceptive. The trial court orally ruled that "the reliance on statements on Regal marine's website such as we have Christian values, we have

exceptional service and – I don't know how those, if someone is dissatisfied with the service, can be found, on this record anyway, to be an unfair or deceptive act." RP 23. The evidence before the court demonstrated that there were sufficient advertisements made by Regal to require a jury to determine whether the advertisements were unfair or deceptive.

The Washington Consumer Protection Act has five elements. Those are that the defendant engaged in an (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; (5) causation. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wash. 2d 778, 719 P.2d 531, (1986). A plaintiff need not show that the act in question was *intended* to deceive, but that the alleged act had the *capacity* to deceive a substantial portion of the public. Id. at 785. Factors indicating public interest in this context include: (1) Were the alleged acts committed in the course of defendant's business? (2) Did defendant advertise to the public in general? (3) Did defendant actively solicit this particular plaintiff, indicating potential solicitation of others? (4) Did plaintiff and defendant occupy unequal bargaining positions? As with the factors applied to essentially consumer transactions, not one of these factors is dispositive, nor is it necessary that all be present.

The factors in both the "consumer" and "private dispute" contexts represent indicia of an effect on public interest from which a trier of fact could reasonably find public interest impact. Id. 790-91.

The statements made by Regal on its website have the capacity to deceive the public and did deceive Appellant Babb. Appellant Babb relied on the statements made by Regal that they stand behind their product, strive for "exceptional" customer service, and pride themselves on being family owned. CP 103-274. However, they do not stand behind their product. Appellant Babb has put approximately five hours of use on the boat with problems since the very beginning. Regal has done nothing to assist Appellant Babb in repairing his boat and making him feel like part of the Regal family. Regal cannot dispute that its advertisements have the capacity to deceive the public when it spends significant time on its website explaining its great service. It cannot dispute that the transaction of the sale of the boat did not occur in trade or commerce because this action involves the sale of a good to a consumer. Regal cannot dispute that the public is not the intended target of its website. There is no dispute that Appellant Babb has been damaged because he has not been provided a new, properly operating boat despite the representations of Regal.

Appellant Babb is not the only person that Regal has similarly deceived. Steve Risner, an Ohio resident, filed suit against Regal in March 2011. CP 103-274. Mr. Risner claims in his complaint that Regal did not provide him a new boat as promised and when it was time to repair the boat it continually dragged its feet. CP 103-274. Additionally, Regal never repaired the damaged upholstery, never resolved mechanical issues, did not timely provide the MSO, and has never provided a title. CP 103-274. Despite its promises that Mr. Risner would be "made whole" Regal never provided a new boat in proper working order as Mr. Risner expected. CP 103-274. Mr. Risner has brought claims against Regal for Breach of Warranty, Misrepresentation, and Consumer Sales Practices Act, among others. CP 103-274.

Additionally, Gary and Tammy Munn filed a lawsuit against Regal making claims of Breach of Warranties, Magnuson Moss Warranty Act, Fraud, Consumer Protection under Unfair and Deceptive Trade Practices Act and Revocation. CP 103-274. Those plaintiffs allege that Regal failed to provide a new boat and that the boat they received was wrought with defects and that Regal refused to honor the warranties. CP 103-274. It is clear that Regal has a history of misleading customers, providing defective boats, and then refusing to warranty the boats.

In our case, Appellant Babb testified that he traveled to a Regal dealer to purchase a Regal product after reviewing its website. CP 103-274. Appellant Babb relied on the representations made by Regal as have other customers. CP 103-274. However, Regal has a history of refusing to live up to the representations that it makes on its website. CP 103-274. A jury should decide whether the representations made by Regal were unfair or deceptive and a violation of the Consumer Protection Act.

B. WARRANTIES

The court erred in two respects dismissing the warranty claims. *First*, the court ruled that "it was clear there was an engine problem that was excluded from the warranty by Regal..." RP 11. *Second,* the court further ruled in dismissing the warranty claims ruling that "I don't think saying that customer satisfaction is in their DNA can be anything more than mere puffery. I don't know how that could ever rise to the level of a warranty." RP 12.

Appellant Babb never waived his warranties with Regal.

Regal claims that Appellant Babb waived his "Implied Warranty Negotiation." CP 31-102. However, a close review of the document shows that Appellant Babb did not sign on the warranty waiver line. Additionally, Appellant Babb cannot be said to have

waived his right to claims under the CPA. "'Waiver' is an intentional relinquishment of a known right, but the existence of an intent to waive that right must clearly appear in order to show a waiver." Keyes v. Bollinger, 31 Wash. App. 286, 640 P.2d 1077 (1982) *citing* State ex rel. Madden v. Public Util. Dist. 1, 83 Wash.2d 219, 517 P.2d 585 (1973). Although waiver may be established by proof of an express agreement or implied from the circumstances, the party who asserts the existence of a waiver has the burden of proving it. Rhodes v. Gould, 19 Wash.App. 437, 576 P.2d 914 (1978). If the right claimed to have been knowingly waived requires an appraisal of the legal significance of particular conduct or documents, the lack of counsel at the time of an alleged waiver is a factor to be considered in determining if he had knowledge of the right he allegedly waived. Keyes v. Bollinger, 31 Wash. App. 286, 640 P.2d 1077, (1982) *citing* Ross v. Harding, 64 Wash.2d 231, 391 P.2d 526 (1964).

Furthermore, disclaimers of warranty are not favored in the law. Miller v. Badgley, 51 Wash. App. 285, 753 P.2d 530, (1988).

In Miller, a contract for a sailboat provided that Badgley accepted the boat "in its present condition." Id. at 288. The sale was also subject to a marine survey to be performed at Badgley's option. Id. The survey was performed, the boat was pronounced

seaworthy, and Badgley took possession. Id. Within several months, Badgley and her son began to race the boat regularly. Id. Because of a minor but persistent leak, Badgley hired Daniel Mahler, a licensed naval architect and engineer, to analyze the problem. Id. Mahler concluded that the hull-to-keel connection was structurally weak, a deficiency that in his opinion caused excessive flexing and permitted the water to work its way through the hull. Id. The trial court found that the boat's hull-to-keel connection was defectively designed and inadequate for its intended uses. Id. at 285. In so ruling the court found that even if the court assumed that the term "in its present condition" or the survey constituted a disclaimer, a disclaimer or waiver of warranty is ineffective unless "(1) it is explicitly negotiated between the buyer and the seller, and (2) it sets forth with particularity the qualities and characteristics that are not being warranted." Id. at 293. There was no evidence of any negotiations between the parties regarding a disclaimer. Id.at 293. Both Miller and Badgley testified that there were no negotiations regarding any structural deficiency in the hull-to-keel connection. Id. at 293-94. Even Badgley's knowledge of the alleged disclaimer would be insufficient to render it effective absent negotiation and agreement. Id.at 293-94. Similarly here, Appellant Babb cannot be said to waive his warranties because he did not sign the waiver of

warranties documentation and since he did not receive a written warranty from Regal at the time of sale stating that he was waiving his warranty claims for among other things, the engine.

Additionally, Regal's warranty document should be completely disregarded since Appellant Babb never received a copy of the warranty when he entered into the contract since a waiver may not be valid even if provided at the time of sale. "[A waiver of quality or capability], even though printed, should not be allowed to arise from the fine print to haunt the buyer....unless he has agreed to be bound by it with the same degree of explicitness that he bound himself to the other vital conditions of the contract of purchase." Travis v. Washington Horse Breeders Association, Inc. 111 Wash.2d 396, 759 P.2d 418 (1988). In Travis, the court disallowed the exclusion of express warranties despite the language to the contrary in the sales catalog. Id. at 404-05. The court cited to White & Summers, Uniform Commercial Code 430 (2d ed. 1980): that "if the fact finder determines that a sellers' statements created an express warranty, words purportedly disclaiming that warranty will have no effect, for the disclaiming language is inherently inconsistent. Thus a seller who explicitly 'warrants' or 'guarantees' that a car is without defects may not set up a disclaimer of express warranties when sued for the cost of repairing the clutch." Id. at 405. In Travis, the

seller of a horse had advertised it as "a fine athlete" and "in very good condition" despite the horse having medical problems. Id. at 399

Appellant Babb did not waive any warranties with Regal because he did not sign a form to that effect, nor did he ever receive documentation of the warranty disclaimer. Instead, Regal relies on a general form warranty that does not identify Appellant Babb's boat as its basis for disclaiming all liability. The jury should decide whether Regal should be excused of its warranty obligations despite Appellant Babb's lack of waiver.

EXPRESS WARRANTIES:

Regal provided express warranties to Appellant Babb guaranteeing his satisfaction.

Regal's advertising has created an express warranty to repair the boat. Express warranties are "(1) any affirmation of fact or promise, (2) any description or (3) any sample or model by a seller relating to or describing the goods when such representation forms the basis of the bargain. RCW 62A.2-313.

Contractual privity between buyer and seller traditionally has been required before a plaintiff can maintain an action under the UCC. Baughn v. Honda Motor co. Ltd, 107 Wash 2d 127, 727 P.2d 655 (1986). "The privity requirement is relaxed, however, when a

manufacturer makes express representations in advertising or otherwise to a plaintiff." Id. at 151-52. Although the plaintiff is not required to show reliance on the manufacturer's statements, he or she must at least be aware of such representations to recover for their breach. Id.

In Urban Development, Inc., the Plaintiff was a general contractor that had been hired to construct Condominiums. Urban Development, Inc. V. Evergreen Bldg. Products, LLC 114 Wash.App. 639, 59 P.3d 112 (2002). The Plaintiff was not the purchaser of siding for the condominiums; a supplier was. Id. at 646. After the siding began to crack and leak the general contractor brought an action against among other parties the manufacturer. Id.at 643. The plaintiff had not dealt directly with the manufacturer but had reviewed the defendant's brochures. Id. at 649. The court reasoned that the brochure stated that the siding product was durable and resistant to water penetration, and the very nature of the product leads to the conclusion that general contractors are parties that defendant could expect to act on its representations. Id. at 649. Additionally, the plaintiff declared that he relied on the advertising when purchasing the siding. Id. The court ruled that genuine issues of material fact existed regarding the express warranty claim against the defendant regardless of the lack of direct

interaction between the plaintiff and the manufacturer. Id. The court also refused to allow dismissal of the implied warranty claim because of the relationship between the claims. Id.

In Touchet Valley Grain Growers, Inc. V Opp Seibold 119 Wash.2d 334, the plaintiff brought suit against the manufacturer of a grain storage building. Id at 348. The court ruled that it was improper to dismiss the warranty claims. Id. at 350. In so ruling, the court found that the defendant failed to deliver as promised pointing to its brochure that stated that fabrication "is carefully checked by our quality control department" and that the designs will "meet the strictest building codes." Id. at 348. The court excused the lack of privity in part because the defendant made the representations to the ultimate customer, not its dealers. Id.

In another case, advertising was held to create express warranties. The description of horses as "truly outstanding" and "bound to run" were deemed to be express warranties to prospective buyers. Travis v. Washington Horse breeders Association, Inc., 111 Wash.2d 396, 759 P.2d 418 (1988). In that case, Travis learned through advertisements that the horse the defendant was listing at auction and bought by Travis was considered to be "a fine athlete" and "in very good condition." Id. at 399. After the sale of the horse,

Travis learned that the horse had a loud heart murmur. Id. The jury returned a verdict for Travis on warranty claims and the Consumer Protection Act. Id. On appeal, the defendant tried to argue that the statements made to Travis were not express warranties. Id. at 404. The appellate court disagreed and upheld the jury verdict because there was substantial evidence that the horse did not meet the express warranties made by the agent or in the advertisements. Id.

Additionally, Regal has taken great steps to protect its reputation for service including bringing a lawsuit based on trademark infringement demonstrating that Regal uses its claims of great customer satisfaction as a basis for selling its products. In that August 2010 lawsuit, Regal Marine Industries sued Regal Marine, LLC. CP 103-274. This complaint was verified by the President of Regal Marine Industries, Duane Kuck. CP 103-274. In its complaint, Regal claims that it adopted the Regal name because "it reflects an essence of quality and royalty that imbues [Regal's] business." CP 103-274. It claims to use the name in connection with the "design, manufacture, repair, distribution, sale, and promotion of boats." CP 103-274. Regal claims that it needs trademark protection from the court because it "has developed a strong reputation in the marine industry: it has received unprecedented recognition from J.D. Power and Associates for

customer satisfaction; it has received numerous awards from the National Marine Manufacturers Association; it has obtained the highest level of certification for quality control standards; and it has placed on the Top 100 in Quality Leadership by Quality Magazine." CP 103-274. Regal further claims that it has become a "well-known symbol of the first-class reputation of the products and services" offered by it. CP 103-274. Demonstrating its direct relationship with consumers Regal claims that like the party allegedly infringing its trademark Regal sells and repairs boats, advertises their products and services over the internet, and sells to customers nationwide. Regal can't now claim here that it is not connected with the public and does not attempt to influence the public's buying decisions.

Regal created express warranties that Appellant Babb relied on when making his decision to purchase the Regal boat. If Regal had not made the promises that it had, Appellant Babb probably would not have purchased the boat. Additionally, Captain Stephen Carr inspected the boat and in his expert report identified an express warranty that only one call is required to affect repairs to newly delivered boats. CP 306-350. Among the deficiencies constituting breach of express warranties he noted were: 1) Instructing Appellant Babb to contact Volvo. Appellant Babb bought a Regal boat, making it their responsibility; 2) Numerous structural deficiencies

outlined in detail in his report; 3) The boat is a "lemon." CP 306-350. The jury should decide whether Regal's advertisements created an express warranty and whether it breached that express warranty.

IMPLIED WARRANTIES:

Regal provided Appellant Babb with implied warranties in its advertising to Appellant Babb and Appellant Babb never signed a waiver of implied warranties.

By failing to provide a warranty to Appellant Babb that directly identifies his boat and the warranty obligations and limitations, it is required to provide all implied warranties provided by law. Implied warranty embodies the concept "that goods be reasonably fit for their usual, intended purpose", *i.e.,* "reasonably safe when put to their ordinary use and reasonably capable of performing their ordinary functions. Fed. Signal Corp. v. Safety Factors, Inc., 125 Wash. 2d 413, 886 P.2d 172, (1994).

In Baxter, the plaintiff was injured by a faulty windshield on a Ford vehicle. Baxter v. Ford Motor Co., 168 Wash. 456, 12 P.2d 409 (1932). The Plaintiff had bought the vehicle from a dealership and had no direct contact with Ford. Id. However, Ford Motor Company had advertised that its vehicle had nonshatterable glass so made that it will not fly or shatter under the hardest impact. Id. at 461. The court in addressing qualities of a product that cannot be

readily discovered ruled against Ford. Id. at 464-65. It reasoned that it would be unjust to recognize a rule that would permit manufacturers of goods to create a demand for their products by representing that they possess qualities which they, in fact do not possess, and then because there is no privity of contract existing between the consumer and the manufacturer deny the consumer the right to recover when such absence is not readily noticeable. Id.at 462-63.

Other courts have permitted implied warranty claims when no privity was present. In Touchet Valley Grain Growers, Inc., the manufacturer had direct contact with the plaintiff and was aware of the particular design of the grain storage facility. Opp &Seibold 119 Wash.2d 334, 831 P.2d 724 (1992). The court held that the plaintiff was the intended beneficiary of the storage facility despite the party in privity being a contractor. The court permitted the implied warranty claims of merchantability and fit for a particular purpose to be pursued. Id. at 338; 347.

Appellant Babb has never received a warranty packet that specifically identifies his boat and the coverage that he is entitled to. Regal references "Exhibit 3 Implied Warranty Statement" for the proposition that Appellant Babb negotiated away any implied

warranties. CP 31-102. This contention is wrong on multiple basis. First, Exhibit 3 contains no document signed by Appellant Babb. CP 31-102. Second, if Regal intended to identify Exhibit 2 instead of 3, the form on Exhibit 2 under Implied Warranty Statement is not signed by Appellant Babb and is for the trailer not the boat. CP 31-102.

Additionally important is that the form provided by Regal to identify its warranty, CP 31-102- Exhibit 9, is apparently a warranty generally used for the year that Appellant Babb purchased his boat. However, Exhibit 9 is blank in the "registration information" section demonstrating that there is no evidence of a limitation of warranty that was ever provided to Appellant Babb that is specific to his boat.

Lastly, Appellant Babb had Captain Carr inspect his boat. CP 306-350. Among the implied warranties identified by Captain Carr include: 1) Carry passengers through the water; 2) Be turned over to purchaser in pristine condition, new condition; 3) Have all components working or be quickly fixed by the local Regal Dealer as a single point of contact. CP 306-350. Among the deficiencies constituting breach of the implied warranties include: 1) The engine broke almost immediately, rendering the vehicle unable to perform its most essential function; 2) The hull is designed in a manner that

can roll easily. CP 306-350. Appellant Babb was given no warning about this defect; 3) Major streaking in the vinyl was present and the wakeboard tower was broken upon delivery. CP 306-350.

Since Appellant Babb relied on the advertisements of Regal, never signed a waiver of implied warranties form, and did not receive warranty documentation at the time of the sale, a jury should decide whether Appellant Babb should be held to those waivers or instead be given the implied warranties requiring Regal to provide a seaworthy boat in proper working condition that is expected of a new boat purchaser.

CONCLUSION

Appellant Babb respectfully requests that the court reverse the decision of the trial court.

Respectfully submitted this 4th day of March, 2013.

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By _____
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Declaration of Service

I, Justin Elsner, certify under the penalty of perjury of the laws of the state of Washington that I served this document via legal messenger on the following parties on March 4, 2013.

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Signed at Shoreline, Washington this 4th day of March, 2013.

Justin Elsner