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MY NEW CAR IS DEFECTIVE

You purchase a new car from a professional seller. A short time later, you notice a problem when driving your new car. Despite the garage owner's attempts to repair the defective part, the problem is never really fixed. When your warranty expires, do you have the obligation to assume the cost of repairing the defect in question?

THE FACTS

On May 28, 1998, a woman purchased a new motor vehicle from a professional seller. The vehicle was sold with the basic warranty of three years or 60,000 km. A short time after the purchase, she noticed vibrations in the stick shift. She also had difficulty shifting into first gear. She then contacted her dealer to inform it about the problem. Between October 27, 1998 and September 2007, her dealer, as well as another dealer, carried out many road tests and made many attempts to repair the problem, but the problem persisted. On August 11, 2001, the transmission broke down completely. The purchaser therefore asked that it be repaired. The dealer told her that the basic warranty had expired and that she would either have to pay for the repair or purchase an extended warranty at a cost of \$750. After numerous unsuccessful communications with the two dealers that had worked on repairing the transmission as well as with Ford Canada, the purchaser chose to buy the \$750 extended warranty and have the vehicle repaired by the dealer from whom she had purchased the vehicle. Her vehicle was repaired and she was billed an amount of \$1,101.82, including the cost of the extended warranty. She paid the invoice and instituted proceedings for reimbursement of the amount paid. She also asked the Court to award her \$1,890 for the trouble and inconvenience she had suffered. The seller argued that it was not required to pay her this amount, because the basic

of the repairs, even if the basic warranty had expired?

THE JUDGMENT

The judge allowed the claim in part. He ordered the manufacturer to pay the purchaser \$1,101.83. Furthermore, he ordered the manufacturer and the dealer to pay her \$1,700 in damages and exemplary damages.

THE REASONS

Based on the evidence presented at trial, the judge concluded that there was a strong association between the problems mentioned to the dealer between 1998 and 2000 and the breakdown of the transmission in 2001. This was a design or manufacturing defect that had affected the normal use of the vehicle from the moment it had been purchased. The problem had appeared and been disclosed in the weeks following the purchase. In the circumstances, there was a presumption that the manufacturer had been aware of the defect. It is irrelevant that the transmission stopped working after the basic warranty had expired. The Consumer Protection Act offers consumers a safety net against unusual defects affecting the durability of an item. Goods forming the object of a contract must be durable in normal use for a reasonable length time, having regard to their price, the terms of the contract and the conditions of their use. Therefore, given that the purchaser had disclosed the transmission problem and the seller had noted this problem well before the expiry of the warranty, the purchaser was entitled to be reimbursed for the repairs.

References

Desautels v. Papin Ford Ltée, Court of Québec - Civil Division (C.Q.) Joliette 705-32-005693-020, 2002/11/07, Judge: Richard Landry (REJB 2002-37504; available on the Internet at the following address: www.jugements.qc.ca)
Consumer Protection Act, (R.S.Q., c. P-40.1), ss. 37, 38, 53, 54, and 272.

The judgement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult an attorney.

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THE ISSUE IN DISPUTE

Did the manufacturer of the vehicle and the dealer have the obligation to assume the cost

*The information
set out in this
document is not a
legal interpretation.