

04-940-CD
RICHARD D. SELL, et al. vs. CENTRAL VOLKSWAGEN, INC.

Richard Sell et al vs Central Volkswagen
2004-940-CD

2

February 13, 2006

Superior Court of Pennsylvania
Office of the Prothonotary
600 Grant Building
Pittsburgh, PA 15219

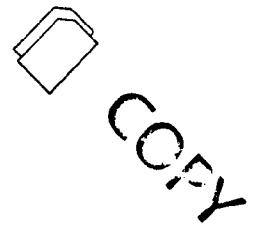
Re: Richard D. Sell and Linda H. Sell
Vs.
Central Volkswagen, Inc.
No. 04-940-CD
Superior Court No. 559 WDA 2005

Dear Prothonotary:

Enclosed you will find the above referenced complete record appealed to your office. Please also find enclosed three transcripts.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts



COPY

Paul E. Cherry, Judge
Court of Common Pleas
230 E. Market Street
Clearfield, PA 16830

Richard D. Sell
Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

Bryan K. Shreckengost
38th Floor, One Oxford Center
Pittsburgh, PA 15219

Richard D. Sell and Linda H. Sell
Vs.
Central Volkswagen, Inc.

Court No. 04-940-CD; Superior Court No. 559 WDA 2005

Dear Counsel:

Please be advised that the above referenced record was forwarded to the Superior Court of Pennsylvania on February 13, 2006.

Sincerely,

William A. Shaw
Prothonotary/Clerk of Courts

Civil Other

Date		Judge
06/18/2004	Filing: Civil Complaint Paid by: Sell, Richard D. (plaintiff) Receipt number: 1881239 Dated: 06/18/2004 Amount: \$85.00 (Check)2 CC to Plff.	No Judge
07/12/2004	Preliminary Objections to Plaintiffs' Complaint, filed by s/Bryan K. Shreckengost, Esq. No CC	No Judge
	Praecipe to Place Case on Argument List, filed by s/Bryan K. Shreckengost, Esq. No CC	No Judge
07/13/2004	Sheriff Return, NOW, June 29, 2004, Complaint, served on Central Volkswgen, Inc., defendant at Employment, Dave Rosenberg. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge
08/19/2004	ORDER, AND NOW, this 18th day of August, 2004, upon consideration of Defendant's Preliminary Objections, it is ORDER of this Court, that argument be scheduled for 23rd day of August, 2004, at 2:00 p.m. By the Court, Paul E. Cherry, 2 cc & Memo Re: Service (see attached) & to Atty Shrekengost.	Paul E. Cherry
08/25/2004	Affidavit of Service, Order of Court, served on Richard D. Sell and Linda H. Sell (RR 1 Box 212 B-1, Reynoldsville, PA 15851) Filed by s/Bryan K. Shreckengost, Esq., No cc	Paul E. Cherry
09/27/2004	Order, NOW, this 23rd day of September, 2004, this being the date set for argument on Preliminary Objections to plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., Plaintiffs, Richard D. and Linda H. Sell, having failed to appear despite receiving due and proper notice, it is the ORDER of this Court that the Preliminary Objections be and are hereby sustained. Plaintiffs' Complaint, in its entirety, is hereby dismissed, with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC Plffs, 2 CC Atty Shreckengost	Paul E. Cherry
09/30/2004	Petition for Reconsideration and Motion to Grant Stay, filed by s/Richard D. Sell Two CC Plaintiff	Paul E. Cherry
10/04/2004	Affidavit Of Service, Order of Court served upon Plaintiffs via 1st class U.S. mail, filed by s/ Bryan K. Shreckengost, Esq. No CC	Paul E. Cherry
10/08/2004	Order, 2 cert. with Memo to Plaintiff AND NOW, this 6th day of October, 2004, ORDER that argument on said Petition has been scheduled for November 5th at 10:30 AM.	Paul E. Cherry
10/15/2004	Certificate of Service, filed R. Sell 1 Cert. to Atty. Served copy of foregoing Order on Atty. Shreckengost.	Paul E. Cherry
11/10/2004	Order, NOW, this 5th day of November, 2004, following argument on Plaintiff's Petition for Reconsideration and upon consideration thereof, it is the ORDER of this Court that the said petition be and is hereby granted. BY THE COURT, /s/ Paul E. Cherry, Judge. 1 CC to Plaintiff, 2CC to Atty. Shreckengost	Paul E. Cherry
	Order, NOW, this 5th day of November, 2004, following argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., it is the ORDER of this Court that Plaintiff shall file brief in support of his opposition to Preliminary Objections within no more than ten days from this date. Defendant, if he so chooses, shall have ten days thereafter to file a reply brief. BY THE COURT: /s/ Paul E. Cherry, Judge. 1 CC Plffs., 1 CC Atty Shreckengost.	Paul E. Cherry
11/15/2004	Plaintiffs' Motion for Leave to File an Amended Complaint, filed by Plaintiff 1 cert. to Plaintiff.	Paul E. Cherry
	Affidavit of Service filed. Brief in Opposition to Preliminary Objections of Defendant, the 15th day of Nov. 2004 upon Bryan Shreckengost, Esquire. Filed by s/ Richard D. Sell. No CC	Paul E. Cherry

Civil Other

Date		Judge
11/16/2004	Order, AND NOW, this 16th day of Nov., 2004, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that hearing be held with regard to said Motion on the 9th day of December, 2004, beginning at 10:30 a.m. in Courtroom 2 of the Clearfield Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 6 CC & Memo Re: Service to Plff.	Paul E. Cherry
11/24/2004	Affidavit of Service, copy of the Nov. 16th Order of Court, Served on Bryan K. Shreckengost on Nov. 23, 2004. Filed by s/ Richard D. Sell, Plaintiff. 1CC Plff.	Paul E. Cherry
12/03/2004	Order, AND NOW, this 2nd day of Dec., 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby Sustained. Plaintiff's Complaint is hereby Dismissed in its entirety with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC to Plff, 2 CC to Atty. Shreckengost	Paul E. Cherry
12/10/2004	Affidavit of Service filed on behalf of defendant, copy of December 2, 2004 Order of Court served on Plaintiffs via mail on Dec. 7, 2004. Filed by s/ Bryan K. Shreckengost, Esq. No CC	Paul E. Cherry
12/20/2004	Affidavit of Service filed on behalf of Plaintiffs, copy of Response to Defendant's Reply Brief, on the 18th day of Dec., 2004 on Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell. no cc	Paul E. Cherry
12/21/2004	Petition for Reconsideration, filed by s/Richard D. Sell One CC Plaintiff	Paul E. Cherry
12/22/2004	Affidavit of Service filed. copy of Response to Defendant's Reply Brief, 18th day of Dec., 2004, to Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell, Plaintiff No CC	Paul E. Cherry
12/23/2004	AND NOW this 22nd day of Dec. 2004, following consideration of Plffs' Petition, hearing will be held Feb. 14, 2004 at 1:30. S/PEC. 1 CC to Plff.	Paul E. Cherry
01/03/2005	Defendant, Central Volkswagen, Inc.'s Opposition to Petition for Reconsideration, filed by s/ Bryan K. Shreckengost, Esq. 1 Cert. to Atty	Paul E. Cherry
01/07/2005	Motion For Leave to File Amended Complaint, With An Order, filed by s/ Richard D. Sell, Plaintiff. No CC	Paul E. Cherry
	Affidavit of Service filed, copy of Dec. 22, 2004 Order of Court, along with a request for issuance of an Order for Amendment of Complaint, with underlying Petition, served on Jan. 14, 2005, upon Defendant's Counsel. Filed by s/ Richard D. Sell, Plaintiff. No CC	Paul E. Cherry
02/17/2005	Order, NOW, this 14th day of Feb., 2005, following argument on plaintiff's petition for reconsideration, the Court having reviewed the file in its entirety, IT IS THE ORDER OF THIS COURT that said petition be and is hereby denied. BY THE COURT: /s/ Paul E. Cherry, Judge. 3CC to Plff	Paul E. Cherry
03/16/2005	Filing: Appeal to High Court, Request for Transcript. Paid by: Sell, Richard Paul E. Cherry D. (plaintiff) Receipt number: 1897623 Dated: 03/16/2005 Amount: \$45.00 (Check) Filed by s/ Richard D. Sell, s/Linda H. Sell. 1CC to Superior Court w/ck for 60.00.	Paul E. Cherry
03/17/2005	Order, filed. 1 cert. to Plaintiff and 1 cert. to Shreckengost. NOW, this 17th day of March, 2005, ORDER that Plaintiff file a concise statement of the matters on Appeal no later than 14 days herefrom.	Paul E. Cherry
03/28/2005	Notice of Appeal, Cert. Copy with check, returned from Superior Court. Appeal to be returned when appellants amend their proof of service and provide original signature from Linda Sell.	Paul E. Cherry
03/31/2005	Proof of Service, filed by s/Richard D. Sell s/Linda H. Sell No CC	Paul E. Cherry

Date: 02/13/2006

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 10:27 AM

ROA Report

Page 3 of 3

Case: 2004-00940-CD

Current Judge: Paul E. Cherry

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

Civil Other

Date		Judge
03/31/2005	Concise Statement of Matters Complained of on Appeal, filed by s/Richard D. Sell One CC Plaintiff	Paul E. Cherry
04/13/2005	Appeal Docket Sheet filed	Paul E. Cherry
04/29/2005	Transcript of Proceedings, Plaintiffs' Petition for Reconsideration, held before Honorable Paul E. Cherry, Judge, November 5, 2004, filed. Transcript of Proceedings, Defendant's Preliminary Objections, held before Honorable Paul E. Cherry, Judge, September 23, 2004, filed.	Paul E. Cherry
02/10/2006	Transcript of Proceedings, February 14, 2005, filed. Opinion, BY THE COURT: /s/Paul E. Cherry, Judge One CC Plaintiffs-124 Four Seasons Drive, Reynoldsville, PA 15851 Two CC Attorney Shreckengost One CC D. Mikesell One CC Law Library	Paul E. Cherry
02/13/2006	Appeal Mailed to Superior Court February 13, 2006.	Paul E. Cherry

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

FEB 13 2006

Attest.

William D. Cherry
Prothonotary/
Clerk of Courts

04-940-CJ

76999 50544 40000 20020 70020

U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT <i>(Domestic Mail Only; No Insurance Coverage Provided)</i>	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 12.00
04-940-CJ 03-182-CJ	
Sent To PA Superior Court-Office of the Prothonotary Street, Apt. No.; or PO Box No. 4000 Grant Building City, State, ZIP+4 Pittsburgh, PA 15219	
PS Form 3800, June 2002 See Reverse for Instructions	

U.S. POSTAL SERVICE
CLEARFIELD PA
FEB 13 2006
Postmark
04-940-CJ
03-182-CJ

FILED
04:00 PM
FEB 13 2006
60
CJ

William A. Shaw
Prothonotary/Clerk of Courts

FILED

FEB 13 2006

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Richard D. Sell and *
Linda H. Sell * No. 04-940-CD
*
v. * REQUEST TO CORRECT RECORD
*
Central Volkswagen, Inc. * PROOF OF SERVICE

By Plaintiffs:

Richard D. Sell and
Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

(814-653-9298)

FILED wcc
M 11:07 AM
MAR 24 2006
SAC William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Richard D. Sell and * No. 04-940- CD
Linda H. Sell *
*
*
*
*
*
v. *
*
Central Volkswagen, Inc. *

REQUEST TO CORRECT RECORD

Plaintiffs hereby request this low Court to **Transmit a Supplemental Record**, pursuant to R.A.P. Rules 1701 and 1926, and hereby request this Court to correct the RECORD, certifying and transmitting a Supplemental Corrected Record to the High Court. In support of this request and by reference Plaintiffs/Appellants hereby submit copy of Quash ORDER of March 1, 2006 and corrected copy of Appellants' **Motion For Relief** with underlying **Petition For Reconsideration**. In addition Appellants request omitted items from Record:

Defendant's Brief In Support Of Preliminary Objections

Plaintiffs' Proposed Amended Complaint

Defendant's Reply Brief and accompanying letter of Defendant's Counsel

Defendant's Opposition to Plaintiffs Petition For Reconsideration

An issuance of Statement of low Court correcting an error in the OPINION of the low Court which corrected would state that, " Plaintiff had requested the use of the blackboard"

Respectfully submitted,

Richard D. Sell
Linda H. Sell

Richard D. Sell
Linda H. Sell

Richard D. Sell and Linda H. Sell : IN THE SUPERIOR COURT
v. : OF PENNSYLVANIA
Central Volkswagen, Inc. : : No. 559 WDA 2005

MOTION FOR RELIEF

Appellants, Richard D. and Linda H. Sell, appeal the ORDER by QUASH dated March 1, 2006 upon appellants' Petition For Reconsideration, *nunc pro tunc* requesting this High Court to thereby advance petitioners' appeal, certifying their appeal with an Order.

PETITION FOR RECONSIDERATION

In As Much as present Order in Quash cites the particular exception of a "...trial court expressly granting[*sic*] reconsideration within the applicable appeal period and eventually denies reconsideration...and this ruling was final, then the appeal from the denial of reconsideration is appropriate.", Petitioners thus rely on the RECORD, and Order of November 5, 2004 expressly granting reconsideration from final Order of Dismissal with prejudice of September 23, 2004. The RECORD evinces the fact that the Denial of Reconsideration of December 3, 2004 is, in fact and in effect, a reversal thus denying Petitioners' earlier ruling of express Reconsideration by Order of November 5, 2004.

Petitioners hereby request this High Court to appropriately apply their effective date of appeal from the original final Order of December 03, 2004, *nunc pro tunc*.

Secondly, Petitioners argue that Petitioners' Reconsideration hearing of February 14 2005, if in fact not a valid date from which appeal could be made, was nevertheless more than a fixed date for a hearing for reconsideration- it was an extension of the earlier Grant of Reconsideration of November 05, 2005 hearing and ORDER. The low court exercised its inherent powers to enlarge the appeal period, holding the same out to both parties, without protest, and with scienter of an expired toll of 30 days. In effect the low court offered an extension of equity, effectively tolling the 30 day bar to which both parties consented, without any protest nor action of the low court to quash upon its own initiative- the question of equity versus the strict adherence to a time bar thusly being established with the reopening of the case in each of three occasions.

Thirdly, the RECORD is self evident of a completely erroneous judgment by Order of December 03, 2004 in that the low court erred as a matter of law and procedure (promulgated as law). By law: the low court erred in rendering judgment based solely on doctrine of *res judicata* and not statute which was available, and for which judicial notice was not apparent, but necessary for correct and fair judgment; by procedure, low court erred in not rendering judgment in favor of a Plaintiff's un-rebutted testimony of their brief of November 15, 2004, following Grant of Reconsideration of November 05, 2004. The RECORD discloses that Petitioner was unopposed, yet the low court fraudulently or otherwise errantly administered invalidated judgment against the wrong party. In *Nagy v.*

Best Home Services, Inc. 829 A.2d 1166 (Pa. Super. 2003), which relies on **McKeown v. Bailey**, 731 A.2d 628, 630 (Pa. Super. 1999), it is clear that fraud or breakdown in the court administration or default of the courts' officers is sufficient here for Petitioners request. Here the trial court abused its discretion; and the applicable nunc pro tunc conforms to **Freeman v. Bonner**, 761 A.2d. 1193, 1194 (Pa. Super. 2000)(citation omitted). “An abuse of discretion is not merely of judgment but is found where the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill will as shown by the evidence of the record” *See id* at 1194-95(citation omitted).

Here, upon the Record and through this petition, Appellants respectfully submit their Request for Relief of this High Court by:

An Order permitting Petitioners' appeal to advance, by this Petition and application

An Order directing low court to certify and transmit a supplemental Record containing :

1. Defendant's Brief In Support Of Preliminary Objections
2. Plaintiff's Proposed Amended Complaint
3. Defendant's Reply Brief and accompanying letter of Defendant's Counsel;
4. Grant Petitioner an Extension for the filing of their Brief upon receipt of the Certified Supplemental Record
5. Permit by application Petitioners' request to proceed In Forma Pauperis

March 22, 2006

by: *Richard D. Sell*
Linda N. Sell

Richard D. Sell and Linda H. Sell : IN THE SUPERIOR COURT
v. : OF PENNSYLVANIA
Central Volkswagen, Inc. : No. 559 WDA 2005

ORDER

Appellants, Richard D. and Linda H. Sell, appeal *pro se* the order dated February 14, 2005 and entered February 17, 2005, denying their petition for reconsideration. Appellants sought reconsideration of the order dated December 2, 2004, and entered December 3, 2004, sustaining Central Volkswagen's preliminary objections to their complaint and dismissing the complaint in its entirety. Generally, the denial of reconsideration is not subject to review on appeal. **See In re: Trust under Deed of Green**, 779 A.2d 1152 (Pa. Super. 2001). Rather, the underlying order which is the subject of the reconsideration order is the immediately appealable order. **See e.g. Geek v. Smeck**, 418 A.2d 711 (Pa. Super. 1980). However, if the trial court expressly grants reconsideration within the applicable appeal period and eventually denies reconsideration or affirms its earlier ruling and this ruling was final, then the appeal from the denial of reconsideration is appropriate. **See Haines v. Jones**, 830 A.2d 579 (Pa. Super. 2003). The mere filing of a motion for reconsideration of a final order does not toll the normal thirty (30) day period for an appeal from such order. **See Cheathem v. Temple University Hospital**, 743 A.2d 518 (Pa. Super. 1999). The only way for a trial court to toll or stay the appeal statute once a motion for reconsideration has been filed is to enter an order expressly granting reconsideration within thirty (30) days of the final order. **See id.** An order merely fixing a hearing date is inadequate to toll the period in which to appeal a final order. **See id.** While a party may file a motion for reconsideration, the simultaneous filing of a notice of appeal is necessary to preserve appellate rights in the event the trial court fails to expressly grant the motion for reconsideration within thirty (30) days or denies the motion for reconsideration. **See id.** Here, the order dismissing Appellants' complaint was entered December 3, 2004. Appellants did not file a notice of appeal within thirty days. Rather, Appellants only filed a petition for reconsideration. The trial court did not issue an order expressly granting reconsideration, but merely issued an order entered December 23, 2004, setting a hearing on the petition for reconsideration. Appellants' notice of appeal was not filed until March 28, 2005. The simultaneous filing of a notice of appeal and petition for reconsideration was necessary in order for Appellants to preserve appellate rights. Accordingly, it is hereby **ORDERED** that the above-captioned appeal is **QUASHED, sua sponte**.

PER CURIAM

Date: *March 1,* 2006

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing: Request ToTransmit Record, Motion For Relief and a copy of ORDER in Quash have been this 22 day of March, 2006, served by first-class U.S. mail, postage prepaid upon:

Bryan Shreckengost, Esquire
Pietragllo, Bosick & Gordon, Attorneys
One Oxford Centre
Pittsburgh, PA 15219

and: David S. Meholick
Court Administrator
Clearfield County Courthouse
Clearfield, PA 16830

By: Richard D. Sell
124 Four Season Drive
Reynoldsville, PA 15851

124 Four Seasons Drive
Reynoldsville, PA 15851
814-653-9298

March 22, 2006

Richard D. Sell
File No: 04-940-CD

David S. Meholick, Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830

Re: Richard D. Sell and Linda H. Sell v. Central Volkswagen, Inc.
Clearfield County No. 04-940-CD

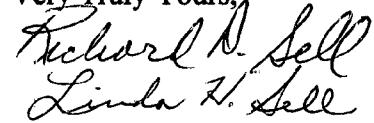
Dear Mr. Meholick:

Enclosed for filing is Plaintiffs' Motion To Transmit Supplemental Record, with Request To Correct The Record, directing that a Supplemental Record be certified and transmitted to the High Court, pursuant to PA R.A.P. Rule 1701, (b)(1), and Rule 1926, Correction or Modification of the Record.

Also enclosed is a copy of Plaintiffs' corrected, Motion For Relief, with underlying Petition For Reconsideration; and, copy of Appellants' ORDER by QUASH, dated March 1, 2006.

Additionally, please find a copy of Certification Of Service, indicating notification to all parties by service this day.

Very Truly Yours,


Richard D. Sell
Linda H. Sell

Richard D. Sell
Linda H. Sell

4:00 P.M.

Appeal Docket Sheet

Docket Number: 559 WDA 2005

Page 1 of 3

April 11, 2005

Superior Court of Pennsylvania



Richard D. Sell and Linda H. Sell, Appellants

v.

Central Volkswagen, Inc.

04-940-CD

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 5, 2005 Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: April 5, 2005

Next Event Type: Docketing Statement Received

Next Event Due Date: April 25, 2005

Next Event Type: Original Record Received

Next Event Due Date: May 16, 2005



Rec'd 3 trans

FILED
APR 13 2005

William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet

Docket Number: 559 WDA 2005

Page 2 of 3

April 11, 2005

Superior Court of Pennsylvania



COUNSEL INFORMATION

Appellant Sell, Richard D.

Pro Se: ProSe Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Sell, Richard D

Bar No.: Law Firm:

Address: 124 Four Seasons Drive
Reynoldsville, PA 15851

Phone No.: (814)653-9298 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellant Sell, Linda H

Pro Se: ProSe Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Sell, Linda H

Bar No.: Law Firm:

Address: 124 Four Seasons Drive
Reynoldsville, PA 15851

Phone No.: (814)653-9298 Fax No.:

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

Appellee Central Volkswagen, Inc.

Pro Se: Appoint Counsel Status:

IFP Status:

Appellee Attorney Information:

Attorney: Shreckengost, Bryan K.

Bar No.: 69098 Law Firm:

Address: One Oxford Centre, 38th Fl.
301 Grant Street
Pittsburgh, PA 15219

Phone No.: (412)263-2000 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

FEE INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
4/5/2005	Notice of Appeal	60.00	60.00	2005SPRWD000402

Appeal Docket Sheet

Docket Number: 559 WDA 2005

Page 3 of 3

April 11, 2005

Superior Court of Pennsylvania



TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of Order Appealed From: February 14, 2005

Date Documents Received: April 5, 2005

Order Type: Order Entered

Judge: Cherry, Paul E.
Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: March 16, 2005

OTN:

Lower Court Docket No.: NO. 04-940-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 5, 2005	Notice of Appeal Filed	Appellant Appellant	Sell, Richard D. Sell, Linda H
April 11, 2005	Docketing Statement Exited (Civil)	Western District Filing Office	

FILED

APR 13 2005

William A. Shaw
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA



Superior Court of Pennsylvania

Western District

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

April 11, 2005

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 559 WDA 2005
Richard D. Sell and Linda H. Sell, Appellants
v.
Central Volkswagen, Inc.

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

MLR

CERTIFICATE AND TRANSMITTAL OF RECORD UNDER PENNSYLVANIA
RULE OF APPELLATE PROCEDURE 1931(C)

To the Prothonotary of the Appellate Court to which the within matter has been appealed:

THE UNDERSIGNED, Clerk (or Prothonotary) of the court of Common Pleas of Clearfield County, the said Court being a court of record, does hereby certify that annexed hereto is a true and correct copy of the whole and entire record, including an opinion of the Court as required by Pa. R.A.P. 1925, the original papers and exhibits, if any, on file, the transcript of the proceeding, if any, and the docket entries in the following matter:

04-940-CD

Richard D. Sell and Linda H. Sell
VS.
Central Volkswagen, Inc.

In compliance with Pa. R.A.P. 1931 (c).

The documents compromising the record have been numbered from **No. 1 to No. 36**, and attached hereto as Exhibit A is a list of the documents correspondingly numbered and identified with reasonable definiteness, including with respect to each document, the number of pages compromising the document.

The date on which the record had been transmitted to the Appellate Court is
February 13, 2006.



Prothonotary/Clerk of Courts

(seal)

Civil Other

Date	Judge
06/18/2004	Filing: Civil Complaint Paid by: Sell, Richard D. (plaintiff) Receipt number: 1881239 Dated: 06/18/2004 Amount: \$85.00 (Check)2 CC to Plff. No Judge
07/12/2004	Preliminary Objections to Plaintiffs' Complaint, filed by s/Bryan K. Shreckengost, Esq. No CC No Judge
	Praecipe to Place Case on Argument List, filed by s/Bryan K. Shreckengost, Esq. No CC No Judge
07/13/2004	Sheriff Return, NOW, June 29, 2004, Complaint, served on Central Volkswgen, Inc., defendant at Employment, Dave Rosenberg. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm No Judge
08/19/2004	ORDER, AND NOW, this 18th day of August, 2004, upon consideration of Defendant's Preliminary Objections, it is ORDER of this Court, that argument be scheduled for 23rd day of August, 2004, at 2:00 p.m. By the Court, Paul E. Cherry, 2 cc & Memo Re: Service (see attached) & to Atty Shrekengost. Paul E. Cherry
08/25/2004	Affidavit of Service, Order of Court, served on Richard D. Sell and Linda H. Sell (RR 1 Box 212 B-1, Reynoldsville, PA 15851) Filed by s/Bryan K. Shreckengost, Esq., No cc Paul E. Cherry
09/27/2004	Order, NOW, this 23rd day of September, 2004, this being the date set for argument on Preliminary Objections to plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., Plaintiffs, Richard D. and Linda H. Sell, having failed to appear despite receiving due and proper notice, it is the ORDER of this Court that the Preliminary Objections be and are hereby sustained. Plaintiffs' Complaint, in its entirety, is hereby dismissed, with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC Plffs, 2 CC Atty Shreckengost Paul E. Cherry
09/30/2004	Petition for Reconsideration and Motion to Grant Stay, filed by s/Richard D. Sell Two CC Plaintiff Paul E. Cherry
10/04/2004	Affidavit Of Service, Order of Court served upon Plaintiffs via 1st class U.S. mail, filed by s/ Bryan K. Shreckengost, Esq. No CC Paul E. Cherry
10/08/2004	Order, 2 cert. with Memo to Plaintiff AND NOW, this 6th day of October, 2004, ORDER that argument on said Petition has been scheduled for November 5th at 10:30 AM. Paul E. Cherry
10/15/2004	Certificate of Service, filed R. Sell 1 Cert. to Atty. Served copy of foregoing Order on Atty. Shreckengost. Paul E. Cherry
11/10/2004	Order, NOW, this 5th day of November, 2004, following argument on Plaintiff's Petition for Reconsideration and upon consideration thereof, it is the ORDER of this Court that the said petition be and is hereby granted. BY THE COURT, /s/ Paul E. Cherry, Judge. 1 CC to Plaintiff, 2CC to Atty. Shreckengost Paul E. Cherry
	Order, NOW, this 5th day of November, 2004, following argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., it is the ORDER of this Court that Plaintiff shall file brief in support of his opposition to Preliminary Objections within no more than ten days from this date. Defendant, if he so chooses, shall have ten days thereafter to file a reply brief. BY THE COURT: /s/ Paul E. Cherry, Judge. 1 CC Plffs., 1 CC Atty Shreckengost. Paul E. Cherry
11/15/2004	Plaintiffs' Motion for Leave to File an Amended Complaint, filed by Plaintiff 1 cert. to Plaintiff. Paul E. Cherry
	Affidavit of Service filed. Brief in Opposition to Preliminary Objections of Defendant, the 15th day of Nov. 2004 upon Bryan Shreckengost, Esquire. Filed by s/ Richard D. Sell. No CC Paul E. Cherry

Civil Other

Date	Judge
11/16/2004	Order, AND NOW, this 16th day of Nov., 2004, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that hearing be held with regard to said Motion on the 9th day of December, 2004, beginning at 10:30 a.m. in Courtroom 2 of the Clearfield Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 6 CC & Memo Re: Service to Plff.
11/24/2004	Affidavit of Service, copy of the Nov. 16th Order of Court, Served on Bryan K. Shreckengost on Nov. 23, 2004. Filed by s/ Richard D. Sell, Plaintiff. 1CC Plff.
12/03/2004	Order, AND NOW, this 2nd day of Dec., 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby Sustained. Plaintiff's Complaint is hereby Dismissed in its entirety with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC to Plff, 2 CC to Atty. Shreckengost
12/10/2004	Affidavit of Service filed on behalf of defendant, copy of December 2, 2004 Order of Court served on Plaintiffs via mail on Dec. 7, 2004. Filed by s/ Bryan K. Shreckengost, Esq. No CC
12/20/2004	Affidavit of Service filed on behalf of Plaintiffs, copy of Response to Defendant's Reply Brief, on the 18th day of Dec., 2004 on Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell. no cc
12/21/2004	Petition for Reconsideration, filed by s/Richard D. Sell One CC Plaintiff
12/22/2004	Affidavit of Service filed. copy of Response to Defendant's Reply Brief, 18th day of Dec., 2004, to Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell, Plaintiff No CC
12/23/2004	AND NOW this 22nd day of Dec. 2004, following consideration of Plffs' Petition, hearing will be held Feb. 14, 2004 at 1:30. S/PEC. 1 CC to Plff.
01/03/2005	Defendant, Central Volkswagen, Inc.'s Opposition to Petition for Reconsideration, filed by s/ Bryan K. Shreckengost, Esq. 1 Cert. to Atty
01/07/2005	Motion For Leave to File Amended Complaint, With An Order, filed by s/ Richard D. Sell, Plaintiff. No CC
	Affidavit of Service filed, copy of Dec. 22, 2004 Order of Court, along with a request for issuance of an Order for Amendment of Complaint, with underlying Petition, served on Jan. 14, 2005, upon Defendant's Counsel. Filed by s/ Richard D. Sell, Plaintiff. No CC
02/17/2005	Order, NOW, this 14th day of Feb., 2005, following argument on plaintiff's petition for reconsideration, the Court having reviewed the file in its entirety, IT IS THE ORDER OF THIS COURT that said petition be and is hereby denied. BY THE COURT: /s/ Paul E. Cherry, Judge. 3CC to Plff
03/16/2005	Filing: Appeal to High Court, Request for Transcript. Paid by: Sell, Richard Paul E. Cherry D. (plaintiff) Receipt number: 1897623 Dated: 03/16/2005 Amount: \$45.00 (Check) Filed by s/ Richard D. Sell, s/Linda H. Sell. 1CC to Superior Court w/ck for 60.00.
03/17/2005	Order, filed. 1 cert. to Plaintiff and 1 cert. to Shreckengost. NOW, this 17th day of March, 2005, ORDER that Plaintiff file a concise statement of the matters on Appeal no later than 14 days herefrom.
03/28/2005	Notice of Appeal, Cert. Copy with check, returned from Superior Court. Appeal to be returned when appellants amend their proof of service and provide original signature from Linda Sell.
03/31/2005	Proof of Service, filed by s/Richard D. Sell s/Linda H. Sell No CC

Date: 02/13/2006

Time: 10:13 AM

Page 3 of 3

Clayfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2004-00940-CD

Current Judge: Paul E. Cherry

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

Civil Other

Date		Judge
03/31/2005	Concise Statement of Matters Complained of on Appeal, filed by s/Richard D. Sell One CC Plaintiff	Paul E. Cherry
04/13/2005	Appeal Docket Sheet filed	Paul E. Cherry
04/29/2005	Transcript of Proceedings, Plaintiffs' Petition for Reconsideration, held before Honorable Paul E. Cherry, Judge, November 5, 2004, filed. Transcript of Proceedings, Defendant's Preliminary Objections, held before Honorable Paul E. Cherry, Judge, September 23, 2004, filed.	Paul E. Cherry
02/10/2006	Transcript of Proceedings, February 14, 2005, filed. Opinion, BY THE COURT: /s/Paul E. Cherry, Judge One CC Plaintiffs-124 Four Seasons Drive, Reynoldsville, PA 15851 Two CC Attorney Shreckengost One CC D. Mikesell One CC Law Library	Paul E. Cherry Paul E. Cherry

I hereby certify this to be a true and attested copy of the original statement filed in this case.

FEB 13 2006

Attest.

William L. Brown
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 04-940-CD

Richard D. Sell and Linda H. Sell
VS.
Central Volkswagen, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	06/18/04	Civil Complaint	08
02	07/12/04	Preliminary Objections to Plaintiffs' Complaint	24
03	07/12/04	Praeclipe to Place Case on Argument List	03
04	07/13/04	Sheriff Return	01
05	08/19/04	Order, Re: argument on Defendant's Preliminary Objections scheduled	02
06	08/25/04	Affidavit of Service, Re: Order upon Plaintiffs	05
07	09/27/04	Order, Re: argument on Preliminary Objections	01
08	09/30/04	Petition for Reconsideration and Motion to Grant Stay	06
09	10/04/04	Affidavit of Service, Order of Court upon Plaintiffs	05
10	10/08/04	Order, Re: argument on Petition scheduled	01
11	10/15/04	Certificate of Service, Order on Attorney Shreckengost	01
12	11/10/04	Order, Re: Plaintiff's Petition for Reconsideration	01
13	11/10/04	Order, Re: Preliminary Objections to Plaintiffs' Complaint	01
14	11/15/04	Plaintiff's Motion for Leave to File an Amended Complaint	23
15	11/15/04	Affidavit of Service, Brief in Opposition to Preliminary Objections of Defendant	02
16	11/16/04	Order, Re: Plaintiff's Motion for Leave to File an Amended Complaint	02
17	11/24/04	Affidavit of Service, Re: Order of Court upon Bryan Shreckengost	25
18	12/03/04	Order, Re: Preliminary Objections to Plaintiffs' Complaint	01
19	12/10/04	Affidavit of Service, Order of Court served upon Plaintiffs	04
20	12/20/04	Affidavit of Service, Response to Defendant's Reply Brief on Bryan Schreckengost	02
21	12/21/04	Petition for Reconsideration with Order filed December 23, 2004 scheduling hearing	08
22	12/22/04	Affidavit of Service, Response to Defendant's Reply Brief, upon Bryan Shreckengost	02
23	01/03/05	Defendant, Central Volkswagen, Inc.'s Opposition to Petition for Reconsideration	07
24	01/07/05	Motion for Leave to File Amended Complaint	05
25	01/07/05	Affidavit of Service	02
26	02/17/05	Order, Re: Petition for Reconsideration	01
27	03/16/05	Notice of Appeal to Superior Court	04
28	03/17/05	Order, Re: Plaintiff to file a concise statement	01
29	03/28/05	Notice of Appeal returned by Superior Court	01
30	03/31/05	Proof of Service	04
31	03/31/05	Concise Statement	05
32	04/13/05	Appeal Docket Sheet	04
33	04/29/05	Transcript of Proceedings, Plaintiffs' Petition for Reconsideration, November 5, 2004	Separate Cover
34	04/29/05	Transcript of Proceedings, Defendant's Preliminary Objections, September 23, 2004	Separate Cover
35	02/10/06	Transcript of Proceedings held February 14, 2005	Separate Cover
36	02/10/06	Opinion	05

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CLEARFIELD

I, **William A. Shaw**, Prothonotary/Clerk of Courts of Common Pleas in and for said County, do hereby certify that the foregoing is a full, true and correct copy of the whole record of the case therein stated, wherein

Richard D. Sell and Linda H. Sell

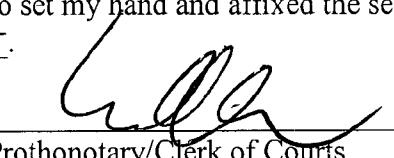
Vs.

Central Volkswagen, Inc.

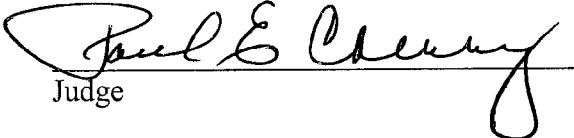
04-940-CD

So full and entire as the same remains of record before the said Court, at **No. 04-940-CD**

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 21st Day of April, 2005.

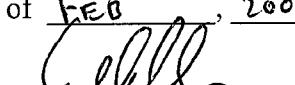

Prothonotary/Clerk of Courts

I, **Paul E. Cherry**, Judge of the Forty-sixth Judicial District, do certify that **William A. Shaw**, by whom the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and affixed the seal of the Court of Common Pleas of said county, was at the time of so doing and now is Prothonotary/Clerk of Courts in and for said County of Clearfield, the Commonwealth of Pennsylvania, duly commissioned and qualified; to all of whose acts as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere, and that the said record, certificate and attestation are in due form of law and made by proper officer.


Judge

I, **William A. Shaw**, Prothonotary/Clerk of Courts of the Court of Common Pleas in and for said county, do certify that the Honorable **Paul E. Cherry**, Judge, by whom the foregoing attestation was made and who has thereunto subscribed his name was at the time of making thereof and still is Judge, in and for said county, duly commissioned and qualified; to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 13th day of FEB, 2006.


Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and : NO. 04-940-CD
LINDA H. SELL :
V. :
CENTRAL VOLKSWAGEN, INC. :

OPINION

This matter comes before the Court upon the filing of a Complaint by Plaintiffs, Richard D. Sell and Linda H. Sell, in which they assert numerous claims arising out of multiple incidents to the repair of a motor vehicle owned by the Plaintiffs. Plaintiffs contend that Defendant, Central Volkswagen, Inc., made excessive repair charges for the repair of the motor vehicle during the period from approximately June, 1998 through October, 2002. Plaintiffs plead six causes of action identified as breach of warranty, breach of contract, conversion, unfair or deceptive acts in violation of the Pennsylvania Consumer Protection Law, negligence and common law fraud. Plaintiffs had previously commenced an action against Defendant before the Honorable Patrick N. Ford, Magisterial District Judge, in District No. 46-3-01. In that action, Plaintiffs asserted claims against Defendant based upon the same facts and circumstances that this Court believes gives rise to the present law suit. In the Magisterial District Judge's proceedings, judgment was entered in favor of the Plaintiffs in the amount of Eight Hundred Ninety Dollars and Thirty Cents (\$890.30). Defendant paid that judgment in full with the Plaintiffs endorsing the check paying the judgment amount.

FILED
01/11/06
FEB 10 2006 ICCPHFS:
William A. Shaw
Prothonotary/Clerk of Courts
124 Four Seasons Drive
Reynardsville, PA
15851
cc: D.M. Kressell
cc: Amy Shreckengost

36

As a result of the present action, Defendant filed Preliminary Objections requesting this Court to dismiss Plaintiffs' claims with prejudice. A hearing was scheduled before this Court and an argument held on the Preliminary Objections to Plaintiffs' Complaint. This Court was satisfied that the Plaintiffs were barred by the Doctrine of res judicata. As a result, the Preliminary Objections were sustained by this Court and Plaintiffs' complaint was dismissed in its entirety with prejudice. Plaintiffs filed a timely appeal. Plaintiffs did file a Concise Statement of Matters Complained of on Appeal. Although most of the matters complained of in their Statement of Matters Complained of on Appeal deal with procedural issues, this Court will attempt to address those matters as well as render an Opinion as to this Court sustaining the Preliminary Objections and this Court's dismissal of Plaintiffs' Complaint.

Plaintiffs first allege that this Court created prejudicial error in denying Plaintiffs due process for a fair and full opportunity to amend their Complaint to supplement the record and oppose the motion. The Motion to Amend Plaintiffs' Complaint was filed subsequent to argument on the Preliminary Objections. In addition, Plaintiffs were afforded the opportunity for argument on the Preliminary Objections. Once the decision was handed down by this Court on December 2, 2004, dismissing Plaintiffs' Complaint, there was no basis to hold a hearing on the Motion to Amend Complaint as the Complaint had been dismissed.

Plaintiffs next contend that this Court ignored the Motion for Leave to File Amended Complaint with an Order until the hearing held upon the Petition for Reconsideration. The Court is not quite clear as to what Plaintiffs are alleging in this matter. However, the Court was satisfied that there was no basis to reconsider its Order of

December 2, 2004 and grant Plaintiffs leave to Amend their Complaint.

Plaintiffs next alleged this Court erred by violating Pa. Rules of Civil Procedure Proscription Against Presumption and thus allowing unproven Preliminary Objections to stand; 2) preventing the natural, invited and countered reply of Plaintiffs to a previous pleading; 3) allowing such reply brief to be valued against Plaintiffs and not enter the same in the file or record in denying Plaintiffs an opportunity to both express his claims and resolve any controversy pertinent to the issues by use of the courtroom blackboard. This Court is unaware how it violated the Pa. Rules of Civil Procedure. Plaintiffs had an opportunity to be fully heard by this Court through their argument made during the hearing on the Preliminary Objections. The Court did, in fact, read all briefs filed by both parties prior to rendering a decision in this matter. Plaintiffs did have adequate opportunity to argue their position against the granting of the Preliminary Objections. Lastly, at no time to this Court's recollection, did Plaintiffs ever request to use the Courtroom blackboard. Nevertheless, this Court does not believe that, even if the use of the blackboard was requested and the same granted, it would have changed this Court's decision:

Plaintiffs next allege that this Court exceeded the scope of judgment and authority and that the resulting dismissal of the Complaint was an invalid application and presumptuous determination of a future event in which the elements remained yet to be proven. This Court does not understand what Plaintiffs are alleging in this matter and the allegation is not substantiated by the record and this Court shall not address the same.

Next, Plaintiffs allege that this Court committed an egregious neglect of the known construction and scope of existing law. This Court relied upon the Doctrine of res

judicata in rendering its decision. The Doctrine of res judicata "holds that an existing final judgment rendered upon the merits without fraud or collusion, by a Court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated, as to the parties and their privies, in all other actions in the same or any other judicial tribunal of concurrent jurisdiction". Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Super. 225, 464 A.2d 1313, 1316 (1983). "The original cause is "barred" by a judgment for the Defendant and "merged" in one for the Plaintiff." Id at 1316. "Res judicata bars not only those issues actually raised but also those issues which could have been litigated in the first action." Id at 1318.

For the doctrine of res judicata to prevail there must be a concurrence of four conditions: 1) identity of the issues sued upon; 2) identity of the causes of action; 3) identity of the parties to the action; and 4) identity of the quality or capacity of the parties suing or being sued". Id at 1317. The Court is satisfied that the above conditions were satisfied in this case. First, the two cases filed by Plaintiffs are based upon the identical facts and circumstances and are based upon the same alleged acts and omissions of Defendant, Central Volkswagen; 2) the parties to both actions are identical; 3) Plaintiffs are asserting, in the present action, the same rights as were asserted in the Magisterial District Judge action; and 4) Plaintiffs' Complaint seeks essentially the same relief as they sought and was obtained by Plaintiffs in the Magisterial District Judge's action.

"Where the doctrine of res judicata is otherwise applicable, its invocation will not be precluded or impaired because the prior judgment was entered in an action before a district justice." A.C. Elfman and Sons, Inc. V. Cline, 355 Pa. Super. 394, 513 A.2d 488, 490 (1986). Upon review of the record by this Court, the Court is satisfied that the same

claims were pursued by Plaintiffs in the proceedings before the Magisterial Judge as are now being asserted by Plaintiffs in this case. This Court is satisfied that under the doctrine of res judicata, Plaintiffs cannot, in the present case, pursue any part of the claims that were or that could have been asserted before the Magisterial Judge.

Plaintiffs are not permitted to split the causes of action that formed the basis of both the Magisterial District Judge action and the present action. "The law does not permit the owner of a single or entire cause of action to divide or split that cause as to make it the subject of several actions." Kessler v. Old Guard Mutual Insurance Company, 570 A.2d 569, 573 (Pa. Super. 1990), appeal dismissed, 517 Pa. 82, 534 A.2d 768 (1987).

This Court is satisfied that Plaintiffs have no viable claims to present in this matter. There exists no case or controversy presently existing over which this Court might exercise jurisdiction.

Lastly, this Court is satisfied that Plaintiffs have no standing to pursue the claims that were the subject of the prior judgment and for which Plaintiffs received a judgment and satisfaction.

For all the foregoing reasons, this Court sustained the Preliminary Objections and dismissed Plaintiffs' Complaint in its entirety with prejudice.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

Appeal Docket Sheet

Docket Number: 559 WDA 2005

Page 1 of 3

April 11, 2005

Superior Court of Pennsylvania



~~COPY~~

04-940-CD

Richard D. Sell and Linda H. Sell, Appellants

v.

Central Volkswagen, Inc.

Initiating Document: Notice of Appeal

Case Status: Active

Case Processing Status: April 5, 2005

Awaiting Original Record

Journal Number:

Case Category: Civil

CaseType: Assumpsit

Consolidated Docket Nos.:

Related Docket Nos.:

SCHEDULED EVENT

Next Event Type: Case Initiation

Next Event Due Date: April 5, 2005

Next Event Type: Docketing Statement Received

Next Event Due Date: April 25, 2005

Next Event Type: Original Record Received

Next Event Due Date: May 16, 2005

FILED
APR 13 2005
1740061

William A. Shaw
Prothonotary/Clerk of Courts

Appeal Docket Sheet**Docket Number: 559 WDA 2005****Page 2 of 3****April 11, 2005****Superior Court of Pennsylvania****COUNSEL INFORMATION****Appellant** Sell, Richard D.

Pro Se: ProSe Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Sell, Richard D

Bar No.: Law Firm:

Address: 124 Four Seasons Drive
Reynoldsville, PA 15851

Phone No.: (814)653-9298 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

Appellant Sell, Linda H

Pro Se: ProSe Appoint Counsel Status:

IFP Status: No

Appellant Attorney Information:

Attorney: Sell, Linda H

Bar No.: Law Firm:

Address: 124 Four Seasons Drive
Reynoldsville, PA 15851

Phone No.: (814)653-9298 Fax No.:

Receive Mail: No

E-Mail Address:

Receive E-Mail: No

Appellee Central Volkswagen, Inc.

Pro Se: Appoint Counsel Status:

IFP Status:

Appellee Attorney Information:

Attorney: Shreckengost, Bryan K.

Bar No.: 69098 Law Firm:

Address: One Oxford Centre, 38th Fl.
301 Grant Street
Pittsburgh, PA 15219

Phone No.: (412)263-2000 Fax No.:

Receive Mail: Yes

E-Mail Address:

Receive E-Mail: No

FEES INFORMATION

Fee Date	Fee Name	Fee Amt	Paid Amount	Receipt Number
4/5/05	Notice of Appeal	60.00	60.00	2005SPRWD000402

Appeal Docket Sheet

Docket Number: 559 WDA 2005

Page 3 of 3

April 11, 2005

Superior Court of Pennsylvania



TRIAL COURT/AGENCY INFORMATION

Court Below: Clearfield County Court of Common Pleas

County: Clearfield

Date of OrderAppealed From: February 14, 2005

Date Documents Received: April 5, 2005

Order Type: Order Entered

Judge: Cherry, Paul E.
Judge

Division: Civil

Judicial District: 46

Date Notice of Appeal Filed: March 16, 2005

OTN:

Lower Court Docket No.: NO. 04-940-CD

ORIGINAL RECORD CONTENTS

Original Record Item	Filed Date	Content/Description
----------------------	------------	---------------------

Date of Remand of Record:

BRIEFS

DOCKET ENTRIES

Filed Date	Docket Entry/Document Name	Party Type	Filed By
April 5, 2005	Notice of Appeal Filed	Appellant	Sell, Richard D.
		Appellant	Sell, Linda H
April 11, 2005	Docketing Statement Exited (Civil)		Western District Filing Office

COMMONWEALTH OF PENNSYLVANIA



Superior Court of Pennsylvania

David A. Szewczak, Esq.
Prothonotary
Eleanor R. Valecko
Deputy Prothonotary

Western District

April 11, 2005

310 Grant Street, Suite 600
Pittsburgh, PA 15219-2297
412-565-7592
www.superior.court.state.pa.us

Mr. William A. Shaw
Prothonotary
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830

Re: 559 WDA 2005
Richard D. Sell and Linda H. Sell, Appellants
v.
Central Volkswagen, Inc.

Dear Mr. Shaw:

Enclosed please find a copy of the docket for the above appeal that was recently filed in the Superior Court. Kindly review the information on this docket and notify this office in writing if you believe any corrections are required.

Appellant's counsel is also being sent a Docketing Statement, pursuant to Pa.R.A.P. 3517, for completion and filing. Please note that Superior Court Dockets are available on the Internet at the Web site address printed at the top of this page. Thank you.

Very truly yours,

Eleanor R. Valecko
Deputy Prothonotary

MLR

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and
LINDA H. SELL

v.

CENTRAL VOLKSWAGEN, INC.

*
*
*
* NO. 04-940-CD

*
* CONCISE STATEMENT
* OF MATTERS COMPLAINED
* OF ON APPEAL

*
* REQUEST FOR A STATEMENT
* OF DECISION

*
* Filed By Plaintiff,
* Richard D. Sell, Pro-Se

Plaintiffs:

Richard D. Sell and
Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

(814) 653-9298

FILED *cc*
03/05/01 Piff
MAR 31 2005
B&W
William A. Shaw
Prothonotary/Clerk of Courts

31

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and *
LINDA H. SELL *
*
V. * NO. 04-940-CD
*
CENTRAL VOLKSWAGEN, INC. * **CONCISE STATEMENT**
* **OF MATTERS COMPLAINED**
* **OF ON APPEAL**
*
* **REQUEST FOR A STATEMENT**
* **OF DECISION**
*
* Filed By Plaintiff,
* Richard D. Sell, Pro-Se

CONCISE STATEMENT OF MATTERS
COMPLAINED OF ON APPEAL

AND NOW, having been notified by an ORDER of March 17, 2005 by this Court, Plaintiffs Richard D. Sell and Linda H. Sell hereby file a concise statement of matters complained of on their Appeal.

Plaintiffs assert the following Concise Statement which represents the Matters Complained Of On Appeal and which are issues of reversible error for the following five reasons, in that:

First, this Court created prejudicial error in denying

Plaintiffs due process for a full and fair opportunity to amend their complaint, to supplement the record and oppose the motion. Further, that Judge Cherry denied Plaintiffs' their right to Hearing (of December 9) with regard to their Amended Complaint with summary dismissal of their entire case with an ORDER of dismissal of December 2, 2004.

Second, Plaintiffs' Motion For Leave To File Amended Complaint With An Order, filed January 7, 2005, was ignored by Judge Cherry, until the Hearing upon Petition For Reconsideration on February 14, 2005, when Judge Cherry referenced Plaintiffs' Motion For Leave To File Amended Complaint, With An Order; but, denied the existence of an attached Order, which indeed, was in the file. This inaction and refusal to consider, and to grant Plaintiffs an Amended Complaint thus prejudiced, and discredited the singularly dispositive instrument, whereby Plaintiffs might assert their claims, relative to the Motion.

Third, this Court erred by the Rules Of Court as enumerated here below, thus enabling unfair advantage to Defendant, with corresponding injury to Plaintiffs by:

Violating the PA RCP proscription against presumption, despite Plaintiffs' objections in their arguments, and by their Petition, thus allowing unproven preliminary objections to stand.

Preventing the natural, invited, and "of course" Counter
Reply of Plaintiffs to a previous pleading of Reply Brief.

Allowing such Reply Brief to be valued against
Plaintiffs, with unfavorable decision, but to not enter
same in the file or record; and, to allow for or otherwise
permit challenge of adverse party's last submission of
"evidence".

Denying Plaintiff opportunity to both, express his
claims, and, to resolve any controversy pertinent to the
issues by use of the Courtroom blackboard.

Fourth, Judge Cherry, exceeded the scope of his judgment
and authority by hearing of February 14, 2005, in which his
opinion as to the future value of Plaintiffs' case in chief
was used as a pretext of sustaining adverse party's
affirmative defense. Resulting judgment of Dismissal was
an invalid application, and presumptuous determination of a
future event of which the elements remained yet to be
proved.

Fifth, Judgment of this Court, of February 14, 2005, is
a result of a particular, egregious neglect of the known
construction and scope of existing law, with specific
reference to Judge's statements as to what is "not fraud",
or cognizable in fraud, as compared to the PA CPL.

Fundamental, reversible error by this judgment is in its nonconformance with, and misinterpretation of the PA CPL, which is based on fraud.

REQUEST FOR A STATEMENT OF DECISION

And Now, having filed a Concise Statement Of The Matters Complained Of On Appeal, by Order of March 17, 2005, Plaintiff Richard D. Sell, on behalf of Richard D. Sell and Linda H. Sell, upon their foregoing Concise Statement Of Matters Complained Of, do hereby request of the Honorable Judge Paul E. Cherry a Request For A Statement of Decision.

Richard D. Sell
Richard D. Sell, pro se

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND
LINDA H. SELL

v.

CENTRAL VOLKSWAGEN, INC.

*
* NO. 04-940-CD

*
* PROOF OF SERVICE

*
* By Plaintiffs:

Richard D. Sell and
Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

(814) 653-9298

FILED
3:05 PM
MAR 31 2005
NO CC
B
William A. Shaw
Prothonotary/Clerk of Courts

mailed certified
to Superior Court w/
Notice of Appeal 4/1/05

4/30

Proof of Service

We hereby certify that a true and correct copy of Plaintiffs' NOTICE OF APPEAL and REQUEST FOR TRANSCRIPT has been served, by hand, March 16, 2005 upon:

The Honorable Paul E. Cherry *
Court of Common Pleas
230 Market Street
Clearfield, PA 16830;

and upon:

Court Reporters Office *
Clearfield County Courthouse
230 Market Street
Clearfield, PA 16830;

and upon:

Bryan K. Schrekengost, Esquire
Pietragallo, Bosick & Gordon
Attorneys at Law
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, Pa 15219-6404

By Plaintiffs, Pro-Se:

Richard D. Sell

Linda A. Sell

Proof of Service

We hereby certify that a true and correct copy of Plaintiffs' NOTICE OF APPEAL and REQUEST FOR TRANSCRIPT has been served, * by hand, March 16, 2005 upon:

The Honorable Paul E. Cherry*
Court of Common Pleas
230 Market Street
Clearfield, PA 16830;

and upon:

Court Reporters Office*
Clearfield County Courthouse
230 Market Street
Clearfield, PA 16830;

and upon:

Bryan K. Schrekengost, Esquire
Pietragallo, Bosick & Gordon
Attorneys at Law
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, Pa 15219-6404

By Plaintiffs, Pro-Se:

Richard D. Sell

Linda J. Sell



**The Superior Court of Pennsylvania
Office of the Prothonotary**

GRANT BUILDING
310 GRANT STREET, SUITE 600
PITTSBURGH, PA 15219-2297

DAVID A. SZEWCAK, ESQUIRE
PROTHONOTARY

ELEANOR R. VALECKO
DEPUTY PROTHONOTARY

(412) 565-7592

FAX: (412) 565-7711

WEBSITE: www.superior.pacourts.us

March 23, 2005

William Shaw, Prothonotary
Court House
Clearfield, Pa. 16830

In Re: Sell v Central Volkswagen Inc.
No. 04-940-CD

Dear Mr. Shaw:

When appellants amend their proof of service to verify that the trial court judge and court reporter received a copy – and provide us with an original signature from Linda Sell – kindly return this appeal to our office.

Very truly yours,

A handwritten signature in cursive script that reads "Eleanor R. Valecko".

DEPUTY PROTHONOTARY

ERV/smc
Cc: Richard and Linda Sell



The Superior Court of Pennsylvania
Office of the Prothonotary

GRANT BUILDING
310 GRANT STREET, SUITE 600
PITTSBURGH, PA 15219-2297

DAVID A. SZEWCZAK, ESQUIRE
PROTHONOTARY

ELEANOR R. VALECKO
DEPUTY PROTHONOTARY

(412) 565-7592

FAX: (412) 565-7711

WEBSITE: www.superior.pacourts.us

March 23, 2005

William Shaw, Prothonotary
Court House
Clearfield, Pa. 16830

In Re: Sell v Central Volkswagen Inc.
No. 04-940-CD

FILED

MAR 28 2005
3:00 PM
William A. Shaw

Prothonotary/Clerk of Courts

Dear Mr. Shaw:

When appellants amend their proof of service to verify that the trial court judge and court reporter received a copy – and provide us with an original signature from Linda Sell – kindly return this appeal to our office.

Very truly yours,

Eleanor R. Valecko

DEPUTY PROTHONOTARY

ERV/smc
Cc: Richard and Linda Sell

(62)

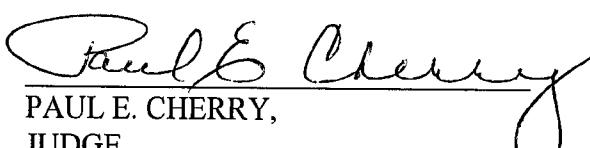
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and :
LINDA H. SELL :
: :
V. : NO. 04-940-CD
: :
CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 17th day of March, 2005, the Court having been notified of Appeal to the Superior Court of Pennsylvania in the above captioned matter, it is the ORDER of this Court that Richard D. Sell and Linda H. Sell, Appellants, file a concise statement of the matters complained of on said Appeal no later than fourteen (14) days herefrom, as set forth in Rule 1925(b) of the Rules of Appellate Procedure.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

MAR 17 2005
11120/m
William A. Shaw
Prothonotary
1 cent to Plaintiff
1 cent to Party
Sheriff's Cost
DJS

FILED

MAR 17 2005

William A. Shaw
Prothonotary
Re:ctanc^{se}
RR 1 Box 212 B-1
RENOVOSVILLE, PA
15851

BRYAN K. SHEACKENGST, Esq.
38TH Floor, ONE OXFORD CENTER
Pitts., PA 15219

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND
LINDA H. SELL

PLAINTIFFS

v.

CENTRAL VOLKSWAGEN, INC.

DEFENDANT

*
* CIVIL DIVISION

*
* No. 04-940-CD

*
* NOTICE OF APPEAL

*
* REQUEST FOR TRANSCRIPT

*
* Pro-Se

*
* Filed by:

Richard D. Sell and
Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851
(814-653-9298)

FILED ~~Opp. Piss pd.~~

01/10/59/01 45.00
MAR 16 2005

William A. Shaw
Prothonotary/Clerk of Courts

ICC to Superior
Court of Common Pleas
for 45.00
for 60.00

(6K)

27

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND
LINDA H. SELL

*
* NO. 04-940-CD

Plaintiffs

* **NOTICE OF APPEAL**

V.

* **REQUEST FOR TRANSCRIPT**

CENTRAL VOLKSWAGEN, INC.

*

Defendant

*

*

NOTICE OF APPEAL

Notice is here given that Richard D. Sell and Linda H. Sell, the above-named Plaintiffs, hereby appeal to the Superior Court of Pennsylvania from the Order entered in this matter on the 14th day of February, 2005. This Order has been entered in the docket as evidenced by the attached copy of the docket entry.

Richard D. Sell

124 Four Seasons Drive

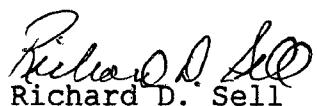
Reynoldsville, PA 15851

814-653-9298

REQUEST FOR TRANSCRIPT

I hereby request the transcript in the above-captioned case,
NO. 04-940-CD, with reference hearing dates of 2-14-05, and 11-
05-04.

Plaintiff, pro-se


Richard D. Sell

PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing
NOTICE OF APPEAL, and REQUEST FOR TRANSCRIPT has been served this
~~28~~ 16th day of March, 2005, by pre-paid, U.S. mail on:

Bryan Schrekengost, Esquire
Pietragallo, Bosick & Gordon
Attorneys at Law
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219-6404

by:

Richard D. Sell
Richard D. Sell

FILED

MAR 16 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL, al, *
Plaintiffs *
vs. * NO. 04-940-CD
CENTRAL VOLKSWAGEN, *
Defendants *

ORDER OF COURT

NOW, this 14th day of February, 2005, following argument on plaintiff's petition for reconsideration, the Court having reviewed the file in its entirety, IT IS THE ORDER OF THIS COURT that said petition be and is hereby denied.

BY THE COURT:


Paul E. Cherry
Judge

FILED

6K 0 2:33 PM 3/15/05 to PLH
RFB 3/15/05 2:33 PM
FEB 17 2005 Reynoldsburg, OH
15851

William A. Shaw
Prothonotary

3/15/05 fax copy to Attorney Shreckengast

#26

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D.SELL AND) CIVIL DIVISION
LINDA H. SELL,)
Plaintiffs) NO. 04-940-CD
)
) AFFIDAVIT OF SERVICE
)
)
 v.)
CENTRAL VOLKSWAGEN INC.,)
Defendant) Filed on Behalf of
) Plaintiffs by
) Richard D. Sell
)
) pro-se

Plaintiffs:

Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851
(814-653-9298)

g/c 1/3/24/04
JAN 07 2005
FILED NO cc

William A. Shaw
Prothonotary/Clerk of Courts

#26

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the of the December 22, 2004 Order of Court was served, along with a request for issuance of an Order for Amendment of Complaint, with underlying petition, served on Defendant's Counsel, Bryan Shreckengost, Esq., by 1st class, U.S. mail, postage prepaid on January 14, 2005, to:

Pietragallo, Bosick & Gordon
Attorneys At Law
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

Respectfully submitted,


Richard D. Sell, pro-se

FILED

JAN 07 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND LINDA H. SELL) CIVIL DIVISION
Plaintiffs)
V.) NO: 04-940-CD
CENTRAL VOLKSWAGEN, INC.)
Defendant) PLAINTIFFS' MOTION FOR
) LEAVE TO FILE AMENDED
) COMPLAINT, WITH AN ORDER
) Filed on Behalf of
) Richard D. Sell and
) Linda H. Sell
) Pro-Se

Return to
IT for
Pls see
Dated. Order

FILED ^{NO}
013-2461 ^{CC}
JAN 07 2005

William A. Shaw
Prothonotary/Clerk of Courts

#24

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND LINDA H. SELL	)	CIVIL DIVISION
)	
Plaintiffs	)	NO: 04-940-CD
V.)	
)	
CENTRAL VOLKSWAGEN, INC.	)	PLAINTIFFS' MOTION FOR
	)	LEAVE TO FILE AMENDED
	)	COMPLAINT, WITH AN ORDER
Defendant)	
	)	Filed by Richard D. Sell
	)	Pro-Se

Plaintiffs:

Richard D. Sell and
Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

MOTION TO FILE AMENDED COMPLAINT

AND NOW, comes the Plaintiffs Richard D. Sell and
Linda H. Sell, by Richard D. Sell, pro-se, and file this request
for the Amendment of their Complaint.

INTRODUCTION

Because Plaintiffs have received an ORDER from this Court
with regard to a hearing on Plaintiffs' PETITION FOR
RECONSIDERATION scheduled for February 14, 2005, Plaintiffs
now seek to amend their Complaint. As it would appear,
Plaintiffs have not yet been granted leave to file an AMENDED

COMPLAINT, they hereby request that permission be granted to do so, by way of an ISSUANCE of an ORDER hereto attached.

ARGUMENT

Because this Honorable Court is familiar with Plaintiffs' prior request for Leave To File an Amended Complaint and for their reasons of subserving their original Complaint with more particular allegations, an Amended Complaint as requested, will also effect an economy for the proceedings of an HEARING, (as being timely for the PETITION FOR RECONSIDERATION), scheduled for February 14, 2005.

History of this case shows Plaintiffs' intent not to delay HEARING with regard to PRELIMINARY OBJECTIONS, by their advanced, timely submission of Plaintiffs' PROPOSED AMENDED COMPLAINT, which as yet remains unapproved.

Rule 1033 of the Pennsylvania Rules of Civil Procedure permits a party to amend its complaint by leave of court. The rule also provides that "[t]he amended pleadings, even though they give rise to a new cause of action or defense" and also allows amendment "to conform the pleading to the evidence offered or admitted."Id. The trial court has broad discretion in determinng whether to allow amendment. Capobianchi v. BIC Corp., 446 Pa. Super. 130, 666 A2d 344, 346(1995).

Amendments are to be liberally permitted except where surprise or prejudice to the other party will result, or where

the amendment is against a positive rule of law". Burger v. Borough of Ingram, 697 A2d. 1037, 1041 (Pa. Commw. 1997); Roach v. Port Auth. of Alleghany County. 380 Super. 28,30,550 A2d. 1346,1347 (1988) (the right to amend the pleadings should not be withheld where some reasonable possibility exists that the amendment can be accomplished successfully.")

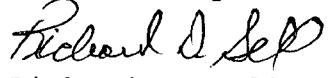
For this reason, and for reason of arguments advanced by Plaintiffs' PETITION FOR RECONSIDERATION, filed December 17, 2004, Plaintiffs define a specific claim(s) (of fraud) on which relief could be granted, *c.f.* Werner v.Zazyczny, 545 Pa. 570,583,681 A.2d 1331,1338 (1996). Likewise, Defendant's REPLY BRIEF raises a new matter, upon which a new cause of action in fraud can be asserted.

For these reasons, and because no evidence of prejudice has been presented which would compel this Court to rule otherwise, Plaintiffs' Motion should be granted, with respect to cognizable actions in fraud.

CONCLUSION

WHEREAS, Plaintiffs, by virtue of their prior request for the relief of filing an AMENDED COMPLAINT, move this Honorable Court to grant Plaintiffs leave to file an AMENDED COMPLAINT as set forth in the attached ORDER.

Respectfully submitted,


Richard D. Sell

FILED

JAN 07 2005

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND LINDA H. SELL)
)
)
Plaintiffs)
V.) NO: 04-940- CD
)
)
CENTRAL VOLKSWAGEN, INC.)
)
)
)
Defendant)

ORDER

AND NOW, this ____th day of January, 2005, upon
consideration of Plaintiffs' Motion for Leave to File an Amended
Complaint, it is the **ORDER** of this Court that Plaintiffs are
hereby directed to file their Amended Complaint within ten(10)
days from the date of entry of this **ORDER**.

BY THE COURT,

PAUL E. CHERRY
JUDGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
)
Plaintiffs,) No.: 04-940-CD
)
)
v.)
) DEFENDANT, CENTRAL
CENTRAL VOLKSWAGEN, INC.,) VOLKSWAGEN, INC.'S
) OPPOSITION TO PETITION FOR
Defendant.) RECONSIDERATION

Filed on Behalf of:
Defendant Central Volkswagen, Inc.

Counsel of Record:

Bryan K. Shreckengost, Esq.
PA ID #69098

Pietragallo, Bosick & Gordon
Firm No. 834
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED

JAN 03 2005 GK
m/1:55/ (initials)
William A. Shaw
Prothonotary/Clerk of Courts

1 cent to MTA
#23

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
)
Plaintiffs,) No.: 04-940-CD
)
)
v.)
)
CENTRAL VOLKSWAGEN, INC.,)
)
)
Defendant.)

**DEFENDANT, CENTRAL VOLKSWAGEN, INC.'S
OPPOSITION TO PETITION FOR RECONSIDERATION**

AND NOW, comes the Defendant, Central Volkswagen, Inc., by and through its attorneys, Pietragallo, Bosick & Gordon, and files this opposition to Plaintiffs' Petition for Reconsideration.

I. INTRODUCTION

Because this Honorable Court is familiar with the facts of this case, they will not be repeated here. Suffice it to say, after the filing of various Complaints and Amended Complaints, this Honorable Court by Order dated December 2, 2004 dismissed this action with prejudice. Attached hereto as Exhibit "A" is a copy of this Honorable Court's December 2, 2004 Order.

On or about December 18, 2004, Plaintiffs filed their Petition for Reconsideration of the dismissal order. In their petition, Plaintiffs contend, apparently, that statements contained in their Complaint and Amended Complaint and the exhibits attached to both of those pleadings should not have been considered by the Court when ruling upon Defendant's Preliminary Objections. It further appears that Plaintiffs are contending that they should be granted leave to file a further amended pleading to attempt to prolong this litigation.

For the reasons more fully described herein, as well as for the reasons previously argued by Defendants in their Preliminary Objections, Plaintiffs' Request for Reconsideration should be denied.

II. ARGUMENT

A. Plaintiffs' Claims Are Barred As A Matter Of Law

As more fully set forth in Defendant's Preliminary Objections, Brief in Support of Preliminary Objections and Reply Brief in Support of Preliminary Objections and, as more fully argued by counsel for Defendant during the hearing held on November 5, 2004, the claims Plaintiffs are attempting to assert in this action are barred, as a matter of law. Plaintiffs' attempts to avoid the preclusive effect of res judicata and to attempt to avoid Defendant's other legal defenses are simply unavailing. As clearly set forth in their pleadings, Plaintiffs' present claims arise out of the same facts and circumstance that gave rise to Plaintiffs' claims in the district justice proceedings. Plaintiffs have already had one recovery and they are not entitled to another.

B. Plaintiffs Should Not Be Permitted To File A Further Amended Complaint

"A court is not required to allow amendment of a pleading if a party will be unable to state a claim on which relief could be granted." Werner v. Zazyczny, 545 Pa. 570, 681 A.2d 1331, 1338 (1996). In this case, Plaintiffs have already filed at least one Amended Complaint, which reiterates the same claims asserted by them in their initial Complaint, all of which claims are barred as a matter of law. This Honorable Court may properly refuse Plaintiffs leave to file a further amended pleading insofar as Plaintiffs are unable to state any claim upon which relief might be granted based upon the facts and circumstances already articulated. See Baravordeh v. Borough Council of Prospect Park, 699 A.2d 789 (Pa. Commw. 1997) (trial court properly

refused the plaintiff a second opportunity to amend his pleading where the first amended pleading contained most of the same allegations and requested exactly the same relief as the initial pleading and plaintiff could not under any amendment state a claim as a matter of law), alloc. denied, 725 A.2d 183 (Pa. 1998).

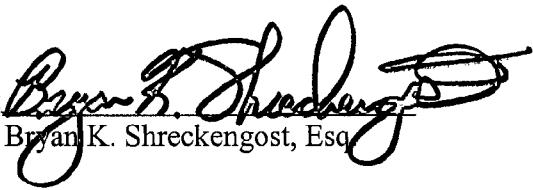
Because the Plaintiffs simply cannot state any presently cognizable claim, the Plaintiffs should not be allowed to file further amended pleadings.

III. CONCLUSION

For the reasons stated herein, as well as for the reasons more fully set forth in Defendant's Preliminary Objections and Defendant's briefing and argument in support of its Preliminary Objections, as well as for the reasons set forth in this Honorable Court's December 2, 2004 Order, Defendant, Central Volkswagen, Inc., respectfully requests this Honorable Court deny Plaintiffs' Petition for Reconsideration.

Respectfully submitted:

PIETRAGALLO, BOSICK & GORDON

By: 
Bryan K. Shreckengost, Esq.

Attorneys for Defendant,
Central Volkswagen, Inc.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and : NO. 04-940-CD
LINDA H. SELL :
V. :
CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 2nd day of December, 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby SUSTAINED. Plaintiff's Complaint is hereby DISMISSED in its entirety with prejudice.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

I hereby certify this to be a true and attested copy of the original statement filed in this case.

DEC 03 2004

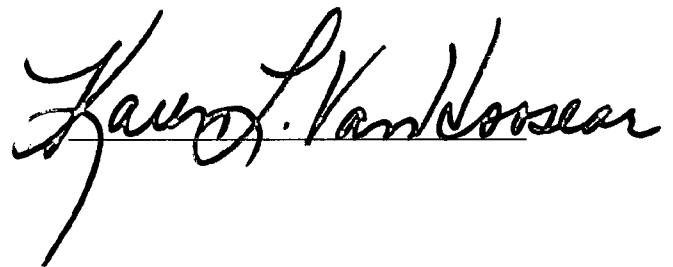
Attest.

W.E. Cherry
Paul E. Cherry
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing DEFENDANT, CENTRAL VOLKSWAGEN, INC.'S OPPOSITION TO PETITION FOR RECONSIDERATION was, on this 30th day of December 2004, served by first-class U.S. mail, postage prepaid, on:

Richard D. Sell
Linda H. Sell
RR 1 Box 212 B-1
Reynoldsville, PA 15851

A handwritten signature in black ink, appearing to read "Karen L. Van Noesen". The signature is fluid and cursive, with "Karen" and "L." being more stylized, and "Van Noesen" being more legible in a standard script.

FILED

JAN 03 2005

William A. Shad
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D.SELL AND) CIVIL DIVISION
LINDA H. SELL,)
Plaintiffs)
v.)
CENTRAL VOLKSWAGEN INC.,)
Defendant)
Plaintiffs by)
Richard D. Sell)
pro-se)

Plaintiffs:

Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851
(814-653-9298)

64K FILED NO
M 19 2004
CC
DEC 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

ee

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
Plaintiffs)) No. 04-940-CD
v.))
CENTRAL VOLKSWAGEN, INC.,))
DEFENDANT))

AFFIDAVIT OF SERVICE

I hereby certify that a copy of the foregoing
RESPONSE TO DEFENDANT'S REPLY BRIEF was, on this 18th day of
December, 2004, served by first-class mail, postage prepaid, on:

Bryan K. Shreckengost, Esq.
Pietragallo, Bosick & Gordon,
Attorneys At Law
The Thirty-Eighth Floor
One Oxford Center
Pittsburgh, PA 15219

Richard D. Sell

FILED

DEC 21 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and)
LINDA H. SELL)
V.) NO. 04-940-CD
CENTRAL VOLKSWAGEN, INC.,)
)

O R D E R

AND NOW, this 22nd day of December, 2004, following
consideration of Plaintiffs' Petition For Reconsideration, it
is the ORDER of this COURT that hearing be held with regard to
said Petition on the 14 day of February, 2005, beginning
at 1:30 o'clock P.M. in #2 of the Clearfield
County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED

09:58 AM 10/20/04

DEC 23 2004

William A. Shaw
Prothonotary

#21

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND) CIVIL DIVISION
LINDA H. SELL)
Plaintiffs) NO. 04-940-CD
V.)
CENTRAL VOLKSWAGEN, INC.)
Defendant)
) Richard D. Sell, pro-se

Plaintiffs:

Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

(814-653-9298)

FILED ¹⁰⁰
m/9/2004 Piff
DEC 21 2004

W.A. Shaw
Prothonotary/Clerk of Courts

#21

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND) CIVIL DIVISION
LINDA H. SELL)
Plaintiffs) NO. 04-940-CD
V.)
CENTRAL VOLKSWAGEN, INC.)
Defendant)
) Richard D. Sell, pro-se

Plaintiffs:
Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851
(814-653-9298)

PETITION FOR RECONSIDERATION

AND NOW, comes Richard D. and Linda H. Sell, by Richard D. Sell, pro-se, and file this PETITION.

INTRODUCTION

Plaintiffs, incorporates herein all the preceding references of facts and argument upon which this Honorable Court rendered judgement with an ORDER on December 2, 2004.

Defendant has raised a new matter, BY REPLY BRIEF, on grounds, which are not within the issues made by any of the

pleadings of Defendant's BRIEF IN SUPPORT OF PRELIMINARY OBJECTIONS, (not his REPLY BRIEF of November 23, 2004). DEFENDANT'S REPLY BRIEF is in fact, a response to a PROPOSED AMENDED COMPLAINT advanced to Defense Counsel on November 15, 2004; the first of two Proposed Amended Complaints, with both Complaints being sent concurrent with their filing in the Court. A Court hearing was set by ORDER of November 16, 2004, for argument on December 9, 2004. Following Plaintiffs 2nd notification on November 23, 2004, Defendant, on the same day filed his REPLY BRIEF with new matter. Before Plaintiffs could respond, an ORDER of December 2, 2004 was issued by the Court, dismissing Plaintiffs' Complaint.

Plaintiffs, by their PETITION now seek the opportunity to submit a COUNTER REPLY to Defendant's REPLY BRIEF, which is a writing of a new matter, not raised by the issues that relate to the issues heretofore being examined. Plaintiffs assert that new matter is an inclusion of extant issues of their original COMPLAINT, yet undecided, pending hearing on the PROPOSED AMENDED COMPLAINT. As submitted, said REPLY BRIEF appears as a presumption of adoption of Plaintiffs' PROPOSED AMENDED COMPLAINT, requiring further inquiry and response.

ARGUMENT

Plaintiffs, by the PA Rules of Civil Procedure, 1017 assert their right to address new matter raised with REPLY to

a pleading; and by Rule 1028 (a)" Preliminary objections may be filed by any party to any pleading...". Plaintiffs argue that their reply, and AMENDED COMPLAINT, was merited to the extent of: A reply or answer of PRELIMINARY OBJECTIONS, raised, "of course", from Defendant's last REPLY of a new matter; and, upon reliance and expectation of an ORDER already granted Plaintiffs as regarding the hearing on Amended Complaint. As per FRCP, Rule 15(a), "...and leave shall be freely given when justice so requires." Plaintiffs' ability to correct the RECORD, however was superseded, by Court, with an ORDER for dismissal. Except for any question of substantial disparity, raised by Defendant's unanswered charges of contrivance and alleged fiction by Plaintiffs design, these very questions, and new matter, was obviated by a hearing on the Amended Complaint, and upon any controversy as may have existed in the first place.

Therefore, by procedural integrity, the intent to give justice was maintained by the willingness of the Court, to at least, hear the matter before judgement on the Motion. In fact, judgement was rendered upon, and immediately following Defendant's unsolicited, unnecessary (adoption of Proposed Amendment was only pending) Reply Brief. Additionally, PA RCP 1035 states:

"If judgement is denied or is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court when considering the motion may, if practicable, ascertain

from the pleadings, the evidence and the parties which material facts relevant to the motion exists without controversy and which are actually contraverted. It shall thereupon make an order specifying the facts that are without controversy, including the extent to which the amount of damages or other relief is not in controversy and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established and the trial shall be conducted accordingly."

Additionally, the grounds upon which Defendant raises new

"evidence" are particularly pertinent by FFRCP 15(a) in that:

"If evidence is objected to at trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

Therefore, Plaintiffs right to a hearing on their Proposed Amended Complaint was set in motion by Defendant, premature response by Defendant requiring a response to objectionable, new matter, to which Plaintiffs' AMENDED COMPLAINT, REPLY, OBJECTIONS and a hearing were right, just and necessary.

Additionally, Plaintiffs' argument now, in response to Defendant's new issue, with the use of footnotes is an attempt in itself, to contradict the known, and some yet to be developed evidence. Moreover, Defendant's "evidence" is not within the issues made by this latter pleading; and, only supported by an *an priori*, and untested presumption by the doctrine of *res judicata*.

Plaintiffs' argument for REHEARING, is evinced by the

newly evoked, fraud upon the lower court which is an issue not intrinsic to the judgement of that ruling. Here, Plaintiffs use this extrinsic, evidence to apply to the entirety of their claims, while maintaining that fraud was present, but not manifest, during the times of their claims. This has now become Plaintiffs' *a fortiori* and "gist of the action", and for all CPL claims of disparate transactions. It was not manifest as operating in the first judgement and is the fraud upon the court at district justice level committed by Defendant now as it is in the context of a CPL claim of fraud, not part of the proceedings, themselves. The test of, "gist of the action" is analogous and particularly pertinent in Plaintiffs case. By the citation of eToll, Inc. v. Elias/Savion Adver., Inc., an explanation of the "gist of action" is that, "...[T]he[sic] important difference between contract and tort actions is that the latter lie from the breach of duties imposed as a matter of social policy while the former lie from the breach of duties imposed by mutual consensus..." This principle is precisely what Plaintiff incorporate now as they did in their initial Complaint, although it is more clearly defined by the above case citation. Plaintiff have applied this principle in their arguments, but have an *a fortiori* in the isolation of Defendant's present issue of extra-evidential and extrinsic fraud upon a Lower Court as evidence of all other frauds upon

contracts for which Plaintiffs make claims and continue to declare, but for disparate transactions and types of relief.

By analogy:

Fraud upon a contract is to mere non-performance of a contract as Fraud upon the Court is to a case being heard in Court. Upon this analogy and point of law Plaintiffs rely; therefore, Plaintiffs pray this Honorable Court to Grant Relief by an ORDER to:

1. Grant Plaintiffs right to Amend their Complaint
2. Stay the ORDER of December 2, 2004, suspending ORDER dismissing Plaintiffs claims with a HEARING with regard to Petition

Respectfully Submitted



Richard D. Sell
Richard D. Sell

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D.SELL AND) CIVIL DIVISION
LINDA H. SELL,)
Plaintiffs)
NO. 04-940-CD)
AFFIDAVIT OF SERVICE)
v.)
CENTRAL VOLKSWAGEN INC.,)
Defendant) Filed on Behalf of
) Plaintiffs by
) Richard D. Sell
)
) *pro-se*

Plaintiffs:

Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851
(814-653-9298)

6K FILED NO
M 11 54 2004 cc
DEC 20 2004

William A. Shaw
Prothonotary/Clerk of Courts

20

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
Plaintiffs)
v.) No. 04-940-CD
CENTRAL VOLKSWAGEN, INC.,)
DEFENDANT)

AFFIDAVIT OF SERVICE

I hereby certify that a copy of the foregoing
RESPONSE TO DEFENDANT'S REPLY BRIEF was, on this 18th day of
December, 2004, served by first-class mail, postage prepaid, on:

Bryan K. Shreckengost, Esq.
Pietragallo, Bosick & Gordon,
Attorneys At Law
The Thirty-Eighth Floor
One Oxford Center
Pittsburgh, PA 15219



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs,) No.: 04-940-CD
)
v.)
) **AFFIDAVIT OF SERVICE**
CENTRAL VOLKSWAGEN, INC.,)
)
Defendant.) Filed on Behalf of:
) Defendant Central Volkswagen, Inc.

Counsel of Record:

Bryan K. Shreckengost, Esq.
PA ID #69098

Pietragallo, Bosick & Gordon
Firm No. 834
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

E GK **FILED** NO CC
m 11:28 AM
DEC 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

111

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

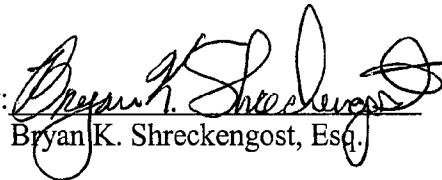
RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs,) No.: 04-940-CD
)
v.)
)
CENTRAL VOLKSWAGEN, INC.,)
)
Defendant.)

AFFIDAVIT OF SERVICE

I hereby certify that a copy of the December 2, 2004 Order of Court was served on Plaintiffs, Richard D. Sell and Linda H. Sell at RR 1 Box 212 B-1, Reynoldsville, Pennsylvania 15851 via 1st class, U.S. mail, postage prepaid on December 7, 2004. A copy of the December 2, 2004 Order is attached hereto as Exhibit A.

Respectfully submitted:

PIETRAGALLO, BOSICK & GORDON

By: 
Bryan K. Shreckengost, Esq.

Attorneys for Defendant,
Central Volkswagen, Inc.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and : NO. 04-940-CD
LINDA H. SELL :
: :
V. : :
: :
CENTRAL VOLKSWAGEN, INC. : :

ORDER

AND NOW, this 2nd day of December, 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby SUSTAINED. Plaintiff's Complaint is hereby DISMISSED in its entirety with prejudice.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

DEC 03 2004

Attest.

W. E. Cherry
Prothonotary
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AFFIDAVIT OF SERVICE was, on this 7th day of December 2004, served by first-class U.S. mail, postage prepaid, on:

Richard D. Sell
Linda H. Sell
RR 1 Box 212 B-1
Reynoldsville, PA 15851



A handwritten signature in black ink, appearing to read "Bryan P. Sheddinger", is written over a horizontal line. The signature is fluid and cursive, with a prominent 'B' at the beginning.

FILED

DEC 10 2004

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and : NO. 04-940-CD
LINDA H. SELL :
V. :
CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 2nd day of December, 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby SUSTAINED. Plaintiff's Complaint is hereby DISMISSED in its entirety with prejudice.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED ^{EGK}
02-4388 ACC-RECEIVED
2004 CITY OF CLEARFIELD
DEC 03 2004

William A. Shaw
Prothonotary

#18

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs) No: 04-940-CD
)
v.) **AFFIDAVIT OF SERVICE**
)
CENTRAL VOLKSWAGEN, INC.,) Filed by Plaintiff,
) Richard D. Sell, pro-se
Defendant) Filed on behalf of;
)
)
Richard D. SELL and
Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851
)
(814) 653-9298

EGK
FILED
01/3/2004
NOV 23 2004
PIFF

William A. Shaw
Prothonotary/Clerk of Courts

#17

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs) No: 04-940-CD
)
)
v.)
CENTRAL VOLKSWAGEN, INC.,)
)
)
Defendant)
)

AFFIDAVIT OF SERVICE

I hereby certify that a copy of the November 16 Order of Court was served on Bryan K. Shreckengost, attorney for Defendant, of Pietragallo Bosick & Gordon, Attorneys At Law, at One Oxford Center, Pittsburgh, Pennsylvania, 15219, via 1st class, U.S. mail, postage paid, on November 23, 2004. A copy of the November 16, 2004 Order is attached hereto.

Respectfully submitted,


Richard D. Sell, Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND LINDA SELL :
:
V. : NO. 04-940-CD
:
CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 16th day of November, 2004, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that hearing be held w.th regard to said Motion on the 9 day of December, 2004, beginning at 10:30 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

/s/ Paul E. Cherry

PAUL E. CHERRY,
JUDGE

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 16 2004

Attest

Paul E. Cherry
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL,	) CIVIL DIVISION
)
Plaintiffs	) No. 04-940-CD
)
v.	) REQUEST TO AMEND
	) COMPLAINT
)
CENTRAL VOLKSWAGEN, INC.,	) Filed by plaintiff,
	) Richard D. Sell
)
Defendant)

PLAINTIFFS' MOTION FOR LEAVE
TO FILE AN AMENDED COMPLAINT

Plaintiff *pro se* Richard D. Sell requests Honorable Court for leave to file an amended complaint. Reasons for amending are for: providing a proper, more legible format; clarifying and making more certain the causes of action as fraudulent or deceptive conduct, to be construed as fraud; and, for restating all other counts previously asserted but now asserted as "unfair or deceptive acts or practices", together, combined, and defined or construed as **PA CPL violations**.

In their amended complaint here attached, plaintiffs include all previously asserted counts, now, under a singular count as **Violations of Consumer Protection Law** in order to simplify, consolidate and to make more certain, plaintiffs' claims of: unlawful acts and practices, generally; fraudulent or deceptive conduct, specifically.

Plaintiffs here provide documentary material in conformity with PA RCP 1019 (h), stating, "When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written." Copies of documentary materials, here provided, are based on oral contracts with, and warranty given by, defendant. Other written agreements

relative to transactions that may exist, other than invoices, are unknown or otherwise unavailable to Plaintiffs.

Present Complaint and Amended Complaint are based on an oral agreement contemporary with EXHIBIT A. Subsequent to "A" a new oral agreement resulted in written invoice(s), EXHIBIT B. EXHIBIT C is an invoice as being the last record of any oral agreement with written contract for repairs with defendant business.

EXHIBIT D is a letter of Defendant relative to the terms of agreement for work, circumstances of repairs performed or anticipated by Defendant; and, reference to one or more agreements.

EXHIBIT E is an "e-mail" relevant to conditions preceding, and concurrent with, "A".

Plaintiffs here supplement, and amend their Complaint with attached exhibits and:

Plaintiff, Richard D. Sell, pro-se, requests this Honorable Court for leave to file an amended supplemental complaint, for which, proposed amended complaint is attached.

Respectfully submitted,



Richard D. Sell

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND
LINDA H. SELL

Plaintiffs

v.

CENTRAL VOLKSWAGEN, INC.
Defendant

) CIVIL DIVISION
)
) NO. 04-940-CD
)
) AMENDED COMPLAINT
)
) Filed on Behalf of Plaintiffs, by
) Richard D. Sell
)
) Pro-Se
)

Plaintiffs:

Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

AND NOW COMES the plaintiffs, Richard D. Sell and Linda H. Sell, pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17 1968, P.L. 1224, as amended and reenacted by the Act of November 2, 1976 P.L. 1166, 73 P.S. 201-1 et seq. (hereinafter "CPL"); 73 P.S. section 1951 et seq., P.S. sec. 1961, P.S. 1962 (PA Automobile Law); and 37 PA ADC s 301.1 et seq., 37 Pa. Code 301.1 et seq., (Automotive Industry Trade Practices), and represents as follows:

1. Plaintiffs, Richard D. Sell and Linda H. Sell, husband and wife, residing at Four Seasons Drive (former address as RR 1 Box 212), Reynoldsville, PA 15851.
2. Defendant, Central Volkswagen, Inc., is a motor vehicle repair shop, dealer (code50327), as defined by 37 Pa. Code 301.1 and 75 Pa. C.S. sec. 7131; and 49 U.S.C., Sec. 32702(2), as licensed, with a principal place of business at Route 322, Box 445, Dubois, PA 15801.
3. At all times hereto, the acts employed by Defendant were taken willfully.

Jurisdictional Allegations

4. Plaintiffs' damages alleged caused by defendant's actions are within the monetary limits of this court.
5. Defendant's business is in Clearfield County
6. Defendant's intentional actions in Clearfield County caused damages to plaintiffs in Clearfield County.
7. This Court has statutory jurisdiction over plaintiffs' rights and remedies claimed in addition to those sought under any other law, contract or warranty.
8. Plaintiffs now seek their rights and remedies under present law.
9. This Court has jurisdiction.

Identification Of Subject Transaction

10. Paragraphs 1 through 9 are incorporated herein by reference as if more fully set forth.
11. After plaintiffs purchased a 1995 Mazda, VIN JM3LV5234S0707759 from Defendant plaintiffs returned their vehicle a second time, for the same major engine Problem, on 6-16-98.
12. Defendant repaired plaintiffs' vehicle a second time on 6-16-98.
13. Defendant gave an oral agreement to fix it again, for free, upon delivery to Plaintiffs at that time, on or about 6-16-98.
14. Plaintiffs' vehicle continued with the same problems as those complained of on numerous occasions, following 6-16-98.
15. Plaintiff delivered vehicle on 4-13-01 following the same, aforesaid complaints.

16. Defendant did not "fix it again", but replaced plaintiffs' engine.
17. Defendant released plaintiff's vehicle to her after more than three months following completion of repairs/replacement of her engine.
18. Defendant again replaced plaintiffs' engine on 10-08-02 under warranty, releasing Plaintiff's vehicle to him on 10-23-02.
19. Defendant charged plaintiff the full cost of an engine replacement.
20. On 10-23-02, having his vehicle driven to his home, plaintiff discovered a major leak in his engine, requiring plaintiff to have his vehicle towed to another shop.
21. Plaintiffs seek damages for defendant's conduct as enumerated more fully below.

VIOLATIONS OF CPL:

I. Fraudulent And Deceptive Acts And Conduct

22. Paragraphs 1 through 21 are incorporated here as if more fully set forth.
23. A violation of any provision of Chapter 28 of this state's Automobile Lemon Law is also a violation of the act of December 17, 1968 P.L. 1224, No. 387, known as the Unfair Trade Practices and Consumer Protection Law (CPL).
24. Unfair or deceptive acts or practices are violations of this state's CPL, 73 P.S. 201-2(4) (i through xxi).
25. Defendant breached his duty to inform plaintiff of material facts of the cause and remedy to plaintiffs' persistent complaints.
26. Defendant failed to comply with the terms of an express warranty for not reporting a nonconformity" as proscribed by 73 P.S. 1957.
27. Defendant fraudulently concealed the existence of an extended warranty or otherwise free remedy of repairs through the manufacturer.

27. Defendant's failure to inform, report, and to comply: effectively withheld free repairs from plaintiffs, under the terms of their oral agreement; and barred an otherwise free remedy of repairs through the manufacturer.

28. Defendant intended plaintiffs to rely upon his material misrepresentations in order to gain excess profit.

30. Defendant intended plaintiffs to rely upon his statements in order to agree to an engine replacement.

31. Defendant, through conduct herein identified as material misrepresentation and/or constructive fraud, fraud by inducement into a contract of repairs caused damages to plaintiffs in the amount of \$4690.

32. Defendant additionally submitted a false document- a written invoice- following a new oral agreement for an engine replacement.

33. Defendant, through fraudulent conduct as here described, breached one oral agreement for repairs in fact and effect, subsequently supplanting it with a new oral agreement and written contract.

34. Wherefore, plaintiffs pray for three times their actual damages, or \$14,070.

OTHER CPL VIOLATIONS
II. Unfair Or Deceptive Acts Or Practices

35. Paragraphs 1 through 34 are incorporated herein as if more fully set forth.

36. Defendant engaged in other unfair or deceptive acts and practice, or other Fraudulent conduct which was likely to create confusion or misunderstanding.

37. Defendant breached an oral agreement of \$3700 for an engine replacement, by charging plaintiff \$4690.

38. Plaintiff did not authorize, orally or in writing, an increase of \$990 over the agreed price.

39. Defendant's breach was in knowing violation of the agreement and the law.

40. Defendant's breach was unconscionable and in bad faith, given the circumstances of known costs of repairs, damage to plaintiffs vehicle while in the custody of defendant and the cost and inconvenience of other substitute transportation, over a period of 3 months.

41. Plaintiffs assert that defendant exceeded their agreement in order to pay for its cost of additional labor connected to an accident involving rear-end damage to plaintiffs' vehicle.

42. Wherefore, as defendant's conduct was in reckless disregard of the law and of plaintiffs' interests; unconscionable and in bad faith, plaintiffs pray for three times actual damages of \$990, or \$2970.

III. Constructive Fraud

43. Defendant owed a duty to assign a credit of \$818.80 to plaintiffs, given by virtue of a separate agreement attendant upon the occasion of plaintiffs' first engine replacement.

44. Defendant knew, by his confirmation in writing, of this agreement pertaining to the issuance of \$818.80 from an engine vendor.

45. Defendant received, but did not credit plaintiffs with said credit.

46. Plaintiffs sought, and received only, the exact amount of this breach by judgment.

47. Plaintiffs discovered defendant's fraudulent behavior of concealing and

misdirecting said credit in April, 2004.

48. Defendant denied the existence and purpose of said credit which defendant directed, or caused to be directed, to an associated dealer and different identity.

49. Defendant intended plaintiffs to be deceived by its cloaking of identity.

50. Defendant's acts of concealment, interference with a contract and through otherwise fraudulent or deceptive acts, intended to deprive plaintiffs of \$818.80.

51. Wherefore and in accordance with provision of P.S. 201-9.2, plaintiffs pray for two times actual damages, or \$1,637.60.

IV. Fraud In The Inducement

52. Paragraphs 1 through 51 are herein incorporated as if more fully set forth.

53. Plaintiff delivered his vehicle to defendant for an engine replacement on 10-08-03, under warranty for failure of same engine which was installed about 5-24-01.

54. Defendant replaced same engine with a new one, charging plaintiff \$972.08.

55. Defendant told plaintiff, when she called defendant on 10-28-03, that defendant had replaced items, informing her that vehicle was ready but that the radiator was "shot".

56. Plaintiff received his vehicle on 10-31-03, removing it to his home, where he discovered a major antifreeze leak from the block.

57. Plaintiff purchased a new radiator, subsequently towing his vehicle to another shop where a leaking block gasket was replaced, along with the new radiator.

58. Defendant could, or should have known of damage to plaintiffs' radiator and that his radiator was repairable at minimal cost.

59. Defendant's workmanship resulted in the major leak of the engine block the

same as factually occurred on 5-24-01 when plaintiff attempted to take custody of her vehicle after the previous engine replacement.

60. Defendant fraudulently induced plaintiff into buying a new radiator.

61. Wherefore, plaintiffs pray for the amount, for fraud upon breached contract of \$972.08, doubled as damages of \$1,944.16.

62. Defendant's fraud upon the contract of 10-23-02 caused damages of additional repairs and charges to effectively repair plaintiffs' vehicle, as a direct consequence, totalling \$894.62, Whereas, plaintiffs pray for treble damages of \$2,672.

63. In all three agreements, as aforementioned, defendant violated the PA CPL by 73 P.S. 201-2(4):

- (ii) "Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services."
- (viii) "Disparaging the goods, services or business of another by false or misleading representations of fact."
- (xiv) "Failing to comply with the terms of any written guarantee or warranty..."
- (xv) "Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed."
- (xviii) "Using a contract, form or any other document related to a customer transaction which contains a confessed judgment clause that waives the consumer's right."
- (xxi) "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."

64. Defendant engaged in deceptive acts and practices against the Prohibitions of the Automobile Industry Trade Practices, by 37 PA ADC 301.5, and Are more fully enumerated as follows:

- (1) knowingly making false statements of need for repairs
- (2) failing to record odometer reading before or after repairs
- (3) making unauthorized repairs
- (4) failure of return of parts for inspection
- (5) failure to remedy promptly, at no charge for work not

performed properly and complained of

- (6) using customer's vehicle for a purpose other than a test drive
- (7) failure to provide an accurate, complete invoice

PRAYER FOR RELIEF

WHEREFORE, Plaintiff as this Honorable Court for an Order:

1. Finding that Defendant's conduct was in violation of CPL and the Automotive Industry Trade Practices
2. Directing Defendant to pay Plaintiffs the sum of actual damages of \$8,364 representing all Counts
3. Directing Defendant to pay Plaintiffs treble amounts from Counts I, II, III, where indicated for an amount of \$19,712
4. Directing Defendant to pay Plaintiffs double amounts from Counts III, IV, where indicated for an amount of \$3,581.76
5. Directing Defendant to pay Plaintiffs total damages from all Counts for a total of \$23,293.76
6. Granting such other equitable relief as this Honorable Court may deem necessary and proper.

Respectfully submitted,



Richard D. Sell

EXHIBIT A

Central VW Mazda
Route 322 Box 445
uBois, PA 15801
Phone 814-583-5121
Toll Free 800-328-7253

SELLER: RICHARD D RD1 BOX 212 REYNOLDSVILLE PA 15851		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.	
		JM3LV5234S0707759		58745	06/16/98	23940 A	
		YEAR	MAKE	MODEL	COLOR	TAG NO.	
		95	MAZDA	MPV LX	WHITE	00000	
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.	TERMS
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	DL	CASH
CUST. LABOR RATE		DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE	
36.00		12/09/95		58745	05/14/98	12/09/95	

AAAA
BBBB
CCCC

LINE	OP. CODE	FAIL-CD	TECH	HOURS/QTY	TYPE	AMOUNT
A CUSTOMER STATES TIC NOISE IN ENGINE ON COLD START UP REPLACE VALVE LIFTERS---CHANGE OIL AND FILTER						
	ARS 4043			5.93	W	122.10
	JFY112100		ADJUSTER, HYD.	18	W	415.80
	JF0110235A		GASKET, HEAD	2	W	30.38
	G6Y014302A		FILTER, OIL	1	W	5.25
44133	122.10-	50.41		TOTAL-CASH		1188 NoCharge
48033	451.43-	316.55				
1356	573.53					

OFFICE COPY - PAGE 1

STATEMENT OF DISCLAIMER
The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

On behalf of servicing dealer, I hereby certify that the information contained herein is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.

CUSTOMER SIGNATURE

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

EXHIBIT B

Central Volkswagen, Inc.

Route 322 P O Box 445
 DuBois, PA 15801
 Phone 814-583-5121
 Toll Free 800-328-7253

SELL: RICHARD D RD1 BOX 212 REYNOLDSVILLE		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.	
		JM3LV5234S0707759		129261	05/25/01	27890 A EOD - C	
		YEAR	MAKE	MODEL	COLOR	TAG NO.	
95	MAZDA	MPV LX	WHITE	00000			
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.	TERMS
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	STE 1252	CASH
CUST. LABOR RATE	DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE		
44.00	12/09/95		129261	04/03/01	12/09/95		

AAAA
 BBBB
 CCCC

AAAA
 BBBB
 CCCC

LINE	OP. CODE	FAIL-CD	TECH	HOURS/QTY	TYPE	AMOUNT
A	CUSTOMER STATES ENGINE HAD KNOCKING NOISE THEN VAN SHUT OFF MOTOR BLOWN REPLACED WITH JASPER MOTOR					
	ARS 4043			40.69	C	1130.36
	FK231	TRANS KIT		1	C	36.73
	JASPER	ENGINE		1	C	2866.00
	INSTALL	KIT FOR ENGINE		1	C	214.00
B	PA STATE INSP. PLATE # ACB8573 EXP. 5-31-2002 ERIE POLICY # Q08 2401955 N EXP. 8-24-2001					
C	CUSTOMER STATES PERFORMED TRANNY SERVICE AND CHANGED DIFFERENTIAL FLUIDS					
	ARS 4043			.70	C	17.00
FLUIDS	ARS 4043			4.00	C	150.00
FLUIDS	OIL			4	C	4.50
	MISC.			6	C	6.50
	Labor			4401	1297.36-	385.82
	Parts			4701	3116.73-	2522.99
	Fluids			6459	11.00-	
	SalesTax			2221	265.51-	
	TOTAL-CASH			1188	4690.60	

OFFICE COPY - PAGE 01

STATEMENT OF DISCLAIMER

The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

On behalf of servicing dealer, I hereby certify that the information contained herein is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.

CUSTOMER SIGNATURE

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

Central Volkswagen, Inc.
 Route 322 P O Box 445
 DuBois, PA 15801
 Phone 814-583-5121
 Toll Free 800-328-7253

SELL; RICHARD D RD1 BOX 212 REYNOLDSVILLE		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.
		JM3LV5234S0707759	129871	07/13/01	28135 A EOD - C	
		YEAR	MAKE	MODEL	COLOR	TAG NO.
PA 15851	95	MAZDA	MPV LX	WHITE	00000	
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	STE 1252 CASH
CUST. LABOR RATE	DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE	
44.00	12/09/95		129871	06/07/01	12/09/95	

AAAA
 BBBB
 CCCC

AAAA
 BBBB
 CCCC

LINE	OP. CODE	FAIL-CD	TECH	HOURS/QTY	TYPE	AMOUNT
A	CUSTOMER STATES FIX LEAK					
	REPLACED HEADGASKETS AND WATERPUMP GASKET					
	ARS 4043			22.08	C	528.20
	SL14620	OIL FILTER		1	C	3.60
	JF0113237	GASKET, EXH. MA		6	C	16.80
	JE1513111	GASKET, IN. MAN		2	C	24.22
	JF0110235A	GASKET, HEAD		2	C	24.02
	FREIGHT CHARGE			1	C	4.20
	HEAD	GASKET		2	C	156.08
FLUIDS	OIL			4	C	4.50
FLUIDS	MISC.			2	C	2.50
	Labor			4401	528.20-	187.68
	Parts			4701	228.92-	160.47
	Fluids			6459	7.00-	
	SalesTax			2221	45.85-	
	TOTAL-CASH			1188	809.97	

OFFICE COPY - PAGE 01

STATEMENT OF DISCLAIMER
 The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

On behalf of servicing dealer, I hereby certify that the information contained hereon is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.

CUSTOMER SIGNATURE

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

EXHIBIT C

30189SEL

Central Volkswagen, Inc.
 Route 322 P O Box 445
 DuBois, PA 15801
 Phone 814-583-5121
 Toll Free 800-328-7253

SELL; RICHARD D RD1 BOX 212 REYNOLDSVILLE		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.	
		JM3LV5234S0707759		146466	10/23/02	30189	
		PA 15851	YEAR	MAKE	MODEL	COLOR	TAG NO.
	95	MAZDA	MPV LX	WHITE	00000		
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.	TERMS
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	STE 1252	CASH
CUST. LABOR RATE	DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE		
46.00	12/09/95		146466	10/08/02	12/09/95		

LINE	OP. CODE	FAIL CD	TECH	HOURS/QTY	TYPE	AMOUNT
A	CUSTOMER STATES CHECK ENGINE NOISE AT IDLE MOST NOISE CHUGS AT DRIVING NOISE LEFT SIZE JASPER MOTOR CASE NO. 194001 800 827 7450 RADIATOR NEED REPLACED					
	JASPER REPLACEMENT ENGINE NO CHARGE					
LABOR						
	AJM 8477			18.00	C	810.00
	NUTZ & BOLTZ MISC.			3	C	4.17
	5224 SPARK PLUGS/ C			6	C	10.20
	225179 DIST. CAP			1	C	31.50
	235056 DIST. ROTOR			1	C	6.36
	4772 WIRE SET			1	C	30.72
	600-1813 STUD KIT			1	C	6.13
	WASHERS LOCKING WASHER			4	C	2.36
	ZIP TIE STRAP LOCKING STRAP			3	C	4.17
	21356 OIL FILTER/ NA			1	C	4.20
	ZVP000300 ENGINE OIL			5	C	7.25
	Labor					810.00
	Parts					107.06
	SalesTax					55.02
	TOTAL-CASH					972.08

CUSTOMER COPY - PAGE 01

STATEMENT OF DISCLAIMER	On behalf of servicing dealer, I hereby certify that the information contained hereon is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.
CUSTOMER SIGNATURE	(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

EXHIBIT D

Attn: Timothy Shiey

When Mr. Sell arrived at our dealership his claim was the Mazda was running with the hood up! It was parked behind our building not running and locked up. Before coming here Mr. Sell was informed that the car needed cap, rotors, plug wires and the radiator should be replaced because it has a leak. It would not have been leaking when it was brought into us so it was very low on antifreeze. This may be why the second engine had deteriorated. After the new engine was replaced and road tested there were no leaks other than the top of the radiator. Mr. Sell went home and came back to remonstrating that we had damaged the top of his radiator after he inspected it and now comes back stating there is no radiator damage but a leak in the intake manifold.

Mr. Sell keeps making reference to three engine replacement on his Mazda. He only made 2. Unless there is a third replacement elsewhere we don't know about it. Mr. Sell was told early on that they would have to pay for installation of the second engine and collect the warranty labor from Japen engines; since Japen has a tendency to find fault with the return core. They do replace the motor under this warranty but the labor guarantee is easy to find an outfit attached is a fax from Japen stating they would not pay labor because of an abusive material in the engine.

The first engine that Japen sent us was improperly built by them having the wrong lifters and rocker arms. Japen reimburses us to fix the first engine with parts

second engine as Mr. Bell keeps referring to. Jasper wanted us to run the first motor for 100 miles to see if the engine noise would go away. We had asked for a second motor and refused to drive the car for 1000 miles. Jasper then reimbursed us for repairing their motor.

On the most recent repair Mr. Bell was charged for labor amounts that Jasper told us they would pay for the repair which is lower than our current labor rates. This amount would be reimbursed if the found nothing wrong with the car return. The other charges on the bill were for oil, oil filter, plugs, distributor cap, rotor and miscellaneous parts and labor.

I will include repair orders on my bill to Major for 5000 miles forward since they are able to be generated by our computer since the time that they were on maintenance service, a 100000 mile break before the first of two engine replacements and we are repairing and we are doing service except during major repair.

Mr. Bell said the intake manifold was leaking and not the radiator. I told him to bring the V-8 back to us and we would look at it for him. He has yet to do so.

Thank you
David S. Rosenberg

EXHIBIT E



Welcome,
aclassactrds
[Sign Out, My
Account]



Search
the web

Search

Mail Home - Help



Click Here to protect your business
from the widest range of Spyware.

Mail

Addresses

Calendar

Notepad

aclassactrds@yahoo.com [Sign Out]

Check Mail

Compose

Search Mail

Mail Upgrades - Mail Options

Folders

[Add - Edit]

Inbox (4)

Draft

Sent

Bulk [Empty]

Trash [Empty]

My Folders [Hide]

action

setting motions



It's Free.
Check your Credit.



\$300K mortgage for
only \$1050/month!



Get 2.9%* at
RateMyMortgage



1.9%* Home Loan
Free Quote

Previous | Next | Back to Messages

Printable View

Delete

Reply

Forward

Spam



This message is not flagged. [Flag Message - Mark as Unread]

Date: Tue, 22 Jun 2004 13:21:41 -0700

To: "richard sell" <aclassactrds@yahoo.com>

Subject: Re: Re: Thanks for contacting Mazda (KMM235074V25247L0KM)

From: "Mazdavisors" <mazdavisors@mazdausa.com>

Dear Richard,

Thank you for supplying your VIN.

According to our records, Central Mazda was terminated on Dec 1999. Our records indicate the last warranty repair performed vehicle was for the hydraulic lash adjusters on May 21, 1998. time, your vehicle had 58,745 miles, and Mazda offered after-assistance to cover the repair.

I hope this information is helpful for you.

Please take a moment to give us your opinion about our e-mail Click or paste the link below to complete a brief, online sur

<http://www.zoomerang.com/survey.zgi?p=WEB2F69CVSJH>

Regards,

Lisa Lasky
Specialist, Customer Assistance E-Business

Original Message Follows:

Sorry for error, VIN is JM3LV5234S0707759. Again, please adv
I

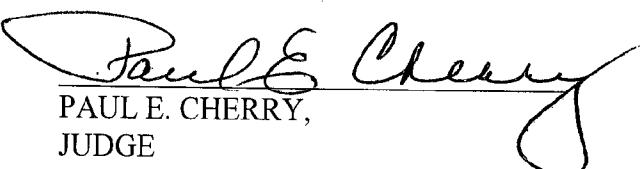
IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL AND LINDA SELL :
: NO. 04-940-CD
V. :
: CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 16th day of November, 2004, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that hearing be held with regard to said Motion on the 9 day of December, 2004, beginning at 10:30 o'clock A.M. in Courtroom No. 2 of the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,


PAUL E. CHERRY,
JUDGE

FILED ^{EB}
of 3:34 PM NOV 16 2004 to Paff-
RH 1, Box 212 B1
William A. Shaw
Prothonotary/Clerk of Courts
Reynoldsville, PA
#5851

116



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

CLEARFIELD COUNTY COURTHOUSE
SUITE 228, 230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-7649

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

***** Please note: This also includes service of scheduling orders obtained as the result of the filing of any pleading.**

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL) CIVIL DIVISION
)
 Plaintiffs) No. 04-940-CD
)
)
CENTRAL VOLKSWAGEN, INC.,)
)
 Defendant)

AFFIDAVIT OF SERVICE

I hereby certify that a copy of the foregoing
BRIEF IN OPPOSITION TO PRELIMINARY OBJECTIONS OF DEFENDANT was,
on this 15th day of November, 2004, served by first-class mail,
postage prepaid, on:

Bryan Shreckengost,
Pietragallo, Bosick & Gordon
Attorneys At Law
The Thirty-Eighth Floor
One Oxford Center
Pittsburgh, PA 15219

FILED *601c*

NOV 15 2004
6/15/05
William A. Shaw
Prothonotary/Clerk of Courts

#15

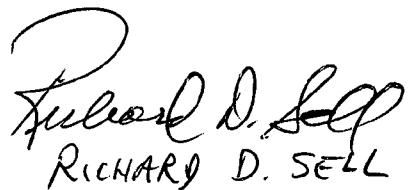
COMMONWEALTH OF PENNSYLVANIA

COUNTY OF CLEARFIELD

RICHARD D. SELL being duly sworn according to law depose
and says that the facts set forth in the foregoing pleadings
are true and correct to the best of my knowledge, information
and belief.

Sworn to and subscribed before me

this 15th day of November 2004


Richard D. Sell
RICHARD D. SELL

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL,	)	CIVIL DIVISION
)	
Plaintiffs	)	No. 04-940-CD
)	
)	
)	
CENTRAL VOLKSWAGEN, INC.,	)	Filed by Plaintiff
	)	Richard D. Sell <i>pro-se</i>
Defendant)	
)	

FILED

NOV 15 2004
William A. Shaw
Prothonotary/Clerk of Courts

1 copy to Plaintiff

#14

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL,) CIVIL DIVISION
Plaintiffs)
v.) No. 04-940-CD
CENTRAL VOLKSWAGEN, INC.,)
Defendant)
) **REQUEST TO AMEND**
) **COMPLAINT**
)
) Filed by plaintiff,
) Richard D. Sell
)

**PLAINTIFFS' MOTION FOR LEAVE
TO FILE AN AMENDED COMPLAINT**

Plaintiff *pro se* Richard D.Sell requests Honorable Court for leave to file an amended complaint.

Reasons for amending are for: providing a proper, more legible format; clarifying and making more certain the causes of action as fraudulent or deceptive conduct, to be construed as fraud; and, for restating all other counts previously asserted but now asserted as "unfair or deceptive acts or practices", together, combined, and defined or construed as **PA CPL violations**.

In their amended complaint here attached, plaintiffs include all previously asserted counts, now, under a singular count as **Violations of Consumer Protection Law** in order to simplify, consolidate and to make more certain, plaintiffs' claims of: unlawful acts and practices, generally; fraudulent or deceptive conduct, specifically.

Plaintiffs here provide documentary material in conformity with PA RCP 1019 (h), stating, "When any claim or defense is based upon an agreement, the pleading shall state specifically if the agreement is oral or written." Copies of documentary materials, here provided, are based on oral contracts with, and warranty given by, defendant. Other written agreements

relative to transactions that may exist, other than invoices, are unknown or otherwise unavailable to Plaintiffs.

Present Complaint and Amended Complaint are based on an oral agreement contemporary with EXHIBIT A. Subsequent to "A" a new oral agreement resulted in written invoice(s), EXHIBIT B. EXHIBIT C is an invoice as being the last record of any oral agreement with written contract for repairs with defendant business.

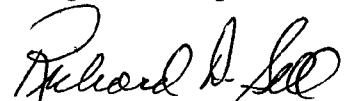
EXHIBIT D is a letter of Defendant relative to the terms of agreement for work, circumstances of repairs performed or anticipated by Defendant; and, reference to one or more agreements.

EXHIBIT E is an "e-mail" relevant to conditions preceding, and concurrent with, "A".

Plaintiffs here supplement, and amend their Complaint with attached exhibits and:

Plaintiff, Richard D. Sell, *pro-se*, requests this Honorable Court for leave to file an amended supplemental complaint, for which, proposed amended complaint is attached.

Respectfully submitted,



Richard D. Sell

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND
LINDA H. SELL

Plaintiffs

v.

CENTRAL VOLKSWAGEN, INC.
Defendant

) CIVIL DIVISION
)
) NO. 04-940-CD
)
) AMENDED COMPLAINT
)
) Filed on Behalf of Plaintiffs, by
) Richard D. Sell
)
) Pro-Se
)

Plaintiffs:

Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

AND NOW COMES the plaintiffs, Richard D. Sell and Linda H. Sell, pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17 1968, P.L. 1224, as amended and reenacted by the Act of November 2, 1976 P.L. 1166, 73 P.S. 201-1 et seq. (hereinafter "CPL"); 73 P.S. section 1951 et seq., P.S. sec. 1961, P.S. 1962 (PA Automobile Lemon Lemon Law); and 37 PA ADC s 301.1 et seq., 37 Pa. Code 301.1 et seq. (Automotive Industry Trade Practices), and represents as follows:

1. Plaintiffs, Richard D. Sell and Linda H. Sell, husband and wife, residing at 124 Four Seasons Drive (former address as RR 1 Box 212), Reynoldsville, PA 15851.
2. Defendant, Central Volkswagen, Inc., is a motor vehicle repair shop, dealer (code 50327), as defined by 37 Pa. Code 301.1 and 75 Pa. C.S. sec. 7131; and 49 U.S.C., sec 32702(2), as licensed, with a principal place of business at Route 322, Box 445, Dubois, PA

15801.

3. At all times hereto, the acts employed by Defendant were taken willfully.

Jurisdictional Allegations

4. Plaintiffs' damages alleged caused by defendant's actions are within the monetary limits of this court.

5. Defendant's business is in Clearfield County

6. Defendant's intentional actions actions in Clearfield County caused damages to plaintiffs in Clearfield County.

7. This Court has statutory jurisdiction over plaintiffs' rights and remedies claimed in addition to those sought under any other law, contract or warranty.

8. Plaintiffs now seek their rights and remedies under present law.

9. This Court has jurisdiction.

Identification Of Subject Transaction

10. Paragraphs 1 through 9 are incorporated herein by reference as if more fully set forth.

11. After plaintiffs purchased a 1995 Mazda, VIN JM3LV5234S0707759 from defendant plaintiffs returned their vehicle a second time, for the same major engine problem, on 6-16-98.

12. Defendant repaired plaintiffs' vehicle a second time on 6-16-98.

13. Defendant gave an oral agreement to fix it again, for free, upon delivery to plaintiffs at that time, on or about 6-16-98.

14. Plaintiffs' vehicle continued with the same problems as those complained of on numerous occasions, following 6-16-98.

15. Plaintiff delivered vehicle on 4-13-01 following the same, aforesaid complaints.

16. Defendant did not "fix it again", but replaced plaintiffs' engine.

17. Defendant released plaintiff's vehicle to her after more than three months

following completion of repairs/replacement of her engine.

18. Defendant again replaced plaintiffs' engine on 10-08-02 under warranty, releasing Plaintiff's vehicle to him on 10-23-02.
19. Defendant charged plaintiff the full cost of an engine replacement.
20. On 10-23-02, having his vehicle driven to his home, plaintiff discovered a major leak in his engine, requiring plaintiff to have his vehicle towed to another shop.
21. Plaintiffs seek damages for defendant's conduct as enumerated more fully below.

VIOLATIONS OF CPL:

I. Fraudulent And Deceptive Acts And Conduct

22. Paragraphs 1 through 21 are incorporated here as if more fully set forth.
23. A violation of any provision of Chapter 28 of this state's Automobile Lemon Law is also a violation of the act of December 17, 1968 P.L. 1224, No. 387, known as the Unfair Trade Practices and Consumer Protection Law (CPL).
24. Unfair or deceptive acts or practices are violations of this state's CPL, 73 P.S. 201-2 (4) (i through xxⁱ).
25. Defendant breached his duty to inform plaintiff of material facts of the cause and remedy to plaintiffs' persistent complaints.
26. Defendant failed to comply with the terms of an express warranty for not reporting a "nonconformity" as proscribed by 73 P.S. 1957.
27. Defendant fraudulently concealed the existence of an extended warranty or otherwise free remedy of repairs through the manufacturer.
28. Defendant's failure to inform, report, and to comply: effectively withheld free repairs from plaintiffs, under the terms of their oral agreement; and barred an otherwise free remedy of repairs through the manufacturer.

29. Defendant intended plaintiffs to rely upon his material misrepresentations in order to gain excess profit.

30. Defendant intended plaintiffs to rely upon his statements in order to agree to an engine replacement.

31. Defendant, through conduct herein identified as material misrepresentation and/or constructive fraud, fraud by inducement into a contract of repairs, caused damages to plaintiffs in the amount of \$4690.

32. Defendant additionally submitted a false document- a written invoice- following a new oral agreement for an engine replacement.

33. Defendant, through fraudulent conduct as here described, breached one oral agreement for repairs in fact and effect, subsequently supplanting it with a new oral agreement and written contract.

34. Wherefore, plaintiffs pray for three times their actual damages, or \$14,070.

OTHER CPL VIOLATIONS

II. Unfair Or Deceptive Acts Or Practices

35. Paragraphs 1 through 34 are incorporated herein as if more fully set forth.

36. Defendant engaged in other unfair or deceptive acts and practice, or other fraudulent conduct which was likely to create confusion or misunderstanding.

37. Defendant breached an oral agreement of \$3700 for an engine replacement, by charging plaintiff \$4690.

38. Plaintiff did not authorize, orally or in writing, an increase of \$990 over the agreed price.

39. Defendant's breach was in knowing violation of the agreement and the law.

40. Defendant's breach was unconscionable and in bad faith, given the circumstances

of known costs of repairs, damage to plaintiffs vehicle while in the custody of defendant and the cost and inconvenience of other substitute transportation, over a period of 3 months.

41. Plaintiffs assert that defendant exceeded their agreement in order to pay for its cost of additional labor connected to an accident involving rearend damage to plaintiffs vehicle.

42. Wherefore, as defendant's conduct was in reckless disregard of the law and of plaintiffs' interests; unconscionable and in bad faith, plaintiffs pray for three times actual damages of \$990, or \$2970.

III. Constructive Fraud

43. Defendant owed a duty to assign a credit of \$818.80 to plaintiffs, given by virtue of a separate agreement attendant upon the occasion of plaintiffs' first engine replacement.

44. Defendant knew, by his confirmation in writing, of this agreement pertaining to the issuance of \$818.80 from an engine vendor.

45. Defendant received, but did not credit plaintiffs with said credit.

46. Plaintiffs sought, and received only, the exact amount of this breach by judgement.

47. Plaintiffs discovered defendant's fraudulent behavior of concealing and misdirecting said credit in April, 2004.

48. Defendant denied the existence and purpose of said credit which defendant directed, or caused to be directed to an associated dealer, and different identity.

49. Defendant intended plaintiffs to be deceived by its cloaking of identity.

50. Defendant's acts of concealment, interference with a contract and through otherwise fraudulent or deceptive acts, intended to deprive plaintiffs of \$818.80.

51. Wherefore and in accordance with provision of P.S. 201-9.2, plaintiffs pray for two times actual damages, or \$1,637.60.

IV. Fraud In The Inducement

52. Paragraphs 1 through 51 are herein incorporated as if more fully set forth.
53. Plaintiff delivered his vehicle to defendant for an engine replacement on 10-08-03, under warranty for failure of same engine which was installed about 5-24-01.
54. Defendant replaced same engine with a new one, charging plaintiff \$972.08.
55. Defendant told plaintiff, when she called defendant on 10-28-03, that defendant had replaced items, informing her that vehicle was ready but that the radiator was "shot".
56. Plaintiff received his vehicle on 10-31-03, removing it to his home, where he discovered a major antifreeze leak from the block.
57. Plaintiff purchased a new radiator, subsequently towing his vehicle to another shop, where a leaking block gasket was replaced, along with the new radiator.
58. Defendant could, or should have known of damage to plaintiffs' radiator and that his radiator was repairable at minimal cost.
59. Defendant's workmanship resulted in the major leak of the engine block the same as factually occurred on 5-24-01 when plaintiff attempted to take custody of her vehicle after the previous engine replacement.
60. Defendant fraudulently induced plaintiff into buying a new radiator.
61. Wherefore, plaintiffs pray for the amount, for fraud upon breached contract of \$972.08, doubled as damages of \$1,944.16.
62. Defendant's fraud upon the contract of 10-23-02 caused damages of additional repairs and charges to effectively repair plaintiffs' vehicle, as a direct consequence. totalling \$894.
62. Whereas, plaintiffs pray for treble damages of \$2,672.
63. In all three agreements, as aforementioned, defendant violated the PA CPL by:

- (ii) "Causing the likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services."
- viii) "Disparaging the goods, services or business of another by false or misleading representations of fact."
- (xiv) "Failing to comply with the terms of any written guarantee or warranty..."
- (xv) "Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed."
- (xviii) "Using a contract, form or any other document related to a customer transaction which contains a confessed judgement clause that waives the consumer's right."
- (xxi) "Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding."

64. Defendant' engaged in deceptive acts and practices against the prohibitions of the Automobile Industry Trade Practices, by 37 PA ADC 301.5, are more fully enumerated as follows:

- (1) knowingly making false statements of need for repairs
- (2) failing to record odometer reading before and after service work
- (3) making unauthorized repairs
- (4) failure of returns for inspection of parts
- (5) failure to remedy promptly, at no charge for work not performed properly and complained of
- (6) using customer's vehicle for a purpose other than a test drive
- (7) failure to provide a accurate, complete invoice

PRAYER FOR RELIEF

Wherefore, Plaintiffs ask this Honorable Court for an Order:

1. Finding that Defendant's conduct was in violation of CPL and the Automotive Industry Trade Practices.
2. Directing Defendant to pay Plaintiffs the sum of actual damages of \$8,364.88.
3. Directing Defendant to pay treble damages for Counts I,II and IV of \$19,712, as indicated.
4. Directing Defendant to pay Plaintiffs double damages for Counts III and IV of \$1,944.16.
5. Directing Defendant to pay Plaintiffs, as indicated, total damages of \$23,293.76.
6. Granting such other equitable relief as this Honorable Court may deem necessary and proper.

Respectfully submitted,



Richard D. Sell

Richard D. Sell

EXHIBIT A

Central VW Mazda
route 322 Box 445
uBois, PA 15801
hone 814-583-5121
oll Free 800-328-7253

SELL; RICHARD D RD1 BOX 212 REYNOLDSVILLE		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.	
		JM3LV5234S0707759		58745	06/16/98	23940 A	
		YEAR	MAKE	MODEL	COLOR	TAG NO.	
95	MAZDA	MPV LX	WHITE	00000			
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.	TERMS
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	DL	CASH
CUST. LABOR RATE	DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE		
36.00	12/09/95		58745	05/14/98	12/09/95		

AAAA
BBBB
CCCC

AAAA
BBBB
CCCC

LINE	OP. CODE	FAIL-CD	TECH	HOURS/QTY	TYPE	AMOUNT
A CUSTOMER STATES TIC NOISE IN ENGINE ON COLD START UP REPLACE VALVE LIFTERS---CHANGE OIL AND FILTER						
	ARS 4043			5.93	W	122.10
	JFY112100	ADJUSTER, HYD.		18	W	415.80 297.00
	JF0110235A	GASKET, HEAD		2	W	30.38 15.80
	G6Y014302A	FILTER, OIL		1	W	5.25 3.75
44133	122.10-	50.41		TOTAL-CASH	1188	NoCharge
48033	451.43-	316.55				
1356	573.53					

Re - valve lifter problem on 58745 - part & labor charge
why no record for valve job prior to 58745, left open for 21 days
important as this whole issue of engine repair is at stake.

OFFICE COPY - PAGE 1

STATEMENT OF DISCLAIMER

The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

On behalf of servicing dealer, I hereby certify that the information contained hereon is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.

CUSTOMER SIGNATURE

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

EXHIBIT B

Central Volkswagen, Inc.

Route 322 P O Box 445
 DuBois, PA 15801
 Phone 814-583-5121
 Toll Free 800-328-7253

SELL; RICHARD D RD1 BOX 212 REYNOLDSVILLE		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.	
		JM3LV5234S0707759		129261	05/25/01	27890 A	
		YEAR	MAKE	MODEL	COLOR	EOD - C	
95	MAZDA	MPV LX	WHITE	TAG NO.	00000		
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.	TERMS
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	STE 1252	CASH
CUST. LABOR RATE	DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE		
44.00	12/09/95		129261	04/03/01	12/09/95		

AAAA
 BBBB
 CCCC

AAAA
 BBBB
 CCCC

LINE	OP. CODE	FAIL-CD	TECH.	HOURS/QTY	TYPE	AMOUNT
A	CUSTOMER STATES ENGINE HAD KNOCKING NOISE THEN VAN SHUT OFF MOTOR BLOWN REPLACED WITH JASPER MOTOR					
	ARS 4043			40.69	C	1130.36
	FK231	TRANS KIT		1	C	36.73
	JASPER	ENGINE		1	C	2866.00
	INSTALL	KIT FOR ENGINE		1	C	214.00
B	PA STATE INSP. PLATE # ACB8573 EXP. 5-31-2002 ERIE POLICY # Q08 2401955 N EXP. 8-24-2001					
	ARS 4043			.70	C	17.00
C	CUSTOMER STATES PERFORMED TRANNY SERVICE AND CHANGED DIFFERENTIAL FLUIDS					
	FLUIDS	ARS 4043		4.00	C	150.00
	FLUIDS	OIL		4	C	4.50
		MISC.		6	C	6.50
		Labor		4401	1297.36-	385.82
		Parts		4701	3116.73-	2522.99
		Fluids		6459	11.00-	
		SalesTax		2221	265.51-	
		TOTAL-CASH		1188	4690.60	

OFFICE COPY - PAGE 01

STATEMENT OF DISCLAIMER
 The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

On behalf of servicing dealer, I hereby certify that the information contained herein is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.

CUSTOMER SIGNATURE

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

Central Volkswagen, INC.

Route 322 P O Box 445
 DuBois, PA 15801
 Phone 814-583-5121
 Toll Free 800-328-7253

SELL; RICHARD D RD1 BOX 212 REYNOLDSVILLE		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.	
		JM3LV5234S0707759		129871	07/13/01	28135 A EOD - C	
		YEAR	MAKE	MODEL	COLOR	TAG NO.	
95	MAZDA	MPV LX	WHITE	00000			
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.	TERMS
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	STE 1252	CASH
CUST. LABOR RATE	DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE		
44.00	12/09/95		129871	06/07/01	12/09/95		

AAAA
 BBBB
 CCCC

LINE	OP. CODE	FAIL-CD	TECH	HOURS/QTY	TYPE	AMOUNT
A	CUSTOMER STATES FIX LEAK					
	REPLACED HEADGASKETS AND WATERPUMP GASKET					
	ARS 4043			22.08	C	528.20
	SL14620	OIL FILTER		1	C	3.60
	JF0113237	GASKET, EXH. MA		6	C	16.80
	JE1513111	GASKET, IN. MAN		2	C	24.22
	JF0110235A	GASKET, HEAD		2	C	24.02
	FREIGHT CHARGE			1	C	4.20
	HEAD	GASKET		2	C	156.08
FLUIDS	OIL			4	C	4.50
FLUIDS	MISC.			2	C	2.50
	Labor			4401	528.20-	187.68
	Parts			4701	228.92-	160.47
	Fluids			6459	7.00-	
	SalesTax			2221	45.85-	
	TOTAL-CASH			1188	809.97	

OFFICE COPY - PAGE 01

STATEMENT OF DISCLAIMER
 The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The Seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

On behalf of servicing dealer, I hereby certify that the information contained hereon is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.

CUSTOMER SIGNATURE

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

EXHIBIT C

Central Volkswagen, Inc.

Route 322 P O Box 445
 DuBois, PA 15801
 Phone 814-583-5121
 Toll Free 800-328-7253

30189SEL

SELL; RICHARD D RD1 BOX 212 REYNOLDSVILLE		VEHICLE IDENTIFICATION		MILEAGE OUT	DATE OUT	INVOICE NO.
		JM3LV5234S0707759	146466	10/23/02	30189	
		YEAR	MAKE	MODEL	COLOR	TAG NO.
	PA 15851	95	MAZDA	MPV LX	WHITE	00000
CUST. NO.	LICENSE	HOME PHONE	WORK PHONE	STOCK NO.	PROD. DATE	SERV. ADV.
	ACB 8573	814-653-9298	814-375-7515	1860	00/00/00	STE 1252 CASH
CUST. LABOR RATE	DELIV. DATE	DELIV. MILES	MILEAGE IN	DATE IN	IN-SERV. DATE	
46.00	12/09/95		146466	10/08/02	12/09/95	

LINE	OP. CODE	FAIL-CD	TECH	HOURS/QTY	TYPE	AMOUNT
A	CUSTOMER STATES CHECK ENGINE NOISE AT IDLE MOST NOISE CHUGS AT DRIVING NOISE LEFT SIZE JASPER MOTOR CASE NO. 194001 800 827 7450 RADIATOR NEED REPLACED JASPER REPLACEMENT ENGINE NO CHARGE LABOR					
	AJM 8477			18.00	C	810.00
	NUTZ & BOLTZ MISC.			3	C	4.17
	5224 SPARK PLUGS/ C			6	C	10.20
	225179 DIST. CAP			1	C	31.50
	235056 DIST. ROTOR			1	C	6.36
	4772 WIRE SET			1	C	30.72
	600-1813 STUD KIT			1	C	6.13
	WASHERS LOCKING WASHER			4	C	2.36
	ZIP TIE STRAP LOCKING STRAP			3	C	4.17
	21356 OIL FILTER/ NA			1	C	4.20
	ZVP000300 ENGINE OIL			5	C	7.25
	Labor					810.00
	Parts					107.06
	SalesTax					55.02
	TOTAL-CASH					972.08

CUSTOMER COPY - PAGE 01

STATEMENT OF DISCLAIMER
 The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties either express or implied, including any implied warranty of merchantability or fitness for a particular purpose. Seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

On behalf of servicing dealer, I hereby certify that the information contained herein is accurate unless otherwise shown. Warranty services described were performed at no charge to owner. There was no indication from the appearance of the vehicle or otherwise, that any part repaired or replaced under this claim had been connected in any way with any accident, negligence or misuse. Records supporting this claim are available for (1) year from the date of payment notification at the servicing dealer for inspection by manufacturer's representative.

CUSTOMER SIGNATURE

(SIGNED) DEALER, GENERAL MANAGER OR AUTHORIZED PERSON (DATE)

EXHIBIT D

Attn: Timothy Shiey

When Mr. Sell arrived at our dealership his claim was the Mazda was running with the hood up! It was parked behind our building not running and locked up. Before coming here Mr. Sell was informed that the car needed caps, roth, plug wires and the radiator should be replaced because it has a leak. It would not have been leaking when it was brought into us so it was very low on antifreeze. This may be why the second engine had deteriorated. After the new engine was replaced and road tested there were no leaks other than the top of the radiator. Mr. Sell went home and came back to remonstrating that we had done the top of his radiator after he inspected it and now comes back stating there is no radiator damage but a leak in the intake manifold.

Mr. Sell keeps making reference to three engine replacement on his Mazda. He only made 2. Unless there is a third replacement engine we don't know about it. Mr. Sell was told early on that they would have to pay for installation of the second engine and collect the warranty labor from Japan engines; since Japan does not have to pay full with the return core. They do replace the motor under this warranty but the dealer guarantees it easy to find an outfit attached is a far from guaranteeing they would not pay labor because of an defective material in the engine.

The first engine that Japan sent us was improperly built by them having the wrong lifters and rocker arms. Japan reimburses us to fix the first engine with parts

second engine as Mr. Sell keeps referring to. Jasper wanted us to run the first motor for 1000 miles to see if the engine noise would go away. We had asked for a second motor and refused to drive the car for 1000 miles. Jasper then reimbursed us for repairing their motor.

On the most recent repair Mr. Sell was charged for labor amounts that Jasper told us, they would pay for the repair which is lower than our current labor rates. This amount would be reimbursed if they found nothing wrong with the core return. The other charges on the bill were for oil, oil filters, plugs, distributor cap, rotor and miscellaneous nuts and bolts.

I will include repair orders on Mr. Sell's mileage for 5000 miles forward since they are able to be generated by our computer since that time. Note there were no maintenance services, a water pump leaking before the first of two engine replacements and never repaired and no oil change services except during major repairs.

Mr. Sell said the intake manifold was leaking and now not the radiator. I told him to bring the V-16 back to us and we would look at it for him. He had yet to do so.

Thank you
David S. Rosenberg

EXHIBIT E



Welcome,
aclassactrds
[Sign Out, My
Account]



Search
the Web

Search

Mail Home - Help

Click Here to protect your business
from the widest range of Spyware.

Mail

Addresses

Calendar

Notepad

aclassactrds@yahoo.com [Sign Out]

Check Mail

Compose

Search Mail

Mail Upgrades - Mail Options

Folders [Add - Edit]

Inbox (4)

Draft

Sent

Bulk [Empty]

Trash [Empty]

My Folders [Hide]

action

setting motions

Previous | Next | Back to Messages

Printable View

Delete

Reply

Forward

Spam

This message is not flagged. [Flag Message - Mark as Unread]

Date: Tue, 22 Jun 2004 13:21:41 -0700

To: "richard sell" <aclassactrds@yahoo.com>

Subject: Re: Re: Thanks for contacting Mazda (KMM235074V25247L0KM)

From: "Mazdavisors" <mazdavisors@mazdausa.com>

Dear Richard,

Thank you for supplying your VIN.

According to our records, Central Mazda was terminated on Dec 1999. Our records indicate the last warranty repair performed vehicle was for the hydraulic lash adjusters on May 21, 1998. time, your vehicle had 58,745 miles, and Mazda offered after-assistance to cover the repair.

I hope this information is helpful for you.

Please take a moment to give us your opinion about our e-mail Click or paste the link below to complete a brief, online sur

<http://www.zoomerang.com/survey.zgi?p=WEB2F69CVSJH>

Regards,

Lisa Lasky
Specialist, Customer Assistance E-Business

Original Message Follows:

Sorry for error, VIN is JM3LV5234S0707759. Again, please adv
I

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

RICHARD D. SELL and

:

LINDA H. SELL

:

VS.

: NO. 04-940-CD

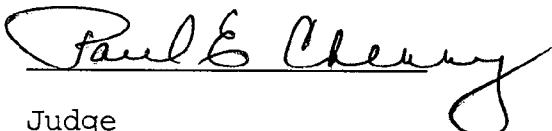
CENTRAL VOLKSWAGEN, INC.

:

O R D E R

NOW, this 5th day of November, 2004, following argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Incorporated, it is the ORDER of this Court that Plaintiff shall file brief in support of his opposition to Preliminary Objections within no more than ten (10) days from this date. Defendant, if he so chooses, shall have ten (10) days thereafter to file a reply brief.

BY THE COURT:


Paul E. Cheaney

Judge

FILED
NOV 10 2004
0200819 1cc ref
1cc aty Shreckengost

NOV 10 2004

WILL
Protho

#13

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

RICHARD D. SELL and

:

LINDA H. SELL

:

VS.

: NO. 04-940-CD

CENTRAL VOLKSWAGEN, INC.

:

O R D E R

NOW, this 5th day of November, 2004, following argument on Plaintiff's Petition for Reconsideration and upon consideration thereof, it is the ORDER of this Court that the said petition be and is hereby granted.

BY THE COURT:

Paul E. Cheung

Judge

ERK **FILED**
O 2:00 PM 10/10/04
2004-04-04 Shreckengast

NOV 10 2004

WILLIAM A. CHEN
Prothonotary

#12

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing CRDER was, on this 14th day of October, 2004 served by first-class mail, prepaid, on:

Bryan K. Shreckengost
Pietragallo Bosick & Gordon
Attorneys At Law
The Thirty-Eighth Floor
One Oxford Center
Pittsburgh, Pennsylvania 15219

IN THE COUNTY OF JEFFERSON _____ BEING DULY SWORN ACCORDING TO LAW DEPOSE AND SAYS THAT THE FACTS SET FORTH IN THE FOREGOING ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 14th DAY OF October


Richard D. Sell

FILED 
m 2004 MA 100000
Richard Sell

OCT 15 2004

William A. Shaw
Prothonotary


#11

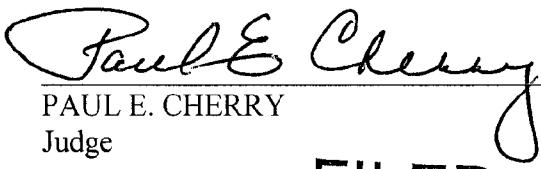
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and LINDA :
H. SELL :
vs. : No. 04-940-CD
: :
CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 6th day of October, 2004, upon consideration
of Plaintiff's Petition for Reconsideration filed in the above matter, it is the
ORDER of the Court that argument on said Petition has been scheduled for the
5 day of November, 2004, at 10:30 A M, in Courtroom
No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED

OCT 08 2004
08 8:30 AM
William A. Shaw
Prothonotary/Clerk of Courts

2 cent w/ memo to

~~Plaintiff~~ Plaintiff
#10

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs,) No.: 04-940-CD
)
v.)
) **AFFIDAVIT OF SERVICE**
CENTRAL VOLKSWAGEN, INC.,)
)
Defendant.) Filed on Behalf of:
) Defendant Central Volkswagen, Inc.

Counsel of Record:

Bryan K. Shreckengost, Esq.
PA ID #69098

Pietragallo, Bosick & Gordon
Firm No. 834
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED *E6K*
NO CC
3/11/56 AM
OCT 04 2004

William A. Shaw
Prothonotary/Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs,) No.: 04-940-CD
)
v.)
)
CENTRAL VOLKSWAGEN, INC.,)
)
Defendant.)

AFFIDAVIT OF SERVICE

I hereby certify that a copy of the September 23, 2004 Order of Court was served on Plaintiffs, Richard D. Sell and Linda H. Sell at RR 1 Box 212 B-1, Reynoldsville, Pennsylvania 15851 via 1st class, U.S. mail, postage prepaid on September 29, 2004. A copy of the September 23, 2004 Order is attached hereto as Exhibit A.

Respectfully submitted:

PIETRAGALLO, BOSICK & GORDON

By



Bryan K. Shreckengost, Esq.
Attorneys for Defendant,
Central Volkswagen, Inc.

EXHIBIT A

RECEIVED
SEP 28 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

RICHARD D. SELL and :
LINDA H. SELL :
VS. : NO. 04-940-CD
CENTRAL VOLKSWAGEN, INC. :

O R D E R

NOW, this 23rd day of September, 2004, this being the date set for argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Incorporated, Plaintiffs, Richard D. And Linda H. Sell, having failed to appear despite receiving due and proper notice, it is the ORDER of this Court that the Preliminary Objections be and are hereby sustained. Plaintiffs' Complaint, in its entirety, is hereby dismissed, with prejudice.

BY THE COURT:

/s/ Paul E. Cherry

Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

SEP 27 2004

Attest.

William E. Cherry
Prothonotary/
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AFFIDAVIT OF SERVICE was, on this 29th day of September 2004, served by first-class U.S. mail, postage prepaid, on:

Richard D. Sell
Linda H. Sell
RR 1 Box 212 B-1
Reynoldsville, PA 15851

A handwritten signature in black ink, appearing to read "Bryan J. Swango", is written over a thin horizontal line.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL,	)	CIVIL DIVISION
)	
Plaintiffs	)	No. 04-940-CD
)	
)	
)	
CENTRAL VOLKSWAGEN, INC.,	)	Filed by Plaintiff
	)	Richard D. Sell <i>pro-se</i>
Defendant)	
)	

FILED
01400 BY acc Piff
SEP 30 2004
William A. Shaw
Notary/Clerk of Courts

(#)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL	)	CIVIL DIVISION
)	
Plaintiffs	)	No. 04-940-CD
)	
	)	PETITION FOR
	)	RECONSIDERATION
CENTRAL VOLKSWAGEN, INC.,)	
	)	MOTION TO GRANT STAY
Defendant)	
	)	Filed by plaintiff,
	)	Richard D. Sell, pro-se
)	
	)	Filed on behalf of Plaintiffs:

Richard D. and Linda H. Sell
124 Four Seasons Drive
Reynoldsville, PA 15851

(814-653-9298)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL	)	CIVIL DIVISION
)	
Plaintiffs	)	No. 04-940-CD
)	
)	
)	
CENTRAL VOLKSWAGEN, INC.,)	
)	
Defendant)	

PETITION FOR RECONSIDERATION

AND NOW, comes Plaintiff, Richard D. Sell *pro-se*, on behalf of Richard D. Sell and Linda H. Sell, and petitions this Honorable Court for reconsideration of their complaint which was dismissed with prejudice, on September 23, 2004, and asserts the following:

1. Plaintiff states his tardy appearance in the Court, by seven to nine minutes of the appointed time for hearing of preliminary objections, was excusable or otherwise allowable by customary and usual indulgence, under similar circumstances, as which has been afforded others.
2. Plaintiff asserts that his delayed appearance, and no other reason, resulted in a prejudicial dismissal of his complaint, for failure of timely appearance.
3. Plaintiff received no "call to court", nor was he otherwise informed or sought out in the Court House, by security guard, tipstaff, attorneys in the Court or by personnel in the Prothonotary's office.
4. Under these circumstances plaintiff was prejudiced with default judgement

against him in that he was not given a full and fair opportunity to supplement the record

5. Plaintiff asserts default judgement was improper in that:

It was improper based on defendant's non compliance with PA RCP Rule 1028 (a)(1), (5),(6), requiring an endorsement with a notice to plead. No such endorsement was received by plaintiff. Plaintiffs therefore relied upon PA RCP Rule 1028(d), "Official Note": 'Preliminary objections must be endorsed with a notice to plead or no response will be required under Rule 1029(d)." Plaintiffs relied upon Rule 1029(d), stating, "Averments in pleadings to which no responsive pleading is required shall be deemed to be denied."

Therefore, inasmuch as Plaintiff's "no response" is a denial of defendant's assertions, and as such, constituted a reply to defendant, judgement against either party could not be properly rendered without further evidence required of defendant under Rule 1028 against its own presumption, as weighed against the clear presumption, and *prima facie* of Plaintiffs' original complaint.

WHEREAS, in consideration of all the foregoing reasons and for the facts stated above Plaintiffs respectfully submit, and petition this Honorable Court to restore, re-open and reconsider plaintiffs to their former position of the filing of their initial complaint.

Respectfully submitted,



Richard D. Sell

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND LINDA H. SELL	)	CIVIL DIVISION
)	
Plaintiffs	)	NO. 04-940-CD
)	
CENTRAL VOLKSWAGEN, INC.)	
)	
Defendant)	

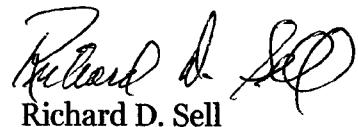
MOTION TO GRANT STAY

NOW COMES Plaintiffs, Richard D and Linda H. Sell, seeking relief of a default judgement, issued by this Court on September 23, 2004, stating in their original complaint that their cause of action, under Pennsylvania UTPCP Laws, as referred to in their original complaint, constitutes a *prima facie* case based on the following:

1. Plaintiffs' complaint was asserted under a provision of treble damages which is based on fraud, by construction and interpretation of present law and equity.
2. Plaintiffs' assertions were not construed as fraud, and were therefore not taken "upon their face" as fraud; moreover they were construed as an action previously litigated and settled.
3. Judgement against Plaintiffs for lack of appearance as noted in his **PETITION FOR RECONSIDERATION**, was improper, as noted, now requiring an issuance of a stay in order that Plaintiff may be relieved of the prejudice of an improper judgement against them.

WHEREAS, Plaintiffs have not had a full and complete opportunity to present their case
Plaintiffs move this Honorable Court to grant Plaintiffs thier right to amend their com-
plaint, to have their case be restored and to be heard at a trial.

Respectfully submitted,



Richard D. Sell

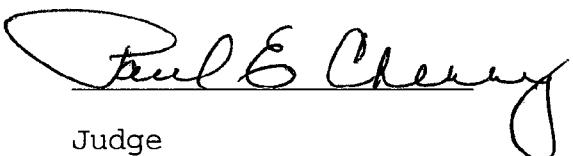
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and :
LINDA H. SELL :
VS. : NO. 04-940-CD
CENTRAL VOLKSWAGEN, INC. :

O R D E R

NOW, this 23rd day of September, 2004, this being the date set for argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Incorporated, Plaintiffs, Richard D. And Linda H. Sell, having failed to appear despite receiving due and proper notice, it is the ORDER of this Court that the Preliminary Objections be and are hereby sustained. Plaintiffs' Complaint, in its entirety, is hereby dismissed, with prejudice.

BY THE COURT:


Judge

EGK
FILED
2CC
PSS
0/2/1030 RRI Box 212
SEP 27 2004 B-1
William A. Shaw
Prothonotary/Clerk of Courts 15851
Reynoldsburg, PA

2CC-A#4
Shreckengost
#7

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

Counsel of Record:

Bryan K. Shreckengost, Esq.
PA ID #69098

Pietragallo, Bosick & Gordon
Firm No. 834
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NO
m/3:55PM '04 cc
AUG 25 2004

William A. Shaw
Prothonotary/Clerk of Courts

#753595

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

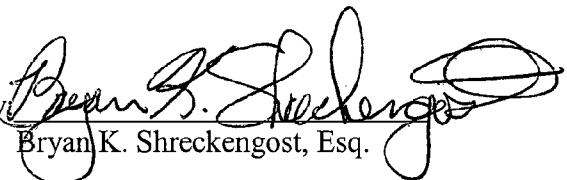
RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs,) No.: 04-940-CD
)
v.)
)
CENTRAL VOLKSWAGEN, INC.,)
)
Defendant.)

AFFIDAVIT OF SERVICE

I hereby certify that a copy of the August 18, 2004 Order of Court was served on Plaintiffs, Richard D. Sell and Linda H. Sell at RR 1 Box 212 B-1, Reynoldsville, Pennsylvania 15851 via 1st class, U.S. mail, postage prepaid on August 23, 2004. A copy of the August 18, 2004 Order is attached hereto as Exhibit A.

Respectfully submitted:

PIETRAGALLO, BOSICK & GORDON

By 
Bryan K. Shreckengost, Esq.

Attorneys for Defendant,
Central Volkswagen, Inc.

E X H I B I T A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and LINDA :
H. SELL :
vs. : No. 04-940-CD
CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 18th day of August, 2004, upon consideration
of Defendant's Preliminary Objections filed in the above matter, it is the ORDER
of the Court that argument on said Objections has been scheduled for the 23
day of September, 2004, at 2:00 P.M. in Courtroom No.
2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

/s/ Paul E. Cherry

PAUL E. CHERRY
Judge

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

AUG 19 2004

Attest.

William B. Cherry
Prothonotary/
Clerk of Courts

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing AFFIDAVIT OF SERVICE was, on this 23rd day of August 2004, served by first-class U.S. mail, postage prepaid, on:

Richard D. Sell
Linda H. Sell
RR 1 Box 212 B-1
Reynoldsville, PA 15851



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA
CIVIL DIVISION

RICHARD D. SELL and LINDA :
H. SELL :
vs. : No. 04-940-CD
CENTRAL VOLKSWAGEN, INC. :

ORDER

AND NOW, this 18th day of August, 2004, upon consideration
of Defendant's Preliminary Objections filed in the above matter, it is the ORDER
of the Court that argument on said Objections has been scheduled for the 23
day of September, 2004, at 2:00 P.M., in Courtroom No.
2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:


PAUL E. CHERRY
Judge

FILED

AUG 19 2004

William A. Shaw
Prothonotary/Clerk of Courts

(#5)

FILED 2cc & Memo Re: service
of 3:23-CV-
Aug 19 2004 to Any Street
EAS post

William A. Shaw
Prothonotary/Clerk of Courts



OFFICE OF COURT ADMINISTRATOR
FORTY-SIXTH JUDICIAL DISTRICT OF PENNSYLVANIA

COPIED

CLEARFIELD COUNTY COURTHOUSE
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

DAVID S. MEHOLICK
COURT ADMINISTRATOR

PHONE: (814) 765-2641
FAX: 1-814-765-6089

MARCY KELLEY
DEPUTY COURT ADMINISTRATOR

MEMO: To all parties filing Petitions/Motions in Clearfield County:

Please make note of the following:

Rule 206(f) The party who has obtained the issuance of a Rule to Show Cause shall forthwith serve a true and correct copy of both the Court Order entering the Rule and specifying a return date, and the underlying Petition or Motion, upon every other party to the proceeding in the manner prescribed by the Pennsylvania Rules of Civil Procedure (see PA. R.C.P. 440) and upon the Court Administrator.

Rule 206(g) The party who has obtained the issuance of a Rule to Show Cause shall file with the Prothonotary, within seven (7) days of the issuance of the Rule, an Affidavit of Service indicating the time, place and manner of service. Failure to comply with this provision may constitute sufficient basis for the Court to deny the prayer of the Petition or Motion.

In The Court of Common Pleas of Clearfield County, Pennsylvania

SELL, RICHARD D. & LINDA H.

Sheriff Docket #

15795

VS.

04-940-CD

CENTRAL VOLKSWAGEN, INC.

COMPLAINT

SHERIFF RETURNS

NOW JUNE 29, 2004 AT 10:45 AM SERVED THE WITHIN COMPLAINT ON CENTRAL VOLKSWAGEN, INC., DEFENDANT AT EMPLOYMENT, RT 322, BOX 445, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA BY HANDING TO DAVE ROSENBERG, GEN. MGR. A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT AND MADE KNOWN TO HIM THE CONTENTS THEREOF.

SERVED BY: COUDRIET

Return Costs

Cost	Description
32.62	SHERIFF HAWKINS PAID BY: PLFF CK# 390
10.00	SURCHARGE PAID BY: PLFF CK# 390

Sworn to Before Me This

13 Day Of July 2004

William A. Shaw
WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2006
Clearfield Co., Clearfield, PA

So Answers,

Chester A. Hawkins
Chester A. Hawkins
Sheriff

FILED
01 8:55am
JUL 13 2004
EAS

William A. Shaw
Prothonotary

#4

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs,) No.: 04-940-CD
)
v.)
)
CENTRAL VOLKSWAGEN, INC.,) **PRAECIPE TO PLACE CASE ON**
) **ARGUMENT LIST**
)
Defendant.)
)
Filed on Behalf of:
Defendant Central Volkswagen, Inc.

Counsel of Record:

Bryan K. Shreckengost, Esq.
PA ID #69098

Pietragallo, Bosick & Gordon
Firm No. 834
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

FILED NO
JUL 11 54 PM 2004 cc
SAC
William A. Shaw
Prothonotary/Clerk of Courts

#739522

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
Plaintiffs,) No.: 04-940-CD
)
v.)
)
CENTRAL VOLKSWAGEN, INC.,)
)
Defendant.)

PRAECIPE TO PLACE CASE ON ARGUMENT LIST

Please place the above-captioned case on the next available argument list.

Respectfully submitted:

PIETRAGALLO, BOSICK & GORDON

By: 
Bryan K. Shreckengost, Esq.

Attorneys for Defendant,
Central Volkswagen, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRAECIPE TO PLACE CASE ON ARGUMENT LIST was, on this 8th day of July 2004, served by first-class U.S. mail, postage prepaid, on:

Richard D. Sell
Linda H. Sell
RR 1 Box 212 B-1
Reynoldsville, PA 15851

A handwritten signature in black ink, appearing to read "Richard D. Sell", is written over a horizontal line. The signature is fluid and cursive, with a large, stylized 'R' at the beginning.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

Counsel of Record:

Bryan K. Shreckengost, Esq.
PA ID #69098

Pietragallo, Bosick & Gordon
Firm No. 834
The Thirty-Eighth Floor
One Oxford Centre
Pittsburgh, PA 15219

(412) 263-2000

#739436

FILED ^{NO}
m115464
cc
JUL 12 2004

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL and LINDA H. SELL,) CIVIL DIVISION
)
)
Plaintiffs,) No.: 04-940-CD
)
)
v.)
)
)
CENTRAL VOLKSWAGEN, INC.,)
)
)
Defendant.)

PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT

AND NOW, comes the Defendant, Central Volkswagen, Inc., by and through its attorneys, Pietragallo, Bosick & Gordon, and files the following Preliminary Objections to Plaintiffs' Complaint:

1. As more fully set forth in Plaintiffs' Complaint, Plaintiffs assert numerous claims arising out of multiple incidents of repair to a motor vehicle owned by Plaintiffs. In general, Plaintiffs contend that Defendant made excessive repair charges for the replacement/repair of a motor vehicle owned by Plaintiffs during the period from approximately June 1998 through October 2002. Based upon those circumstances, generally, Plaintiffs' Complaint alleges at least six causes of action consisting of alleged breach of warranty, breach of contract, conversion, unfair or deceptive acts in violation of the Pennsylvania Consumer Protection Law, negligence, and common law fraud. Attached hereto and made a part hereof as Exhibit A is a copy of Plaintiffs' Complaint in this action.

2. Prior to commencing the present action, Plaintiffs had commenced an action before the Honorable Patrick N. Ford, District Justice of Magisterial District No. 46-3-01. In their district justice action, Plaintiffs asserted claims against Central Volkswagen, Inc. based

upon the same facts and circumstances which give rise to the present lawsuit. Attached hereto and made a part hereof as Exhibit B is a copy of Plaintiffs' district justice Complaint at docket no. CV-27-03. Attached hereto and made a part hereof as Exhibit C is a copy of Plaintiffs' Amended Complaint against Central Volkswagen, Inc. at district justice docket No. CV-133-03.

3. In the district justice proceedings, a judgment was entered in favor of the Plaintiffs in the amount of \$890.30. Attached hereto and made a part hereof as Exhibit D is a copy of the judgment entered by the district justice at docket No. CV-133-03.

4. The district justice's judgment was paid by Central Volkswagen, Inc. check no. 61208 in the full judgment amount. Both Plaintiffs endorsed the check paying the judgment amount. Attached hereto and made a part hereof as Exhibit E is a copy of Central Volkswagen, Inc.'s check no. 61208 in the amount of \$890.30 and showing the endorsement by both Plaintiffs.

**PRELIMINARY OBJECTIONS PURSUANT TO PA. R.C.P. 1028(a)(1)—
LACK OF JURISDICTION OVER THE SUBJECT MATTER OF THE ACTION**

5. Pursuant to Pa. R.C.P. 1028(a)(1), preliminary objections may be filed based upon the Court's lack of jurisdiction over the subject matter of the action.

6. To the extent that Plaintiffs' claims and causes of action have been extinguished by and merged into the judgment of the district justice, there is no actual case or controversy presently existing between the parties.

7. Insofar as there is no actual case or controversy existing between these parties, Plaintiffs' claims are moot and this Court lacks jurisdiction over the purported subject matter of Plaintiffs' Complaint.

WHEREFORE, Defendant, Central Volkswagen, Inc. respectfully requests this Honorable Court sustain this preliminary objection and dismiss Plaintiffs' Complaint in its entirety, with prejudice.

**PRELIMINARY OBJECTIONS PURSUANT TO
PA. R.C.P. 1028(a)(5)—LACK OF CAPACITY TO SUE**

8. Pennsylvania Rule of Civil Procedure 1028(a)(5) provides that preliminary objections may be filed based upon Plaintiffs' lack of capacity to sue.

9. Insofar as the claims and causes of action asserted in the Complaint have been extinguished and merged into the district justice's judgment, which judgment has been fully satisfied, Plaintiffs lack capacity to sue upon the causes of action asserted in the Complaint.

10. Insofar as Plaintiffs are not permitted to split their causes of action which form the basis of both the district justice action and the present action, Plaintiffs' claims are now barred by virtue of the judgment in the district justice action and the satisfaction of said judgment by Central Volkswagen, Inc.

WHEREFORE, Defendant, Central Volkswagen, Inc. respectfully requests this Honorable Court sustain this preliminary objection and dismiss Plaintiffs' Complaint in its entirety, with prejudice.

**PRELIMINARY OBJECTIONS PURSUANT TO
PA. R.C.P. 1028(a)(6)—PENDENCY OF A PRIOR ACTION**

11. Pennsylvania Rule of Civil Procedure 1028(a)(6) provides that preliminary objections may be filed based upon the pendency of a prior action.

12. As shown by both the Complaint and the Amended Complaint in the district justice action, Plaintiffs have already pursued an action based upon the same facts and circumstances upon which Plaintiffs rely on the present action.

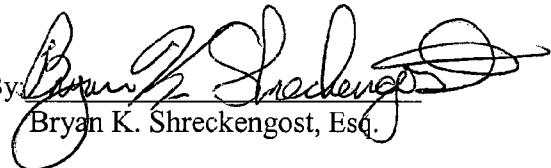
13. Insofar as the district justice action has resulted in a judgment in favor of Plaintiffs, and Central Volkswagen, Inc. has satisfied that judgment as demonstrated by the copy of the check attached hereto as Exhibit E, Plaintiffs' claims are barred by the doctrine of res judicata.

14. Plaintiffs are not permitted to split their causes of action, if any, arising out the facts and circumstances which gave rise to both the district justice action and the present action and, in any event, Plaintiffs are entitled to only one satisfaction of their alleged damages, which satisfaction has been achieved in the district justice action.

WHEREFORE, Defendant, Central Volkswagen, Inc. respectfully requests this Honorable Court sustain this preliminary objection and dismiss Plaintiffs' Complaint in its entirety, with prejudice.

Respectfully submitted:

PIETRAGALLO, BOSICK & GORDON

By: 
Bryan K. Shreckengost, Esq.

Attorneys for Defendant,
Central Volkswagen, Inc.

EXHIBIT A

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND
LINDA H. SELL

PLAINTIFFS

v.

CENTRAL VOLKSWAGEN, INC.

DEFENDANT

* CIVIL DIVISION
*
* NO. 04-940-CD
*
* Type of Pleading:
* COMPLAINT
*
* Filed on Behalf of
* Richard D. Sell and
* Linda H. Sell:
*
* Pro-Se
*

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

JUN 18 2004

Attest:

Wendy A.
Prothonotary/
Clerk of Courts

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND
LINDA H. SELL.

PLAINTIFFS

v.

CENTRAL VOLKSWAGEN, INC.

DEFENDANT

*
* CIVIL DIVISION
*
* NO.
*
* Type Of Pleading:
* COMPLAINT
*
*
*

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITHIN THE COURT YOUR DEFENSE OF OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIMS OF RELIEF REQUESTED BY THE PLAINTIFFS. YOU MAY LOSE MONEY OR PROPERTY RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
Telephone: (814) 765-2641

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD D. SELL AND
LINDA H. SELL

* CIVIL ACTION

*

* NO.

*

*

V.

CENTRAL VOLKSWAGEN, INC.

DEFENDANTS

AND NOW COMES the plaintiff, Richard D. Sell and Linda H. Sell, pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, as amended and reenacted by the Act of November 24, 1976 P.L. 1166, 73 P.S. 201-1 et seq. (hereinafter "CPL"); 73 P.S. section 1951, et seq. (PA Automobile Lemon Law); and 37 PA Code, chapters 301.1, et seq. (Part V., Bureau of Consumer Protection, Automotive Industry Trade Practices), and represents as follows:

1. Plaintiffs, Richard D. and Linda H. Sell, husband and wife, residing at RR 1 Box 212 B-1, Reynoldsville, PA
2. Defendant, Central Volkswagen, Inc, is a motor vehicle dealer, as defined at 75 Pa. C.S. sec. 7131 and 49 U.S.C., sec. 32702(2), as licensed, with a principal place of business at Route 322, Box 445, Dubois, PA 15801.
3. At all times material hereto, the acts employed by Defendant were taken willfully.

Identification Of Subject Transaction

4. Paragraphs 1 through 3 are incorporated herein by reference as if more fully set forth herein.
5. After plaintiff purchased a motor vehicle, a 1995 Mazda MPV, VIN JM3LV5234S0707759 from defendant, plaintiff returned vehicle to defendant for repairs, maintenance services and warranty work.
6. On or about 6-16-98 plaintiff delivered his vehicle to defendant, a second time, for major repairs which were covered under warranty.
7. Defendant repaired plaintiff's vehicle under warranty on or about 6-16-98, by virtue of defendant's affirmations, as recorded by invoice; and, by promise given to plaintiff when vehicle was released to plaintiff.
8. Plaintiff's vehicle continued with the same problems of those complained of to defendant, before each of both attempts to remedy, while under warranty.
9. Plaintiff delivered vehicle for repairs to defendant a third time on 4-03-01 following repeated complaints of the same problems with plaintiff's vehicle.
10. Defendant replaced plaintiff's engine twice between 4-03-01 and 6-18-01.

11. Defendant attempted to repair plaintiff's engine within the same interval of 4-13-01 to 6-18-01 for the same symptoms and repairs that plaintiffs experienced on the two aforementioned, prior occasions.
12. Defendant released vehicle to plaintiff only after more than three months in which defendant replaced two engines.
13. Defendant, again, replaced plaintiff's engine for the third time following delivery to defendant on 10-08-02, for replacement under warranty.
14. On or about 10-23-02 defendant charged plaintiff for a new engine replacement.
15. On or about 10-23-02 plaintiff discovered a major leak in his engine after removing his vehicle to his home, requiring plaintiff to have his vehicle removed to another repair shop.
16. Plaintiffs seek damages for defendant's conduct as enumerated more fully in the counts below.

COUNT ONE: VIOLATION OF CPL
Subcount A: Breach of Warranty

17. Paragraphs 1 through 16 are incorporated herein by reference as if more fully set forth herein.
18. A violation of any provision of Chapter 28 of this state's Automobile Lemon Law is also a violation of the act of December 17, 1968 P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law (CPL).
19. By virtue of 73 P.S. 201-2.1 (xiv), defendant failed to comply with the terms of a warranty given, on 6-19-98
20. Defendant failed to report vehicle "nonconformity" as proscribed by 73 P.S. sec.1957.
21. That defendant's failure to comply, and, failure to report: effectively withheld free repairs by defendant; and, barred otherwise free remedy through the manufacturer.
22. Defendant induced plaintiff into a contract for the replacement of his engine.
23. That defendant had notice of plaintiff's vehicle condition, subject to repeated occurrence of a "nonconformity".
24. That defendant did not seek a free remedy, likely available through the manufacturer for plaintiff's relief from the costs of an engine replacement.
25. Defendant's actions and omissions were made willfully and with disregard of plaintiffs' economic interest.
26. Defendant was motivated by greed and excess profit gained by the opportunity of replacing plaintiff's engine.
27. Plaintiffs suffered damages, a result of defendant's behavior, in the amount of \$4690.
28. Plaintiff discovered actions and omissions of defendant only after extraordinary efforts of inquiries, arising out of the occasion of a third engine replacement on or about 10-08-02.
29. Wherefore, plaintiffs pray for three times his actual damages, or \$14,070.

Subcount B: Breach of Contract

30. Paragraphs 1 through 29 are incorporated herein by reference as if more fully set forth herein.
31. On or about 4-05-01 plaintiff entered agreement with defendant to replace plaintiff's engine, for \$3700.
32. Defendant rendered a bill for repairs exceeding plaintiff's agreement by \$990.
33. Defendant did not ask plaintiffs for, nor did defendant ever receive authorization for, repairs

exceeding the contract price.

34. Plaintiff only became aware of additional costs upon the intended date of the release of his vehicle.

35. Plaintiff, in order to have vehicle released to his care following repairs on or about 5-25-01, paid defendant an additional sum that was over the agreed price of \$3700. As a result of defendant's violation of an agreed price, and as provided for by the CPL, Plaintiff has suffered damages of \$990.

36. Wherefore Plaintiffs pray for three times these actual damages, or \$2970.

Subcount C: Conversion

37. Paragraphs 1 through 36 are incorporated herein by reference as if more fully set forth herein.

38. Defendant on or about 5-22-01 directed, or had caused to be directed, a credit which was payable to plaintiff by virtue of a prior agreement that defendant had with plaintiff and engine vendor.

39. Defendant had prior knowledge of a credit that was payable to plaintiff, by defendant's admission in writing.

40. Defendant directed credit, which was owing to plaintiff, to be paid to defendant's dealership, under a name different than named defendant.

41. Further, that defendant concealed such credit from plaintiffs, and unlawfully withheld said credit, under the name of defendant's partnership, or association of dealerships

42. As a result of defendant's act, plaintiffs have suffered damages of \$818.80.

43. Defendant acted at all times willfully and with disregard of plaintiffs' economic interest.

44. Wherefore, plaintiffs pray for three times damages, as provisioned by the CPL, of \$2456.40.

COUNT TWO:

Other Violations as Unfair or Deceptive Acts or Practices

45. Paragraphs 1 to 44 are incorporated herein by reference as if more fully set forth, herein.

46. Defendant engaged in several violations of unfair or deceptive acts or practices, as defined by the CPL, 73 P.S. 201-2.1, et seq., and as enumerated herewith by:

- ii. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services
- vii. Representing that goods or services are of a particular standard quality or grade, or that goods are of a particular style or model, if they are of another
- viii. Disparaging the goods, services or business of another by false or misleading misrepresentation of fact

- 1. Failing to comply with the terms of any written guarantee or warranty given to the buyer
- 2. Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed

47. Defendant engaged in several unfair methods of competition and unfair or deceptive practices, prohibited under 37 PA ADC sec 301.5, et seq. known as Automotive Industry Trade Practices, as herein described:

(2), (8) Failure to record odometer reading

- (2) No authorization of the customer
- (4), (1) Failure to display and return parts
- (5) Failure to make records
- (7) Failure to remedy promptly, at no charge
- (8) Failure to complete an accurate and complete invoice

48. Defendant, through breach of aforementioned duties to plaintiffs, caused damages of \$735.73.

49. Defendant at all times acted willfully and with obdurate disregard of plaintiffs' economic interest.

50. WHEREFORE, plaintiffs pray for three times his actual damages, as being supported by separate exhibit, for \$2207.19

COUNT THREE: Negligence

- 51. Paragraphs 46 to 50 are incorporated herein by reference as if more fully set forth.
- 52. Plaintiff delivered his vehicle to defendant on 10-08-02 for engine replacement.
- 53. Plaintiff avers engine had no leaks of fluid prior to submitting vehicle to defendant.
- 54. Plaintiff asserts that if his engine were leaking radiator fluid, plaintiff would have detected it.
- 55. Plaintiff asserts that defendant, while replacing plaintiff's engine, damaged it's radiator.
- 56. Plaintiff's radiator shows signs of physical damage.
- 57. Damage to plaintiff's radiator is on the top tank mounting lug and flange where radiator must be dissembled from the air horn, during engine removal.
- 58. Plaintiff removed his vehicle from defendant's repair shop, because of defendant's failure to repair plaintiff's radiator promptly, and without cost.

COUNT FOUR: Common Law Fraud

- 59. Paragraphs 46 to 58 are incorporated herein as if more fully set forth, herein.
- 60. On or before 10-23-02 defendant, during the replacement of a third engine as aforementioned, damaged plaintiff's radiator.
- 61. Defendant informed plaintiff that his radiator was "shot", but only immediately before plaintiff returned to defendant's shop to pick up his vehicle, on or about 10-23-02.
- 62. Defendant did not show plaintiff where radiator was leaking upon plaintiff's arrival to pick up his vehicle.
- 63. Plaintiff removed his vehicle to his home, having it towed to another repair shop, a few days later.
- 64. Plaintiff discovered physical damage upon inspection of his vehicle's air horn-radiator attachment.
- 65. Plaintiff also discovered another, major, leak of antifreeze coming from the intake manifold
- 66. Defendant knew of both leaks, or should have known of both leaks.
- 67. Defendant's concealment of the major leak caused plaintiff to consider the cost of a replacement radiator.
- 68. Defendant intended plaintiff to be deceived by, and rely upon defendant's misrepresentation so that plaintiff would approve, by phone, defendant's replacement of plaintiff's radiator.
- 69. Defendant failed to make a reasonable investigation of the truth of plaintiffs' statements
- 70. In fact, plaintiff's radiator was repairable, at minimal cost.

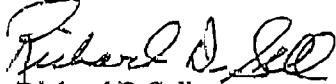
71. Plaintiffs seek cost (average) of replacement of \$590 and treble damages of \$1770, plus costs and fees.

Prayer For Relief

WHEREFORE, Plaintiffs ask this Honorable Court for an Order:

1. Finding that Defendant's conduct was in violation of CPL and the Automotive Industry Trade Practices.
2. Directing defendant to pay Plaintiffs the sum of \$7824.53 as damages.
3. Directing defendant to pay Plaintiffs the sum of three times his actual damages or \$1500, whichever is greater.
4. Directing Defendant to pay Plaintiffs' costs and fees in this matter.
5. Granting such other relief as this Honorable Court may deem necessary and proper.

Respectfully submitted,


Richard D Sell


Linda H. Sell

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF CLEARFIELD

being duly sworn according to law depose

and says that the facts set forth in the foregoing pleading are true and correct to the best of his knowledge,

information and belief.

Sworn to and subscribed before

mc THIS DATE 6-17-2004
Richard D. Sell
Linda W. Sell

Notary Public

EXHIBIT B

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: CLEARFIELD

MSA Dkt. No.:	46-3-01
Def Name:	PATRICK N. FORD
Address:	309 MAPLE AVENUE P.O. BOX 452 DUBOIS, PA 15801
Telephone:	(814) 371-5321

CIVIL COMPLAINT

PLAINTIFF: Richard D. Sell and Linda H. Sell
NAME and ADDRESS
RR 1 Box 212
Reynoldsville, PA
15851

VS.
DEFENDANT: Central Volkswagen Inc., Jasper Engines
NAME and ADDRESS
P O Box 445 and Transmissions
Dubois, Pa 15801 815 Wernsing Road
P O Box 650
Jasper IN 47547

Docket No. CV 2703
Date Filed:



	AMOUNT	DATE PAID
FILING COSTS	\$ <u>94.50</u>	/ /
POSTAGE	\$ _____	/ /
SERVICE COSTS	\$ _____	/ /
CONSTABLE ED.	\$ _____	/ /
TOTAL	\$ _____	/ /

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ \$2,492.40 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated): Plaintiffs, owners of one 1995 Mazda MPV, allege excessive and redundant charges arising out of engine(s) replacement in April to May of 2001; and, again, October of 2002, when under warranty, said owners were again charged for engine replacement labor, and for parts.

Plaintiffs further allege defendant C.V.I., through its employees, failed to properly fix said vehicle, requiring additional repairs from another garage; and, that C.V.I. owes plaintiffs credit paid or payable from Jasper Engines to owners, under contract to do so.

I, Richard D. Sell and Linda H. Sell, verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

Signature of Plaintiff or Authorized Agent

Plaintiff's Attorney: _____ Address: _____

Telephone: _____

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD SO NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing. If you are disabled and require assistance, please contact the Magisterial District office at the address above.

E X H I B I T C

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:

46-3-01

DJ Name: Hon.

PATRICK N. FORD
Address: 309 MAPLE AVENUE
P.O. BOX 452
DUBOIS, PA
Telephone: (814) 371-5321

15801

CIVIL COMPLAINT

PLAINTIFF:

Richard D. Sell and Linda H. Sell
RR 1 Box 212 Bl
Reynoldsville, Pa 15651

NAME and ADDRESS

DEFENDANT:

Central Volkswagen Inc. (C.V.I.)
POBox 445
Dubois, PA 15801

VS.

NAME and ADDRESS

Docket No.: **CV 133-03**
Date Filed:

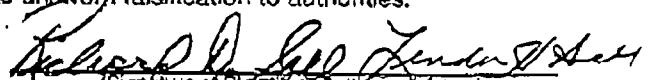


	AMOUNT	DATE PAID
FILING COSTS	\$ _____	/ /
POSTAGE	\$ _____	/ /
SERVICE COSTS	\$ _____	/ /
CONSTABLE ED.	\$ _____	/ /
TOTAL	\$ _____	/ /

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 1,666.46 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated): Plaintiffs allege excessive charges arising from the replacement/repair of owned 1995 Mazda, MPV engine; and, for related repair charges and costs made necessary through defendant's failure to properly repair vehicle, during a 2nd visit in which the engine was replaced.

Additionally, Plaintiffs seek reimbursement for a labor charge credit, which went to C.V.I., instead of to plaintiff(s) by separate contract.

I, Richard D. Sell and Linda H. Sell verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.


(Signature of Plaintiff or Authorized Agent)

Plaintiff's
Attorney: _____

Address: _____

Telephone: _____

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD SO NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT MAY BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five days before the date set for the hearing.

If you are disabled and require a reasonable accommodation to gain access to the Magisterial District Court and its services, please contact the Magisterial District Court at the above address or telephone number. We are unable to provide transportation.

E X H I B I T D

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: CLEARFIELD

Mag. Dist. No.:

46-3-01

DJ Name: Hon.

PATRICK N. FORD
309 MAPLE AVENUE
P.O. BOX 452
DUBOIS, PA
Telephone: (814) 371-5321

15801

CENTRAL VOLKESWAGEN, INC
BOX 445
DUBOIS, PA 15801

NOTICE OF JUDGMENT/TRANSCRIPT
CIVIL CASE

PLAINTIFF/JUDGMENT DEBTOR:

SELL, RICHARD & LINDA

NAME and ADDRESS

RD1 BOX 212 B-1

REYNOLDSVILLE, PA 15851

VS.

DEFENDANT/JUDGMENT CREDITOR:

CENTRAL VOLKESWAGEN, INC

NAME and ADDRESS

BOX 445

DUBOIS, PA 15801

Docket No.: CV-0000133-03

Date Filed: 3/10/03



THIS IS TO NOTIFY YOU THAT:

Judgment:

FOR PLAINTIFF

Judgment was entered for: (Name) SELL, RICHARD & LINDA

Judgment was entered against: (Name) CENTRAL VOLKESWAGEN, INC

in the amount of \$ 890.30 on: (Date of Judgment) 4/16/03

Defendants are jointly and severally liable. *check left* (Date & Time) 6/12/08

Damages will be assessed on: *6/12/08*

This case dismissed without prejudice. *6/12/08*

Amount of Judgment Subject to Attachment/Act 5 of 1996 \$ 890.30

Amount of Judgment	\$ 818.80
Judgment Costs	\$ 71.50
Interest on Judgment	\$.00
Attorney Fees	\$.00
Total	\$ 890.30
Post Judgment Credits	\$.
Post Judgment Costs	\$.
Certified Judgment Total	\$.

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

EXCEPT AS OTHERWISE PROVIDED IN THE RULES OF CIVIL PROCEDURE FOR DISTRICT JUSTICES, IF THE JUDGMENT HOLDER ELECTS TO ENTER THE JUDGMENT IN THE COURT OF COMMON PLEAS, ALL FURTHER PROCESS MUST COME FROM THE COURT OF COMMON PLEAS AND NO FURTHER PROCESS MAY BE ISSUED BY THE DISTRICT JUSTICE.

UNLESS THE JUDGMENT IS ENTERED IN THE COURT OF COMMON PLEAS, ANYONE INTERESTED IN THE JUDGMENT MAY FILE A REQUEST FOR ENTRY OF SATISFACTION WITH THE DISTRICT JUSTICE IF THE JUDGMENT DEBTOR PAYS IN FULL, SETTLES, OR OTHERWISE COMPLIES WITH THE JUDGMENT.

4/16/03 Date Patrick N. Ford, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.

Date _____, District Justice

E X H I B I T E

CENTRAL VOLKSWAGEN, INC.

P.O. Box 445

DUBOIS, PA. 16801

8
二
八

80219

Right Handled Money

TO THE
ORDER

NATIONAL CITY BANK
DUBOIS, PA 15801

RICHLAND COUNTY SELL
RD 1 BOX 212 B-1
REYBOLDVILLE APR 15 1985

**TWO SIGNATURES REQUIRED
CENTRAL VOLKSWAGEN, INC.**

9009800000/ 227100410030 315457 310030 204190119011

ପରିବହନ

ENDORSEMENT

*Richard A. Bell
Linda N. Bell*

DO NOT WRITE STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE

1498 71211

►043 306 855◀
800 25-2005
S 3AM
INDIA PA 1501
►043 306 855◀

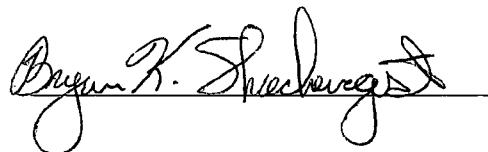
12 04 018 0120846006
P000 S 814K035 286855
3806872457 28030508
-8 05

641960124
641960124
641960124
641960124

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing PRELIMINARY OBJECTIONS TO PLAINTIFFS' COMPLAINT was, on this 3rd day of July 2004, served by first-class U.S. mail, postage prepaid, on:

Richard D. Sell
Linda H. Sell
RR 1 Box 212 B-1
Reynoldsville, PA 15851

A handwritten signature in black ink, appearing to read "Bryan K. Schaeffer", is written over a horizontal line.

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND
LINDA H. SELL

PLAINTIFFS

v.

CENTRAL VOLKSWAGEN, INC.

DEFENDANT

* CIVIL DIVISION
*
* NO. 04-940-D
*
* Type of Pleading:
* COMPLAINT
*
* Filed on Behalf of
* Richard D. Sell and
* Linda H. Sell:
*
* Pro-Se
*

FILED

JUN 18 2004

William A. Shaw
Prothonotary

(X1)

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION

RICHARD D. SELL AND

LINDA H. SELL

PLAINTIFFS

*

* CIVIL DIVISION

*

* NO.

*

V.

* Type Of Pleading:

* COMPLAINT

*

CENTRAL VOLKSWAGEN, INC.

*

*

*

DEFENDANT

*

NOTICE

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITHIN THE COURT YOUR DEFENSE OF OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIMS OF RELIEF REQUESTED BY THE PLAINTIFFS. YOU MAY LOSE MONEY OR PROPERTY RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator's Office
Clearfield County Courthouse
1 North Second Street
Clearfield, PA 16830
Telephone: (814) 765-2641

IN THE COURT OF COMMON PLEAS
CLEARFIELD COUNTY, PENNSYLVANIA

RICHARD D. SELL AND
LINDA H. SELL

PLAINTIFFS

* CIVIL ACTION
*
* NO.
*
*

V.

CENTRAL VOLKSWAGEN, INC.

DEFENDANTS

AND NOW COMES the plaintiff, Richard D. Sell and Linda H. Sell, pursuant to the Unfair Trade Practices and Consumer Protection Law, Act of December 17, 1968, P.L. 1224, as amended and reenacted by the Act of November 24, 1976 P.L. 1166, 73 P.S. 201-1 et seq. (hereinafter "CPL"); 73 P.S. section 1951, et seq. (PA Automobile Lemon Law); and 37 PA Code, chapters 301.1, et seq. (Part V., Bureau of Consumer Protection, Automotive Industry Trade Practices), and represents as follows:

1. Plaintiffs, Richard D. and Linda H. Sell, husband and wife, residing at RR 1 Box 212 B-1, Reynoldsville, PA
2. Defendant, Central Volkswagen, Inc, is a motor vehicle dealer, as defined at 75 Pa. C.S. sec. 7131 and 49 U.S.C., sec. 32702(2), as licensed, with a principal place of business at Route 322, Box 445, Dubois, PA 15801.
3. At all times material hereto, the acts employed by Defendant were taken willfully.

Identification Of Subject Transaction

4. Paragraphs 1 through 3 are incorporated herein by reference as if more fully set forth herein.
5. After plaintiff purchased a motor vehicle, a 1995 Mazda MPV, VIN JM3LV5234S0707759 from defendant, plaintiff returned vehicle to defendant for repairs, maintenance services and warranty work.
6. On or about 6-16-98 plaintiff delivered his vehicle to defendant, a second time, for major repairs which were covered under warranty.
7. Defendant repaired plaintiff's vehicle under warranty on or about 6-16-98, by virtue of defendant's affirmations, as recorded by invoice; and, by promise given to plaintiff when vehicle was released to plaintiff.
8. Plaintiff's vehicle continued with the same problems of those complained of to defendant, before each of both attempts to remedy, while under warranty.
9. Plaintiff delivered vehicle for repairs to defendant a third time on 4-03-01 following repeated complaints of the same problems with plaintiff's vehicle.
10. Defendant replaced plaintiff's engine twice between 4-03-01 and 6-18-01.

11. Defendant attempted to repair plaintiff's engine within the same interval of 4-13-01 to 6-18-01 for the same symptoms and repairs that plaintiffs experienced on the two aforementioned, prior occasions.
12. Defendant released vehicle to plaintiff only after more than three months in which defendant replaced two engines.
13. Defendant, again, replaced plaintiff's engine for the third time following delivery to defendant on 10-08-02, for replacement under warranty.
14. On or about 10-23-02 defendant charged plaintiff for a new engine replacement.
15. On or about 10-23-02 plaintiff discovered a major leak in his engine after removing his vehicle to his home, requiring plaintiff to have his vehicle removed to another repair shop.
16. Plaintiffs seek damages for defendant's conduct as enumerated more fully in the counts below.

COUNT ONE: VIOLATION OF CPL
Subcount A: Breach of Warranty

17. Paragraphs 1 through 16 are incorporated herein by reference as if more fully set forth herein.
18. A violation of any provision of Chapter 28 of this state's Automobile Lemon Law is also a violation of the act of December 17, 1968 P.L. 1224, No. 387), known as the Unfair Trade Practices and Consumer Protection Law (CPL).
19. By virtue of 73 P .S. 201-2.1 (xiv), defendant failed to comply with the terms of a warranty given, on 6-19-98
20. Defendant failed to report vehicle "nonconformity" as proscribed by 73 P.S.sec.1957.
21. That defendant's failure to comply, and, failure to report: effectively withheld free repairs by defendant; and, barred otherwise free remedy through the manufacturer.
22. Defendant induced plaintiff into a contract for the replacement of his engine.
23. That defendant had notice of plaintiff's vehicle condition, subject to repeated occurrence of a "nonconformity".
24. That defendant did not seek a free remedy, likely available through the manufacturer for plaintiff's relief from the costs of an engine replacement.
25. Defendant's actions and omissions were made willfully and with disregard of plaintiffs' economic interest.
26. Defendant was motivated by greed and excess profit gained by the opportunity of replacing plaintiff's engine.
27. Plaintiffs suffered damages, a result of defendant's behavior, in the amount of \$4690.
28. Plaintiff discovered actions and omissions of defendant only after extraordinary efforts of inquiries, arising out of the occasion of a third engine replacement on or about 10-08-02.
29. Wherefore, plaintiffs pray for three times his actual damages, or \$14,070.

Subcount B: Breach of Contract

30. Paragraphs 1 through 29 are incorporated herein by reference as if more fully set forth herein.
31. On or about 4-05-01 plaintiff entered agreement with defendant to replace plaintiff's engine, for \$3700.
32. Defendant rendered a bill for repairs exceeding plaintiff's agreement by \$990.
33. Defendant did not ask plaintiffs for, nor did defendant ever receive authorization for, repairs

exceeding the contract price.

34. Plaintiff only became aware of additional costs upon the intended date of the release of his vehicle.

35. Plaintiff, in order to have vehicle released to his care following repairs on or about 5-25-01, paid defendant an additional sum that was over the agreed price of \$3700. As a result of defendant's violation of an agreed price, and as provided for by the CPL, Plaintiff has suffered damages of \$990.

36. Wherefore Plaintiffs pray for three times these actual damages, or \$2970.

Subcount C: Conversion

37. Paragraphs 1 through 36 are incorporated herein by reference as if more fully set forth herein.

38. Defendant on or about 5-22-01 directed, or had caused to be directed, a credit which was payable to plaintiff by virtue of a prior agreement that defendant had with plaintiff and engine vendor.

39. Defendant had prior knowledge of a credit that was payable to plaintiff, by defendant's admission in writing.

40. Defendant directed credit, which was owing to plaintiff, to be paid to defendant's dealership, under a name different than named defendant.

41. Further, that defendant concealed such credit from plaintiffs, and unlawfully withheld said credit, under the name of defendant's partnership, or association of dealerships

42. As a result of defendant's act, plaintiffs have suffered damages of \$818.80.

43. Defendant acted at all times willfully and with disregard of plaintiffs' economic interest.

44. Wherefore, plaintiffs pray for three times damages, as provisioned by the CPL, of \$2456.40.

COUNT TWO:
Other Violations as Unfair or Deceptive Acts or Practices

45. Paragraphs 1 to 44 are incorporated herein by reference as if more fully set forth, herein.

46. Defendant engaged in several violations of unfair or deceptive acts or practices, as defined by the CPL, 73 P.S. 201-2.1, et seq., and as enumerated herewith by:

- ii. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services
- vii. Representing that goods or services are of a particular standard quality or grade, or that goods are of a particular style or model, if they are of another
- viii. Disparaging the goods, services or business of another by false or misleading misrepresentation of fact
 - 1. Failing to comply with the terms of any written guarantee or warranty given to the buyer
 - 2. Knowingly misrepresenting that services, replacements or repairs are needed if they are not needed

47. Defendant engaged in several unfair methods of competition and unfair or deceptive practices, prohibited under 37 PA ADC sec 301.5, et seq. known as Automotive Industry Trade Practices, as herein described:

- (2), (8) Failure to record odometer reading

- (2) No authorization of the customer
- (4), (1) Failure to display and return parts
- (5) Failure to make records
- (7) Failure to remedy promptly, at no charge
- (8) Failure to complete an accurate and complete invoice

48. Defendant, through breach of aforementioned duties to plaintiffs, caused damages of \$735.73.

49. Defendant at all times acted willfully and with obdurate disregard of plaintiffs' economic interest.

50. WHEREFORE, plaintiffs pray for three times his actual damages, as being supported by separate exhibit, for \$2207.19

COUNT THREE: Negligence

- 51. Paragraphs 46 to 50 are incorporated herein by reference as if more fully set forth.
- 52. Plaintiff delivered his vehicle to defendant on 10-08-02 for engine replacement.
- 53. Plaintiff avers engine had no leaks of fluid prior to submitting vehicle to defendant.
- 54. Plaintiff asserts that if his engine were leaking radiator fluid, plaintiff would have detected it.
- 55. Plaintiff asserts that defendant, while replacing plaintiff's engine, damaged it's radiator.
- 56. Plaintiff's radiator shows signs of physical damage.
- 57. Damage to plaintiff's radiator is on the top tank mounting lug and flange where radiator must be dissembled from the air horn, during engine removal.
- 58. Plaintiff removed his vehicle from defendant's repair shop, because of defendant's failure to repair plaintiff's radiator promptly, and without cost.

COUNT FOUR: Common Law Fraud

- 59. Paragraphs 46 to 58 are incorporated herein as if more fully set forth, herein.
- 60. On or before 10-23-02 defendant, during the replacement of a third engine as aforementioned, damaged plaintiff's radiator.
- 61. Defendant informed plaintiff that his radiator was "shot", but only immediately before plaintiff returned to defendant's shop to pick up his vehicle, on or about 10-23-02.
- 62. Defendant did not show plaintiff where radiator was leaking upon plaintiff's arrival to pick up his vehicle.
- 63. Plaintiff removed his vehicle to his home, having it towed to another repair shop, a few days later.
- 64. Plaintiff discovered physical damage upon inspection of his vehicle's air horn-radiator attachment.
- 65. Plaintiff also discovered another, major, leak of antifreeze coming from the intake manifold
- 66. Defendant knew of both leaks, or should have known of both leaks.
- 67. Defendant's concealment of the major leak caused plaintiff to consider the cost of a replacement radiator.
- 68. Defendant intended plaintiff to be deceived by, and rely upon defendant's misrepresentation so that plaintiff would approve, by phone, defendant's replacement of plaintiff's radiator.
- 69. Defendant failed to make a reasonable investigation of the truth of plaintiffs' statements
- 70. In fact, plaintiff's radiator was repairable, at minimal cost.

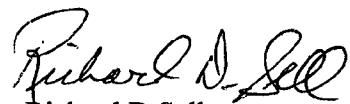
71. Plaintiffs seek cost (average) of replacement of \$590 and treble damages of \$1770, plus costs and fees.

Prayer For Relief

WHEREFORE, Plaintiffs ask this Honorable Court for an Order:

1. Finding that Defendant's conduct was in violation of CPL and the Automotive Industry Trade Practices.
2. Directing defendant to pay Plaintiffs the sum of \$7824.53 as damages.
3. Directing defendant to pay Plaintiffs the sum of three times his actual damages or \$1500, whichever is greater.
4. Directing Defendant to pay Plaintiffs' costs and fees in this matter.
5. Granting such other relief as this Honorable Court may deem necessary and proper.

Respectfully submitted,



Richard D. Sell



Linda H. Sell

Linda H. Sell

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF CLEARFIELD

_____ being duly sworn according to law depose

and says that the facts set forth in the foregoing pleading are true and correct to the best of his knowledge,

information and belief.

Sworn to and subscribed before

me THIS DATE 6-17-2004

Richard D. Selle
Linda N. Selle

Notary Public

William A. Shaw
Prothonotary

11/1/04 - 85.00

JUN 18 2004

see to pay

FILED

The Superior Court of Pennsylvania
Sitting at Pittsburgh

600 Grant Building
Pittsburgh, Pennsylvania
15219

FILED

3/12/30/06
MAY 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

CERTIFICATE OF CONTENTS OF REMANDED RECORD
AND NOTICE OF REMAND
under

PENNSYLVANIA RULES OF APPELLATE PROCEDURE 2571 AND 2572

THE UNDERSIGNED, Prothonotary (or Deputy Prothonotary) of the Superior Court of Pennsylvania, the said court of record, does hereby certify that annexed to the original hereof, is a true and correct copy of the entire record:
Record three transcripts and certified copy of order

As remanded from said court in the following matter:

Richard D. Sell, et ux v. Central Volkswagen, Inc.
No. 559 WDA 2005
Court of Common Pleas Civil Division Clearfield County
No. 04-940-CD

In compliance with Pennsylvania Rules of Appellate Procedure 2571.

The date of which the record is remanded is: May 19, 2006

An additional copy of this certificate is enclosed with the original hereof and the clerk or prothonotary of the lower court or the head, chairman, deputy, or the secretary of the other government unit is hereby directed to acknowledge receipt of the remanded record by executing such copy at the place indicated by forthwith returning the same to this court.

Eleanor R. Valecko

DEPUTY PROTHONOTARY

RECORD, ETC. RECEIVED:

DATE: 5/22/06

William A. Shaw
(Signature & Title)

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2010
Clearfield Co., Clearfield, PA

FILED

MAY 22 2006

William A. Shaw
Prothonotary/Clerk of Courts

William A. Shaw
Prothonotary
Wyo. Commission on Grievances
1st Fl. Wyoming Tech Center, 3010
Casper Highway, Casper, WY

In the Superior Court of
Pennsylvania
Sitting at Pittsburgh

NO. 559

WDA 2005

FILED
MAY 22 2006
12:30 PM

William A. Shaw
Prothonotary/Clerk of Courts

Richard D. Sell and Linda H. Sell

Appeal from the order entered on 2-14-05
By the Honorable Paul Cherry Court of
Common Pleas Civil Division

v

Central Volkswagen, Inc.

Clearfield County

No. 04-940-CD

Certified from the Record

"ORDER"

Appellants, Richard D. and Linda H. Sell, appeal *pro se* the order dated February 14, 2005 and entered February 17, 2005, denying their petition for reconsideration. Appellants sought reconsideration of the order dated December 2, 2004, and entered December 3, 2004, sustaining Central Volkswagen's preliminary objections to their complaint and dismissing the complaint in its entirety. Generally, the denial of reconsideration is not subject to review on appeal. *See In re: Trust under Deed of Green*, 779 A.2d 1152 (Pa. Super. 2001). Rather, the underlying order which is the subject of the reconsideration order is the immediately appealable order. *See e.g. Geek v. Smeck*, 418 A.2d 711 (Pa. Super. 1980). However, if the trial court expressly grants reconsideration within the applicable appeal period and eventually denies reconsideration or affirms its earlier ruling and this ruling was final, then the appeal from the denial of reconsideration is appropriate. *See Haines v. Jones*, 830 A.2d 579 (Pa. Super. 2003). The mere filing of a motion for reconsideration of a final order does not toll the normal thirty (30) day period for an appeal from such order. *See Cheathem v. Temple University Hospital*, 743 A.2d 518 (Pa. Super. 1999). The only way for a trial court to toll or stay the appeal statute once a motion for reconsideration has been filed is to enter an order expressly granting reconsideration within thirty (30) days of the final order. *See id.* An order merely fixing a hearing date is inadequate to toll the period in which to appeal a final order. *See id.* While a party may file a motion for reconsideration, the simultaneous filing of a notice of appeal is necessary to preserve appellate rights in the event the trial court fails to expressly grant the motion for reconsideration within thirty (30) days or denies the motion for reconsideration. *See id.* Here, the order dismissing Appellants' complaint was entered December 3, 2004. Appellants did not file a notice of appeal within thirty days. Rather, Appellants only filed a petition for reconsideration. The trial court did not issue an order expressly granting reconsideration, but merely issued an order entered December 23, 2004, setting a hearing on the petition for reconsideration. Appellants' notice of appeal was not filed until March 28, 2005. The simultaneous filing of a notice of appeal and petition for reconsideration was necessary in order for Appellants to preserve appellate rights. Accordingly, it is hereby ORDERED that the above-captioned appeal is QUASHED, *sua sponte*.

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at
Pittsburgh,

Pa. 19th

Day of MAY

2006

Eleanor R. Valecko
Deputy Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

No. 04-940-CD

Richard D. Sell and Linda H. Sell
VS.
Central Volkswagen, Inc.

ITEM NO.	DATE OF FILING	NAME OF DOCUMENT	NO. OF PAGES
01	06/18/04	Civil Complaint	08
02	07/12/04	Preliminary Objections to Plaintiffs' Complaint	24
03	07/12/04	Praecipe to Place Case on Argument List	03
04	07/13/04	Sheriff Return	01
05	08/19/04	Order, Re: argument on Defendant's Preliminary Objections scheduled	02
06	08/25/04	Affidavit of Service, Re: Order upon Plaintiffs	05
07	09/27/04	Order, Re: argument on Preliminary Objections	01
08	09/30/04	Petition for Reconsideration and Motion to Grant Stay	06
09	10/04/04	Affidavit of Service, Order of Court upon Plaintiffs	05
10	10/08/04	Order, Re: argument on Petition scheduled	01
11	10/15/04	Certificate of Service, Order on Attorney Shreckengost	01
12	11/10/04	Order, Re: Plaintiff's Petition for Reconsideration	01
13	11/10/04	Order, Re: Preliminary Objections to Plaintiffs' Complaint	01
14	11/15/04	Plaintiff's Motion for Leave to File an Amended Complaint	23
15	11/15/04	Affidavit of Service, Brief in Opposition to Preliminary Objections of Defendant	02
16	11/16/04	Order, Re: Plaintiff's Motion for Leave to File an Amended Complaint	02
17	11/24/04	Affidavit of Service, Re: Order of Court upon Bryan Shreckengost	25
18	12/03/04	Order, Re: Preliminary Objections to Plaintiffs' Complaint	01
19	12/10/04	Affidavit of Service, Order of Court served upon Plaintiffs	04
20	12/20/04	Affidavit of Service, Response to Defendant's Reply Brief on Bryan Schreckengost	02
21	12/21/04	Petition for Reconsideration with Order filed December 23, 2004 scheduling hearing	08
22	12/22/04	Affidavit of Service, Response to Defendant's Reply Brief, upon Bryan Shreckengost	02
23	01/03/05	Defendant, Central Volkswagen, Inc.'s Opposition to Petition for Reconsideration	07
24	01/07/05	Motion for Leave to File Amended Complaint	05
25	01/07/05	Affidavit of Service	02
26	02/17/05	Order, Re: Petition for Reconsideration	01
27	03/16/05	Notice of Appeal to Superior Court	04
28	03/17/05	Order, Re: Plaintiff to file a concise statement	01
29	03/28/05	Notice of Appeal returned by Superior Court	01
30	03/31/05	Proof of Service	04
31	03/31/05	Concise Statement	05
32	04/13/05	Appeal Docket Sheet	04
33	04/29/05	Transcript of Proceedings, Plaintiffs' Petition for Reconsideration, November 5, 2004	Separate Cover
34	04/29/05	Transcript of Proceedings, Defendant's Preliminary Objections, September 23, 2004	Separate Cover
35	02/10/06	Transcript of Proceedings held February 14, 2005	Separate Cover
36	02/10/06	Opinion	05

Date: 02/13/2006

Time: 10:17 AM

Page 1 of 1

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2004-00940-CD

Current Judge: Paul E. Cherry

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

Civil Other

Date	Selected Items	Judge
04/13/2005	32 Appeal Docket Sheet filed	Paul E. Cherry
04/29/2005	33 Transcript of Proceedings, Plaintiffs' Petition for Reconsideration, held before Honorable Paul E. Cherry, Judge, November 5, 2004, filed. 34 Transcript of Proceedings, Defendant's Preliminary Objections, held before Honorable Paul E. Cherry, Judge, September 23, 2004, filed.	Paul E. Cherry
02/10/2006	35 Transcript of Proceedings, February 14, 2005, filed. Opinion, BY THE COURT: /s/Paul E. Cherry, Judge One CC Plaintiffs-124 Four Seasons Drive, Reynoldsville, PA 15851 Two CC 36 Attorney Shreckengost One CC D. Mikesell One CC Law Library 5	Paul E. Cherry

Civil Other

Date	Judge
06/18/2004 #1 Filing: Civil Complaint Paid by: Sell, Richard D. (plaintiff) Receipt number: 1881239 Dated: 06/18/2004 Amount: \$85.00 (Check)2 CC to Plff.	No Judge 8
07/12/2004 #2 Preliminary Objections to Plaintiffs' Complaint, filed by s/Bryan K. Shreckengost, Esq. No CC	No Judge 24
#3 Praeclipe to Place Case on Argument List, filed by s/Bryan K. Shreckengost, Esq. No CC	No Judge 3
07/13/2004 #4 Sheriff Return, NOW, June 29, 2004, Complaint, served on Central Volkswgen, Inc., defendant at Employment, Dave Rosenberg. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm	No Judge 1
08/19/2004 #5 ORDER, AND NOW, this 18th day of August, 2004, upon consideration of Defendant's Preliminary Objections, it is ORDER of this Court, that argument be scheduled for 23rd day of August, 2004, at 2:00 p.m. By the Court, Paul E. Cherry, 2 cc & Memo Re: Service (see attached) & to Atty Shreckengost.	Paul E. Cherry 2
08/25/2004 #6 Affidavit of Service, Order of Court, served on Richard D. Sell and Linda H. Sell (RR 1 Box 212 B-1, Reynoldsville, PA 15851) Filed by s/Bryan K. Shreckengost, Esq., No cc	Paul E. Cherry 5
09/27/2004 #7 Order, NOW, this 23rd day of September, 2004, this being the date set for argument on Preliminary Objections to plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., Plaintiffs, Richard D. and Linda H. Sell, having failed to appear despite receiving due and proper notice, it is the ORDER of this Court that the Preliminary Objections be and are hereby sustained. Plaintiffs' Complaint, in its entirety, is hereby dismissed, with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC Plffs, 2 CC Atty Shreckengost	Paul E. Cherry 1
09/30/2004 #8 Petition for Reconsideration and Motion to Grant Stay, filed by s/Richard D. Sell Two CC Plaintiff	Paul E. Cherry 6
10/04/2004 #9 Affidavit Of Service, Order of Court served upon Plaintiffs via 1st class U.S. mail, filed by s/ Bryan K. Shreckengost, Esq. No CC	Paul E. Cherry 5
10/08/2004 #10 Order, 2 cert. with Memo to Plaintiff AND NOW, this 6th day of October, 2004, ORDER that argument on said Petition has been scheduled for November 5th at 10:30 AM.	Paul E. Cherry 1
10/18/2004 #11 Certificate of Service, filed by Atty. Bell 1 Cert. to Atty. Served copy of foregoing Order on Atty. Shreckengost.	Paul E. Cherry 1
11/10/2004 #12 Order, NOW, this 5th day of November, 2004, following argument on Plaintiff's Petition for Reconsideration and upon consideration thereof, it is the ORDER of this Court that the said petition be and is hereby granted. BY THE COURT, /s/ Paul E. Cherry, Judge. 1 CC to Plaintiff, 2CC to Atty. Shreckengost	Paul E. Cherry 1
#13 Order, NOW, this 5th day of November, 2004, following argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., it is the ORDER of this Court that Plaintiff shall file brief in support of his opposition to Preliminary Objections within no more than ten days from this date. Defendant, if he so chooses, shall have ten days thereafter to file a reply brief. BY THE COURT: /s/ Paul E. Cherry, Judge. 1 CC Plffs., 1 CC Atty Shreckengost.	Paul E. Cherry 1
11/15/2004 #14 Plaintiffs' Motion for Leave to File an Amended Complaint, filed by Plaintiff 1 cert. to Plaintiff.	Paul E. Cherry 23

Civil Other

Date	Judge
11/15/2004 #15 Affidavit of Service filed. Brief in Opposition to Preliminary Objections of Defendant, the 15th day of Nov. 2004 upon Bryan Shreckengost, Esquire. Filed by s/ Richard D. Sell. No CC	Paul E. Cherry 2
11/16/2004 #16 Order, AND NOW, this 16th day of Nov., 2004, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that hearing be held with regard to said Motion on the 9th day of December, 2004, beginning at 10:30 a.m. in Courtroom 2 of the Clearfield Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 6 CC & Memo Re: Service to Plff.	Paul E. Cherry 2
11/24/2004 #17 Affidavit of Service, copy of the Nov. 16th Order of Court, Served on Bryan K. Shreckengost on Nov. 23, 2004. Filed by s/ Richard D. Sell, Plaintiff. 1CC Plff.	Paul E. Cherry 25
12/03/2004 #18 Order, AND NOW, this 2nd day of Dec., 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby Sustained. Plaintiff's Complaint is hereby Dismissed in its entirety with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC to Plff, 2 CC to Atty. Shreckengost	Paul E. Cherry /
12/10/2004 #19 Affidavit of Service filed on behalf of defendant, copy of December 2, 2004 Order of Court served on Plaintiffs via mail on Dec. 7, 2004. Filed by s/ Bryan K. Shreckengost, Esq. No CC	Paul E. Cherry 1
12/20/2004 #20 Affidavit of Service filed on behalf of Plaintiffs, copy of Response to Defendant's Reply Brief, on the 18th day of Dec., 2004 on Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell. no cc	Paul E. Cherry 2
12/21/2004 #21 Petition for Reconsideration, filed by s/Richard D. Sell One CC Plaintiff	Paul E. Cherry
12/22/2004 #22 Affidavit of Service filed. copy of Response to Defendant's Reply Brief, 18th day of Dec., 2004, to Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell, Plaintiff No CC	Paul E. Cherry
12/23/2004 #23 AND HOW this 22nd day of Dec. 2004, following consideration of Plffs' Petition, hearing will be held Feb. 14, 2004 at 1:30. S/PEC. 1 CC to Plff.	Paul E. Cherry
01/03/2005 #23 Defendant, Central Volkswagen, Inc.'s Opposition to Petition for Reconsideration, filed by s/ Bryan K. Shreckengost, Esq. 1 Cert. to Atty	Paul E. Cherry 1
01/07/2005 #24 Motion For Leave to File Amended Complaint, With An Order, filed by s/ Richard D. Sell, Plaintiff. No CC	Paul E. Cherry 5
#25 Affidavit of Service filed, copy of Dec. 22, 2004 Order of Court, along with a request for issuance of an Order for Amendment of Complaint, with underlying Petition, served on Jan. 14, 2005, upon Defendant's Counsel. Filed by s/ Richard D. Sell, Plaintiff. No CC	Paul E. Cherry 2
02/17/2005 #26 Order, NOW, this 14th day of Feb., 2005, following argument on plaintiff's petition for reconsideration, the Court having reviewed the file in its entirety, IT IS THE ORDER OF THIS COURT that said petition be and is hereby denied. BY THE COURT: /s/ Paul E. Cherry, Judge. 3CC to Plff	Paul E. Cherry 1
03/16/2005 #27 Filing: Appeal to High Court, Request for Transcript. Paid by: Sell, Richard D. (plaintiff) Receipt number: 1897623 Dated: 03/16/2005 Amount: \$45.00 (Check) Filed by s/ Richard D. Sell, s/Linda H. Sell. 1CC to Superior Court w/ck for 60.00.	Paul E. Cherry 4

Date: 04/01/2005

Clearfield County Court of Common Pleas

User: SWALBORN

Time: 11:18 AM

ROA Report

Page 3 of 3

Case: 2004-00940-CD

Current Judge: Paul E. Cherry

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

Civil Other

Date	Judge	
03/17/2005 <i>(x) 28</i>	Order, filed. 1 cert. to Plaintiff and 1 cert. to Sheckengost. NOW, this 17th day of March, 2005, ORDER that Plaintiff file a concise statement of the matters on Appeal no later than 14 days herefrom.	Paul E. Cherry
03/28/2005 <i>(x) 29</i>	Notice of Appeal, Cert. Copy with check, returned from Superior Court. Appeal to be returned when appellants amend their proof of service and provide original signature from Linda Sell.	Paul E. Cherry

3/31/05 30 Proof of Service 4

3/31/05 31 Concurred Statement 5

04/13/05 32 Appeal Docket Sheet C

Date: 02/10/2005
Time: 11:57 AM
Page 1 of 2

Clearfield County Court of Common Pleas
ROA Report
Case: 2004-00940-CD
Current Judge: Paul E. Cherry

User: BANDERSON

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

Civil Other

Date	Judge
06/18/2004	Filing: Civil Complaint Paid by: Sell, Richard D. (plaintiff) Receipt number: 1881239 Dated: 06/18/2004 Amount: \$85.00 (Check)2 CC to Plff. No Judge <i>X</i>
07/12/2004	Preliminary Objections to Plaintiffs' Complaint, filed by s/Bryan K. Shreckengost, Esq. No CC No Judge <i>X</i>
	Praeclipe to Place Case on Argument List, filed by s/Bryan K. Shreckengost, Esq. No CC No Judge <i>X</i>
07/13/2004	Sheriff Return, NOW, June 29, 2004, Complaint, served on Central Volkswgen, Inc., defendant at Employment, Dave Rosenberg. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm No Judge <i>X</i>
08/19/2004	ORDER, AND NOW, this 18th day of August, 2004, upon consideration of Defendant's Preliminary Objections, it is ORDER of this Court, that argument be scheduled for 23rd day of August, 2004, at 2:00 p.m. By the Court, Paul E. Cherry, 2 cc & Memo Re: Service (see attached) & to Atty Shrekengost. Paul E. Cherry <i>X</i>
08/25/2004	Affidavit of Service, Order of Court, served on Richard D. Sell and Linda H. Sell (RR 1 Box 212 B-1, Reynoldsville, PA 15851) Filed by s/Bryan K. Shreckengost, Esq., No cc <i>X</i>
09/27/2004	Order, NOW, this 23rd day of September, 2004, this being the date set for argument on Preliminary Objections to plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., Plaintiffs, Richard D. and Linda H. Sell, having failed to appear despite receiving due and proper notice, it is the ORDER of this Court that the Preliminary Objections be and are hereby sustained. Plaintiffs' Complaint, in its entirety, is hereby dismissed, with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC Plffs, 2 CC Atty Shreckengost Paul E. Cherry <i>X</i>
09/30/2004	Petition for Reconsideration and Motion to Grant Stay, filed by s/Richard D. Sell Two CC Plaintiff Paul E. Cherry <i>X</i>
10/04/2004	Affidavit Of Service, Order of Court served upon Plaintiffs via 1st class U.S. mail, filed by s/ Bryan K. Shreckengost, Esq. No CC Paul E. Cherry <i>X</i>
10/08/2004	Order, 2 cert. with Memo to Plaintiff AND NOW, this 6th day of October, 2004, ORDER that argument on said Petition has been scheduled for November 5th at 10:30 AM. Paul E. Cherry <i>X</i>
10/18/2004	Certificate of Service, filed by Atty. Bell 1 Cert. to Atty. Served copy of foregoing Order on Atty. Shreckengost. Paul E. Cherry <i>X</i>
11/10/2004	Order, NOW, this 5th day of November, 2004, following argument on Plaintiff's Petition for Reconsideration and upon consideration thereof, it is the ORDER of this Court that the said petition be and is hereby granted. BY THE COURT, /s/ Paul E. Cherry, Judge. 1 CC to Plaintiff, 2CC to Atty. Shreckengost Paul E. Cherry <i>X</i>
	Order, NOW, this 5th day of November, 2004, following argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., it is the ORDER of this Court that Plaintiff shall file brief in support of his opposition to Preliminary Objections within no more than ten days from this date. Defendant, if he so chooses, shall have ten days thereafter to file a reply brief. BY THE COURT: /s/ Paul E. Cherry, Judge. 1 CC Plffs., 1 CC Atty Shreckengost Paul E. Cherry <i>X</i>
11/15/2004	Plaintiffs' Motion for Leave to File an Amended Complaint, filed by Plaintiff 1 cert. to Plaintiff Paul E. Cherry <i>X</i>

200102257, on February 14, 2001. Her interest would have been a 80/4320 interest.

(c) By Quit-Claim Deed dated September 15, 1973, signed and acknowledged on September 15, 1973, Albert Olexy and Sharlene Mae Olexy, husband and wife, deeded their interest in the property to Mike Skebo. That Deed was recorded under Clearfield County Instrument Number 200102259. His interest would have been a 80/4320 interest.

14. Therefore, upon the transfer of these interests to Michael Skebo he would then have been vested in a 720/4320 interest.

15. That C. Alan Walker, et al., t/d/b/a Shannon Land & Mining Company, (who had acquired the shares of Ray S. Walker as described in Paragraph 9) sold their 288/4320 interest to Michael Skebo by deed dated October 20, 1997, and being recorded on February 25, 1998, in Deed Book Vol. 1910, Page 360. This gave to Michael Skebo, an interest of 1008/4320.

16. Thus, prior to the death of Michael Skebo on April 2, 2000, the subject property was held as follows:

Annie Skebo Washic	192/4320
Michael Skebo Estate	1008/4320
John Skebo	480/4320
Julia Tallant	480/4320
Peter Skebo	480/4320
Joseph Skebo	480/4320
Harry Skebo	480/4320
Josephine Switlick	80/4320
John Olexy	80/4320
George Olexy (Brenda Grube)	80/4320
Wasco Skebo	480/4320

17. That there are no persons other than the named parties herein who has title or interest in the property.

18. No partition or division of the above-described property has ever been made.

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

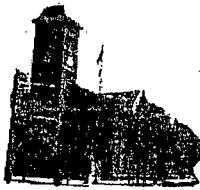
Civil Other

Date	Judge
11/15/2004	Affidavit of Service filed. Brief in Opposition to Preliminary Objections of Defendant, the 15th day of Nov. 2004 upon Bryan Shreckengost, Esquire. Filed by s/ Richard D. Sell. No CC Paul E. Cherry <i>X</i>
11/16/2004	Order, AND NOW, this 16th day of Nov., 2004, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that hearing be held with regard to said Motion on the 9th day of December, 2004, beginning at 10:30 a.m. in Courtroom 2 of the Clearfield Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 6 CC & Memo Re: Service to Plff. Paul E. Cherry <i>X</i>
11/24/2004	Affidavit of Service, copy of the Nov. 16th Order of Court, Served on Bryan K. Shreckengost on Nov. 23, 2004. Filed by s/ Richard D. Sell, Plaintiff. 1CC Plff. Paul E. Cherry <i>X</i>
12/03/2004	Order, AND NOW, this 2nd day of Dec., 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby Sustained. Plaintiff's Complaint is hereby Dismissed in its entirety with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC to Plff, 2 CC to Atty. Shreckengost Paul E. Cherry <i>X</i>
12/10/2004	Affidavit of Service filed on behalf of defendant, copy of December 2, 2004 Order of Court served on Plaintiffs via mail on Dec. 7, 2004. Filed by s/ Bryan K. Shreckengost, Esq. No CC Paul E. Cherry <i>X</i>
12/20/2004	Affidavit of Service filed on behalf of Plaintiffs, copy of Response to Defendant's Reply Brief, on the 18th day of Dec., 2004 on Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell. no cc Paul E. Cherry <i>X</i>
12/21/2004	Petition for Reconsideration, filed by s/ Richard D. Sell One CC Plaintiff Paul E. Cherry <i>X</i>
12/22/2004	Affidavit of Service filed. copy of Response to Defendant's Reply Brief, 18th day of Dec., 2004, to Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell, Plaintiff No CC Paul E. Cherry <i>X</i>
12/23/2004	AND HOW this 22nd day of Dec. 2004, following consideration of Plffs' Petition, hearing will be held Feb. 14, 2004 at 1:30. S/PEC. 1 CC to Plff. Paul E. Cherry <i>X</i>
01/03/2005	Defendant, Central Volkswagen, Inc.'s Opposition to Petition for Reconsideration, filed by s/ Bryan K. Shreckengost, Esq. 1 Cert. to Atty Paul E. Cherry <i>X</i>
01/07/2005	Motion For Leave to File Amended Complaint, With An Order, filed by s/ Richard D. Sell, Plaintiff. No CC Paul E. Cherry <i>X</i>
	Affidavit of Service filed, copy of Dec. 22, 2004 Order of Court, along with a request for issuance of an Order for Amendment of Complaint, with underlying Petition, served on Jan. 14, 2005, upon Defendant's Counsel. Filed by s/ Richard D. Sell, Plaintiff. No CC Paul E. Cherry <i>X</i>

CLEARFIELD COUNTY
OFFICE OF THE PROTHONOTARY AND CLERK OF COURTS

WILLIAM A. SHAW
PROTHONOTARY/
CLERK OF COURTS

DAVID S. AMMERMAN
SOLICITOR



JACKI KENDRICK
DEPUTY PROTHONOTARY

BONNIE HUDSON
ADMINISTRATIVE ASSISTANT

P.O. Box 549, Clearfield, PA 16830
Phone: (814) 765-2641 Ext. 1330 Fax: (814) 765-7659

January 13, 2005

Thomas G. Wagner, Esq.
115 Lafayette Street
St. Marys, PA 15857

Kim C. Kesner, Esq.
23 North Second Street
Clearfield, PA 16830

Blue Sky
362 North Park St.
Sykesville, PA 15865

In Re: Bureau's Consolidated Return 2004
Robert J. Horm, Petitioner
04-1551-CD

To all concerned parties:

Please be advised that the civil docket number in the above captioned action has been changed by direction of the court. The new civil docket number is 04-2046-CD. Please file all further documents to this new number. If you have any questions, please contact me at (814) 765-2641, ext. 1331. I apologize for any inconvenience this may cause.

Sincerely,

William A. Shaw
Prothonotary

Cc: Court Administrator
Fredric J. Ammerman, President Judge
Clearfield Co. Tax Claim Bureau

Date: 03/29/2005

Clearfield County Court of Common Pleas

User: BHUDSON

Time: 02:32 PM

ROA Report

Page 1 of 3

Case: 2004-00940-CD

Current Judge: Paul E. Cherry

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

Civil Other

Date	Judge
06/18/2004	X Filing: Civil Complaint Paid by: Sell, Richard D. (plaintiff) Receipt number: No Judge 1881239 Dated: 06/18/2004 Amount: \$85.00 (Check)2 CC to Plff.
07/12/2004	X Preliminary Objections to Plaintiffs' Complaint, filed by s/Bryan K. Shreckengost, Esq. No CC
	X Praeclipe to Place Case on Argument List, filed by s/Bryan K. Shreckengost, Esq. No CC
07/13/2004	X Sheriff Return, NOW, June 29, 2004, Complaint, served on Central Volkswgen, Inc., defendant at Employment, Dave Rosenberg. So Answers, Chester A. Hawkins, Sheriff by s/Marilyn Hamm
08/19/2004	X ORDER, AND NOW, this 18th day of August, 2004, upon consideration of Defendant's Preliminary Objections, it is ORDER of this Court, that argument be scheduled for 23rd day of August, 2004, at 2:00 p.m. By the Court, Paul E. Cherry, 2 cc & Memo Re: Service (see attached) & to Atty Shrekengost.
08/25/2004	X Affidavit of Service, Order of Court, served on Richard D. Sell and Linda H. Paul E. Cherry Sell (RR 1 Box 212 B-1, Reynoldsville, PA 15851) Filed by s/Bryan K. Shreckengost, Esq., No cc
09/27/2004	X Order, NOW, this 23rd day of September, 2004, this being the date set for argument on Preliminary Objections to plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., Plaintiffs, Richard D. and Linda H. Sell, having failed to appear despite receiving due and proper notice, it is the ORDER of this Court that the Preliminary Objections be and are hereby sustained. Plaintiffs' Complaint, in its entirety, is hereby dismissed, with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC Pliffs, 2 CC Atty Shreckengost
09/30/2004	X Petition for Reconsideration and Motion to Grant Stay, filed by s/Richard D. Paul E. Cherry Sell Two CC Plaintiff
10/04/2004	X Affidavit Of Service, Order of Court served upon Plaintiffs via 1st class U.S. Paul E. Cherry mail, filed by s/ Bryan K. Shreckengost, Esq. No CC
10/08/2004	X Order, 2 cert. with Memo to Plaintiff AND NOW, this 6th day of October, 2004, ORDER that argument on said Petition has been scheduled for November 5th at 10:30 AM.
10/18/2004	X Certificate of Service, filed by Atty. Bell 1 Cert. to Atty. Served copy of foregoing Order on Atty. Shreckengost.
11/10/2004	X Order, NOW, this 5th day of November, 2004, following argument on Plaintiff's Petition for Reconsideration and upon consideration thereof, it is the ORDER of this Court that the said petition be and is hereby granted. BY THE COURT, /s/ Paul E. Cherry, Judge. 1 CC to Plaintiff, 2CC to Atty. Shreckengost
	X Order, NOW, this 5th day of November, 2004, following argument on Preliminary Objections to Plaintiffs' Complaint filed on behalf of Defendant, Central Volkswagen, Inc., it is the ORDER of this Court that Plaintiff shall file brief in support of his opposition to Preliminary Objections within no more than ten days from this date. Defendant, if he so chooses, shall have ten days thereafter to file a reply brief. BY THE COURT: /s/ Paul E. Cherry, Judge. 1 CC Pliffs., 1 CC Atty Shreckengost.
11/15/2004	X Plaintiffs' Motion for Leave to File an Amended Complaint, filed by Plaintiff cert. to Plaintiff.

Civil Other

Date	Judge	
11/15/2004	X Affidavit of Service filed. Brief in Opposition to Preliminary Objections of Defendant, the 15th day of Nov. 2004 upon Bryan Shreckengost, Esquire. Filed by s/ Richard D. Sell. No CC	Paul E. Cherry
11/16/2004	X Order, AND NOW, this 16th day of Nov., 2004, upon consideration of the Plaintiff's Motion for Leave to File an Amended Complaint, it is the ORDER of this Court that hearing be held with regard to said Motion on the 9th day of December, 2004, beginning at 10:30 a.m. in Courtroom 2 of the Clearfield Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 6 CC & Memo Re: Service to Plff.	Paul E. Cherry
11/24/2004	X Affidavit of Service, copy of the Nov. 16th Order of Court, Served on Bryan K. Shreckengost on Nov. 23, 2004. Filed by s/ Richard D. Sell, Plaintiff. 1CC Plff.	Paul E. Cherry
12/03/2004	X Order, AND NOW, this 2nd day of Dec., 2004, following argument on Preliminary Objections to Plaintiffs Complaint filed on behalf of Defendant, Central Volkswagen, Inc., and the timely receipt of Briefs, upon consideration of the same, the Court is satisfied that Plaintiffs are barred by the Doctrine of Res Judicata. It is the ORDER of this Court that the Preliminary Objections be and are hereby Sustained. Plaintiff's Complaint is hereby Dismissed in its entirety with prejudice. BY THE COURT: /s/ Paul E. Cherry, Judge. 2 CC to Plff, 2 CC to Atty. Shreckengost	Paul E. Cherry
12/10/2004	X Affidavit of Service filed on behalf of defendant, copy of December 2, 2004 Order of Court served on Plaintiffs via mail on Dec. 7, 2004. Filed by s/ Bryan K. Shreckengost, Esq. No CC	Paul E. Cherry
12/20/2004	X Affidavit of Service filed on behalf of Plaintiffs, copy of Response to Defendant's Reply Brief, on the 18th day of Dec., 2004 on Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell. no cc	Paul E. Cherry
12/21/2004	X Petition for Reconsideration, filed by s/ Richard D. Sell One CC Plaintiff	Paul E. Cherry
12/22/2004	X Affidavit of Service filed. copy of Response to Defendant's Reply Brief, 18th day of Dec., 2004, to Bryan K. Shreckengost, Esquire. Filed by s/ Richard D. Sell, Plaintiff No CC	Paul E. Cherry
12/23/2004	X AND HOW this 22nd day of Dec. 2004, following consideration of Plffs' Petition, hearing will be held Feb. 14, 2004 at 1:30. S/PEC. 1 CC to Plff.	Paul E. Cherry
01/03/2005	X Defendant, Central Volkswagen, Inc.'s Opposition to Petition for Reconsideration, filed by s/ Bryan K. Shreckengost, Esq. 1 Cert. to Atty	Paul E. Cherry
01/07/2005	X Motion For Leave to File Amended Complaint, With An Order, filed by s/ Richard D. Sell, Plaintiff. No CC	Paul E. Cherry
	X Affidavit of Service filed, copy of Dec. 22, 2004 Order of Court, along with a request for issuance of an Order for Amendment of Complaint, with underlying Petition, served on Jan. 14, 2005, upon Defendant's Counsel. Filed by s/ Richard D. Sell, Plaintiff. No CC	Paul E. Cherry
02/17/2005	X Order, NOW, this 14th day of Feb., 2005, following argument on plaintiff's petition for reconsideration, the Court having reviewed the file in its entirety, IT IS THE ORDER OF THIS COURT that said petition be and is hereby denied. BY THE COURT: /s/ Paul E. Cherry, Judge. 3CC to Plff	Paul E. Cherry
03/16/2005	X Filing: Appeal to High Court, Request for Transcript. Paid by: Sell, Richard D. (plaintiff) Receipt number: 1897623 Dated: 03/16/2005 Amount: \$45.00 (Check) Filed by s/ Richard D. Sell, s/Linda H. Sell. 1CC to Superior Court w/ck for 60.00.	Paul E. Cherry

Date: 03/29/2005

Time: 02:32 PM

Page 3 of 3

Clearfield County Court of Common Pleas

User: BHUDSON

ROA Report

Case: 2004-00940-CD

Current Judge: Paul E. Cherry

Richard D. Sell, Linda H. Sell vs. Central Volkswagen, Inc.

Civil Other

Date		Judge
03/17/2005	<input checked="" type="checkbox"/> Order, filed. 1 cert. to Plaintiff and 1 cert. to Sheckengost. NOW, this 17th day of March, 2005, ORDER that Plaintiff file a concise statement of the matters on Appeal no later than 14 days herefrom.	Paul E. Cherry
03/28/2005	<input checked="" type="checkbox"/> Notice of Appeal, Cert. Copy with check, returned from Superior Court. Appeal to be returned when appellants amend their proof of service and provide original signature from Linda Sell.	Paul E. Cherry