

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-CV- 1934

Lynn RUNYAN

Plaintiff,

v.

RV America the Marketplace Inc.

Defendant.

COMPLAINT FOR DAMAGES

The Plaintiff, Lynn Runyan, by and through her attorney, Alison Ruttenberg, hereby submits his Complaint against the Defendant as follows.

JURISDICTION OF THE COURT

1. This action arises under the laws of the United States and is brought pursuant to Title 15 USC §2310(d)(1)(B). Jurisdiction is conferred on this Court pursuant to Title 28 USC §1331.

2. Venue is proper in the District of Colorado pursuant to 28 USC §1391(b). The Defendant has its principle place of business in Colorado and the vehicle was purchased in Colorado.

PARTIES

3. The Plaintiff is a resident of Florida, but she has a temporary residence in Colorado until the dispute in this case is resolved. She is unable to move or travel due to the Defendant's conduct in selling her a dangerous vehicle, that is dangerous to drive and sleep in. This vehicle is currently in storage in Longmont, Colorado.

4. RV America the Marketplace Inc. ("RV America") is a Colorado Corporation with its principal place of business at 6701 Marketplace Dr., Lakewood CO 80537.

FACTUAL BACKGROUND

5. The Plaintiff purchased 2013 Holiday Rambler Model 34SBD, class A motorhome, hereinafter referred to as the "RV", with an odometer reading of 1111 miles on October 11, 2013 from the Defendant for the cash price of \$152,946.78. She traded in another RV (a 2011 Forest River Windjamer 3065W) and financed \$132,629 for the purchase of the Holiday Rambler. The finance agreement between the parties was for 240 payments of \$914.42 per month beginning November 25, 2013 and continuing until October 25, 2033. This vehicle was going to be the Plaintiff's residence as well as her transportation when she made cross country trips. She is retired and has children and grandchildren who live in other states. The Plaintiff purchased the extended warranty from the Defendant.

6. As soon as the Plaintiff drove the RV home, she noticed problems with the back end – the pain and body was rippled. She took it back to the

Defendant the follow day and they repaired the back end and replaced a damaged windshield wiper. The Plaintiff picked up the RV from the Defendant on October 30, 2013.

7. In November 2013, the Plaintiff left Colorado to return to Florida, and traveled on I-70 through Kansas. One the first day on the road, the RV had a propane leak. The Plaintiff had to stay in motels until someone could repair the leak. Along the way, the leak was repaired, and the Plaintiff was advised the lead was due to a change in the altitude. After that, there did ot appear to be any additional problems with the propane tank.

8. As soon as the RV was taken on the road, the Plaintiff noticed that the refrigerator was not operating properly, it did not keep food cold. The Plaintiff had to throw out spoiled food multiple times during the trip to Florida. When she arrived in Florida, she took the RV to Lazydays RV on November 15, 2013 in Seffner Florida to have the refrigerator repaired. The refrigerator could not be repaired, and it only worked at all when the propane was turned on. The refrigerator stopped working when the RV was plugged into an electric power source.

9. The Plaintiff called Holiday Rambler service department to obtain the name of an authorized factory dealer in northern Florida or Alabama for warranty repairs. She was instructed to use Johnny's RV in Theodore Alabama for repairs. By this time, the repairs the Defendant had allegedly made to the rear end had failed and had to be reaccomplished. Johnny's RV looked at the RV, replaced a battery which was under warranty and repaired the bed frame

which had pulled apart, but could not obtain authorization for repairs to the rear body and instructed the Plaintiff to return to the Defendant since it was the Defendant's fault the repairs were faulty. The Plaintiff had to pay Johnny's RV \$237.50.

10. The Plaintiff then returned to Colorado in July 2014 in an attempt to have the RV repaired by the Defendant. The Defendant would not give her an appointment until September 2, 2014. The Plaintiff stayed in an RV part at Chatfield and also in the Golden area until September 2, 2014.

11. However, in the mean time, on July 28, 2014, the carbon monoxide alarm went off in the RV. The Plaintiff called 911 and the Golden Fire Department responded and found there was a serious carbon monoxide leak. They opened the windows and were able to clear the carbon monoxide out. They then recreated the scenario by turning on the propane tank and closed the windows to the RV and the carbon monoxide alarm went off again. The Plaintiff and her adult son were admitted to St. Anthony's Hospital at around 9:30 p.m. And were treated for carbon monoxide poisoning. They had to be placed on oxygen and were diagnosed with carbon monoxide poisoning. The carbon monoxide levels in the RV were in excess of 159 ppm; anything above 70 ppm is dangerous and potentially fatal.

12. The next morning, the Plaintiff informed the Defendant of this problem and asked them to move up the September 2 appointment, but the Defendant refused and added this problem to the list of problems to be fixed on September 2. The Plaintiff and her son stayed in the RV until September 2, but

could not turn on the refrigerator or the propane. They had to leave the propane off and leave the windows open for ventilation until the problem could be fixed.

13. The Defendant kept the Plaintiff's RV until December 1, 2014 but did not repair the problem. The Defendant used a Carbon Dioxide detector instead of a Carbon Monoxide detector and therefore failed to identify or correct the problem. The Defendant's officers and employees do not know the difference between Carbon Monoxide and Carbon Dioxide, which are two COMPLETELY different gases. They thought they fixed the problem by removing and replacing the carbon dioxide detector. The Defendant falsely determined that the RV was operating properly on September 25, 2014 because they confused a carbon dioxide detector with a carbon monoxide detector. When the Plaintiff called out the ignorance of the Defendant regarding the difference between a carbon monoxide detector and a carbon dioxide detector, agents and employees of the Defendant continued to insist that because the carbon dioxide meter showed normal levels, that there was nothing wrong with the RV.

14. For the first year of ownership, while the RV was under warranty, it was in the repair shop for over three and a half months. This is in excess of what is acceptable for a consumer.

15. The RV is dangerous and cannot be operated because of the carbon monoxide problem which the Defendant refused to repair. The Plaintiff cannot sell the RV because it is a piece of dangerous junk, and she would have to warn any potential purchasers of the carbon monoxide problem that the Defendant refused to repair.

16. The Plaintiff had no duty to resort to informal dispute settlement pursuant to 15 USC 2310(a)(3) before filing this lawsuit. Motorhomes are not eligible for the BBB Auto Line warranty dispute mediation program, and Plaintiff received written confirmation of such on May 28, 2015.

CLAIM FOR DAMAGES

Pursuant to the Magnuson-Moss Warranty Act (Act), 15 USCS § 2301 et seq

17. The Defendant refused to honor the warranty purchased by the Plaintiff when she purchased the RV. The Defendant refused to repair the defect which caused the dangerous carbon monoxide leak. The carbon monoxide leak occurred and was reported to the Defendant while the RV was under warranty.

18. The Defendant is liable to the Plaintiff in the amount of \$152,946.78 plus her out of pocket expenses for medical care, roadside service and other costs of attempted warranty repairs.

19. Pursuant to 15 USC §2310(d)(2), the Defendant is liable to the Plaintiff for her attorney fees and costs.

WHEREFORE, the Plaintiff prays for damages for her compensatory damages, for her attorney fees and costs; and for all other relief that the Court deems just and appropriate.

The Plaintiff Demands a Jury Trial

DATED September 7, 2014.

Respectfully submitted,

/s/ Alison Ruttenberg

Alison Ruttenberg
PO Box 19857

Boulder, CO 80308
(720) 317-3834
Fax: (888) 573-3153
Ruttenberg@me.com

Attorney for Plaintiff

Temporary Colorado Address of Plaintiff

13873 W 78th Pl
Arvada CO 80005

Please wait...

If this message is not eventually replaced by the proper contents of the document, your PDF viewer may not be able to display this type of document.

You can upgrade to the latest version of Adobe Reader for Windows®, Mac, or Linux® by visiting http://www.adobe.com/go/reader_download.

For more assistance with Adobe Reader visit <http://www.adobe.com/go/acrreader>.

Windows is either a registered trademark or a trademark of Microsoft Corporation in the United States and/or other countries. Mac is a trademark of Apple Inc., registered in the United States and other countries. Linux is the registered trademark of Linus Torvalds in the U.S. and other countries.