

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MICHAEL A. THORNE

PLAINTIFF

AND:

NISSAN CANADA INC.

DEFENDANT

Proceeding under the *Class Proceedings Act*, RSBC 1996, c.50

STATEMENT OF CLAIM

THE PARTIES

1. The Plaintiff is a financial consultant who resides at ***, North Vancouver, British Columbia.
2. The Defendant, a federal corporation with its registered head office at 5290 Orbitor Drive, Mississauga, Ontario, is registered extraprovincially pursuant to the *Business Corporations Act* in British Columbia under number A0062020 and has its mailing and delivery address in this province at 2800 – 666 Burrard Street, Vancouver, British Columbia.
3. The Defendant, directly and through various subsidiaries, designs, manufactures, distributes, markets and sells motor vehicles under the brand names Nissan and Infinity in numerous jurisdictions, including Canada and the United States. In Canada, in 2007, the Defendant sold 76,783 passenger cars and light trucks.

THE FACTS

4. The Defendant marketed and sold or leased the 2004 to 2007 Nissan and Infinity models (the "Class Vehicles") to the Canadian public.

5. The Defendant impliedly warranted to the Plaintiff and a putative class of people that he proposes to represent in British Columbia that each Class Vehicle's odometer would accurately record the number of kilometres driven by each Class Vehicle.

6. The Defendant intentionally and/or negligently designed each Class Vehicle's odometer to inflate the represented distance travelled by a factor between 2.5% and 4% (the "Defect").

7. The Defendant has deprived the Plaintiff and all putative class members of the benefit of their bargains, for which they paid good and sufficient consideration. Specifically, the following damages have resulted:

- a) The Plaintiff and all putative class members will not receive the full benefit of the standard warranties that come with all new Nissan and Infinity vehicles in Canada nor the benefit of any extended warranties purchased in addition to the standard warranties, nor any used vehicle warranties purchased from the Defendant or provided by the Defendant in respect of the purchase of a used Defendant vehicle. The Defendant has reduced the effective period of the warranties over the lifetime of the Class Vehicles, resulting in costs to the Plaintiff and putative class members for repairs that should have been covered by warranty. The savings to the Defendant and the corresponding detriment to the Plaintiff and putative class members is considerable;
- b) The Plaintiff and all putative class members have experienced a reduction in the resale value of their vehicles resulting from the inflated kilometres attributed to their vehicles by the Defendant's defective odometer;

- c) The Plaintiff and all putative class members have experienced a reduction in the resale value of their vehicles resulting from the decreased warranty coverage, which has value and is transferable to a subsequent purchaser; and
- d) The Plaintiff and all putative class members will not receive the benefit of their allotted kilometre allowances under a lease agreement. The Defendant has reduced the effective kilometre allowance of each class member who leased a vehicle, resulting in either charges for excess kilometres or the early conclusion of the lease agreement. The savings to the Defendant and the corresponding detriment to the consumer are considerable.

PUTATIVE CLASS ACTION

8. The Plaintiff brings this action on his own behalf and on behalf of all persons resident in British Columbia who presently own or lease one or more of the Class Vehicles.

9. The Plaintiff leased a 2006 Nissan Pathfinder in British Columbia on November 27, 2006.

10. The Plaintiff has relied on the accuracy of the odometer to obtain the warranty coverage he purchased and for determining the potential residual value of his vehicle and his cost should he exceed his allowable number of kilometers.

NEGLIGENCE

11. The Plaintiff and the putative class members have sustained damages as hereinbefore set out as a result of the intentional actions and/or negligence of the Defendant which includes, but is not limited to, the following:

- a) The Defendant knowingly or, alternatively, negligently failed to design the odometer to accurately record the kilometres traveled by a Class Vehicle;
- b) The Defendant knowingly or, alternatively, negligently failed to manufacture the odometer to accurately record the kilometres actually traveled by a Class Vehicle;
- c) The Defendant failed to design and conduct tests or, alternatively, elected to ignore and/or failed to disclose the results of tests that would have disclosed the Defect and which would have determined whether the odometer was functioning accurately;
- d) The Defendant knowingly or, alternatively, negligently incorporated materials and parts into the design and manufacture of the odometer that were inappropriate for its intended use;
- e) The Defendant knowingly or, alternatively, negligently set a tolerance standard in the defective odometers that allows errors which inflate the kilometres driven; and
- f) The Defendant knowingly distributed, marketed, sold and/or serviced a product that they knew or ought to have known was defective.

BREACH OF IMPLIED WARRANTY

12. The Plaintiff says that the Defendant's actions and omissions described herein constitute a breach of an implied warranty issued to the Plaintiff at the time that he leased his vehicle that its odometer would accurately record the distance traveled.

BUSINESS PRACTICES AND CONSUMER PROTECTION ACT

13. The Plaintiff says that the Defendant's actions and omissions described herein constitute deceptive and unconscionable acts and practices contrary to the provisions of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

THE RELEVANT STATUTES

14. The Plaintiff pleads and relies on the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

15. The Plaintiff pleads and relies on the *Negligence Act*, R.S.B.C. 1996, c. 333.

16. The Plaintiff pleads and relies on section 27 of the *Weights and Measures Act*, R.S. 1985, c. W-6.

17. The Plaintiff pleads and relies on the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2.

RELIEF REQUESTED

18. The Plaintiff, on his own behalf and on behalf of members of the putative class, claims:

- (a) General damages;
- (b) Special damages;
- (c) That, by virtue of the Defendant's knowing disregard for, or reckless indifference to, the rights of the Plaintiff and the putative class members, the Plaintiff and the putative class members are entitled to recover aggravated, punitive and exemplary damages.;

- (d) Rescission:
- (e) Restitution;
- (f) Interest pursuant to the provisions of the *Court Order Interest Act*,
- (g) Costs; and
- (h) Such further and other relief as to this Honourable Court may seem meet.

PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA.

DATED at the City of North Vancouver, in the Province of British Columbia this ____ day of January, 2008.

KENNETH J. BAXTER
Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is filed by **KENNETH J. BAXTER, ESQ.**, of the firm of **POYNER BAXTER LLP**, Barristers & Solicitors, whose place of business and address for delivery is 408 - 145 Chadwick Court, North Vancouver, B.C. V7M 3K1. Telephone: (604) 988-6321; Facsimile: (604) 988-3632.