NEW MOTOR VEHICLE BOARD
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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

In the Matter of the Petition of QUAID IMPORTS, INC., Petitioner, vs. MASERATI AUTOMOBILES, INC., Respondent.	Petition No. P-230-91 PROPOSED DECISION

PROCEDURAL BACKGROUND

1. Quaid Imports, Inc. ("Petitioner" or "Quaid") first became a Maserati franchisee in 1983. On October 22, 1990, Quaid filed petition number P-216-90 with the New Motor Vehicle Board ("Board") seeking damages for breach of contract and rescission of its dealer agreement with Maserati Automobiles, Inc. ("Respondent" or "Maserati"). In that petition, Quaid alleged that Maserati's products were essentially unmarketable in California for a variety of reasons, and that Quaid had suffered substantial damages as a

result. On April 12, 1990, during the course of the hearing on petition number P-216-90, the parties entered into a settlement agreement (hereinafter the "settlement agreement") which resolved the issues raised by that petition. Quaid thereafter withdrew it petition.

2. On November 12, 1991, Quaid filed the instant petition with the Board. In this petition, Quaid seeks damages and declaratory relief for its claim that Maserati has refused to reimburse Petitioner for warranty repairs made to a certain 1989 Maserati automobile. On December 24, 1991, Respondent filed a motion to dismiss and motion for attorney's fees and costs pursuant to Code of Civil Procedure section 128.5. The motions were heard by an administrative law judge ("ALJ") for the Board on February 3, 1992. By ruling of the ALJ, the motion to dismiss was denied, and a determination as to Respondent's motion for attorney's fees and costs was deferred until the hearing on the merits of this dispute. The hearing on the merits was held before ALJ Kenneth B. Wilson on March 9, 1992. The Petitioner was represented by Randall L. Hite of Randall L. Hite and Associates, the Hite Building, 1119 North Bush Street, Santa Ana, California 92701. Respondent's counsel was C. Alexander Hewes of Hewes, Morella, Gelband and Lamberton, The Flour Mill, 1000 Potomac Street, Suite 300, Washington, D.C. 20007. This decision disposes of the case on the merits and also rules on Respondent's motion for attorney fees and costs.

UNDISPUTED FACTS

3. The settlement agreement provided, in pertinent part, that Maserati shall "deliver to Quaid at (Maserati's) expense a new Maserati 228 automobile. Quaid shall retain the two new Maserati automobiles currently in its possession." The agreement went on to provide that "(Maserati) shall forthwith pay the sum of $14,500.00 to Quaid, as purchase price for, {sic} the 1987 Maserati 425, Vin No. ZAMBL11034B324370." In addition, the settlement agreement contained a merger clause and an express statement that the parties acknowledged and intended that the written agreement embodied all of the terms of their settlement, excluding "any representation, oral or otherwise, express or implied which is not recited, contained or embodied in this Agreement."

4. One of the two vehicles to be retained by Quaid, a 1989 Maserati 228 (VIN No. ZAMAN1105KA340313), invoice valued at $46,079.00, is the object of the controversy in this proceeding. On the date of delivery, November 22, 1988, Mr. Quaid told his inventory manager that he wanted to use the vehicle as his demonstrator. The inventory manager immediately filed with Maserati a Demonstrator Report Card as required by Paragraph 15d of Maserati's Standard Dealer Agreement ("SDA").

5. The SDA required Quaid to maintain at least one demonstrator available at all times. The SDA also provided that any vehicle, whether designated or not, with more than 500 miles traveled would automatically become a demonstrator.

At no time after November 22, 1988 did Quaid designate any other Maserati vehicle as a demonstrator.

6. Under the terms of Maserati's 1989 model year warranty, the coverage period could start either on the date of retail delivery to a customer or upon first use as a demonstrator or company car. The total term of the warranty was three years or 36,000 miles, whichever came first. Maserati administered the coverage for the first two years or 24,000 miles directly, and a third year of extended coverage was provided through General Warranty, Inc.[1/]

7. After driving the Maserati 228 a short distance, Mr. Quaid found that the driver's seat was uncomfortable and changed his mind about using the car as a demonstrator. Mr. Quaid told neither his own employees nor Maserati that he had decided not to use the vehicle any further. Mr. Quaid did not personally drive the vehicle again, but did allow the car to be test-driven by prospective purchasers.

8. The car remained on Quaid's lot until sometime in March of 1991, when Mr. Quaid found that the battery had failed. He replaced the battery and filed a claim for reimbursement with Maserati. On May 10, 1991, 28 days after the settlement agreement in P-216-90 was signed, Quaid received written notice from Maserati that the warranty claim had been rejected. The notice of rejection contained a

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1/ Sometime after the vehicle was delivered to Quaid, General Warranty's responsibilities were assumed by Maryland Casualty Insurance Co.

notation that the vehicle's factory warranty term had begun to run on November 22, 1988.

9. The subject vehicle was sold at retail approximately four months later on September 12, 1991. The vehicle was represented to the customer as a new vehicle with 340 miles on the odometer. The purchaser returned the vehicle to Quaid for repairs on October 8, 1991 and again on October 18, 1991. On both occasions Quaid performed the repairs and filed warranty reimbursement claims totaling $499.81. Both claims were rejected by Maserati, with notations that the two-year factory warranty had expired. As a result, Quaid filed the instant petition with the Board.

CONTENTIONS OF THE PARTIES

10. The Petitioner claims that sometime after petition number P-216-90 was filed in October of 1990, his attorney learned from Respondent's counsel that because Quaid had filed a Demonstrator Report Card on this vehicle, Maserati considered it to be a demonstrator. Mr. Quaid then consulted his employees and confirmed that, in fact, a Demonstrator Report Card had been filed on October 22, 1988. Petitioner states that it then explained to Respondent that the card had been filed in error and that Quaid had not actually used the vehicle as a demonstrator. A few months later, when the settlement agreement in petition number P-216-90 was drafted using the word "new" to describe the vehicles in inventory which Quaid was to retain, Quaid assumed that Maserati had

accepted Quaid's position that the warranty period on the subject vehicle had not actually commenced.

11. Respondent claims to the contrary, that it did not accept Quaid's explanation and that it never agreed to modify or extend the warranty period on the subject vehicle. Respondent argues that the use of the word "new" in the settlement agreement merely identified two of the total of four vehicles which were involved in the agreement.

ISSUES PRESENTED

12. The issues presented by this proceeding are as follows:

a. Whether, by use of the term "new" in the settlement agreement which resolved petition number P-216-90, the parties intended to rescind the demonstrator designation for the 1989 Maserati 228 at issue in this proceeding (VIN number ZAMAN1105KA340313) and to restart the factory warranty period on this vehicle,

b. The extent to which parol evidence[2/] may be considered by the Board in resolving this matter, and

c. Whether Respondent is entitled to an award of attorney's fees and costs, pursuant to Code of Civil Procedure section 128.5, as a result of the filing of this petition.

2/ Parol evidence consists of writings or oral statements made at the time of or prior to entering into a written contract.

FINDINGS OF FACT

13. Parol evidence is not admissible where its purpose is to modify or contradict the terms set forth in a writing which is intended to be a complete statement of the parties' agreement. (Code of Civil Procedure section 1856(a)).[3/] Parol evidence, however, is admissible to interpret a contract whenever it is reasonably susceptible to more than one meaning. (Code of Civil Procedure section 1856 (g); PG&E vs. G. W. Thomas Drayage and Rigging Co. (1968) 69 Cal 2d 33.) At the hearing in this proceeding, evidence consisting of trade usage, course of dealing and performance of the parties both before and after the settlement agreement was executed was offered for the purpose of showing the parties' intent.

14. The use of the word "new", as it appears in the settlement agreement with reference to the subject vehicle, is reasonably susceptible to the meanings advanced by both parties. It is true, as Quaid claims, that a "new vehicle" is ordinarily one which is under warranty. It is also true, as set forth by Maserati, that "new" generally means not previously sold to a customer. The subject vehicle clearly met both criteria. It follows, therefore, that parol evidence is admissible in this proceeding to determine whether the parties intended that the subject vehicle would be retained by

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3/ Neither party contends that the settlement agreement was not intended as a full integration of the terms of their agreement.

Quaid with a full 36-month warranty or with 28 months of warranty coverage already expired.

15. Quaid's testimony concerning trade usage was intended to show the basis for his belief that the word "new" in the settlement agreement meant that Maserati would provide a full-term warranty on the subject vehicle. This evidence, however, cannot be relied upon to vary the express terms of the Maserati SDA, the 1989 model warranty and the settlement agreement itself. Terminology such as "new" and "demonstrator" as used in the industry are not conclusive in this matter because the specific terms of the SDA and the 1989 Maserati warranty expressly established both demonstrator status and commencement of the warranty period upon the filing of a Demonstrator Report Card.[4/]

16. Petitioner failed to establish by way of the parties' course of dealing that there was any agreement reached regarding the subject warranty. Quaid neither alleged nor proved that there was an oral agreement between the parties that the Demonstrator Report Card was filed in error. At most Maserati agreed to continue to honor its existing

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4/ Both parties cited the Civil and Vehicle Codes in support of their respective arguments. Vehicle Code sections 430 and 665, however, pertain to vehicle registration, not to warranty. Under the terms of Maserati's warranty, the coverage period could begin whether the car was registered or not. Civil Code section 1793.2 (e)(4)(B) merely applies the state consumer warranty law to demonstrators as well as new vehicles and is likewise not determinative of this issue.

warranties. Maserati remained silent when told that the card had been filed by "mistake" and denies outright that it ever agreed to any modification of the status of this vehicle. Although Mr. Quaid may have assumed that Maserati had agreed with him, it is the intent of both parties, not just one, which is the focus of contract interpretation.

17. The parties' course of dealing leading to the settlement agreement also failed to show that the use of the word "new" meant that the parties intended to renew the warranty period. In its original petition, Quaid had sought to rescind its dealer agreement and to require that Maserati repurchase its equipment and inventory. In the settlement agreement, however, Quaid agreed to continue as a Maserati dealer and to retain his existing inventory in exchange for Maserati's agreement to repurchase one used 1987 vehicle which had been returned to Quaid by a customer. Maserati further agreed to provide Quaid with an additional new Maserati at Maserati's cost. The settlement agreement resolved all of the issues raised in that petition. If the parties had in fact also resolved the question of the status of the subject vehicle as demonstrator, it would have been both simple and prudent to expressly include that provision in the settlement agreement. Instead, the settlement agreement expressly excludes any prior understandings not specifically included in the agreement. It is clear, therefore, that in the context of the settlement agreement, the word "new" was meant to designate those vehicles which Quaid would retain for retail

sale to the public as a Maserati dealer. It did not mean that the status of the subject vehicle was changed from "demonstrator" to "new vehicle" for the purpose of warranty.

18. Maserati's performance after the settlement agreement was executed likewise supports the conclusion that Maserati had not agreed to modify the warranty. Maserati rejected all three warranty claims submitted by Quaid between March 24 and October 18, 1991. Maserati rejected these claims even though the last year of the 36-month warranty had not expired because third-year claims were required to be filed first with Maryland Casualty and not with Maserati. Quaid's failure to file the claims with Maryland Casualty rather than Maserati may be explained by Mr. Quaid's own testimony that he was not aware that third-year claims were not handled by Maserati.

DETERMINATION OF THE ISSUES

19. It is hereby determined that the parties to the settlement agreement did not intend to modify the warranty coverage period on the subject Maserati 228. By the unmodified terms of the 1989 warranty, the manufacturer's coverage ended on November 22, 1990. Any obligation for warranty claims during the third year of warranty coverage lies with Maryland Casualty and not with Respondent.

20. Respondent's request under Code of Civil Procedure section 128.5 for sanctions against Petitioner by way of attorney's fees and costs is denied. That section allows an

award of fees and costs for litigation which is unmeritorious and intended solely for the purpose of harassment or delay. A determination regarding the dates of warranty coverage on the subject vehicle would affect its resale value. Therefore, Petitioner clearly had a monetary stake in the outcome of this proceeding. As a result, Respondent has failed to prove that the petition was brought for the sole purpose of harassment or delay.

PROPOSED DECISION

THEREFORE, the following proposed decision is respectfully submitted:

The petition is denied. The parties shall take nothing by way of attorney's fees or costs in this proceeding.

I hereby submit the foregoing which constitutes my proposed decision in the above-entitled matter, as a result of a hearing held before me on the above date and recommend adoption of this proposed decision as the decision of the New Motor Vehicle Board.

Dated: July 2, 1992

Kenneth B. Wilson

KENNETH B. WILSON
Administrative Law Judge
New Motor Vehicle Board