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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EAST FISHKILL FIRE DISTRICT,

Plaintiff,

-against-

FERRARA FIRE APARATUS, INC.

Defendant.

-----X

ECF CASE

**COMPLAINT**

Civil Action No.:

**JURISDICTION**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 as there is diversity of citizenship between the parties and the matter in controversy exceeds the sum of \$75,000.00.

**VENUE**

2. The contract at issue was to be performed in and the subject matter of the contract at issue was to be utilized in Dutchess County, New York. Venue therefore lies in the United States District Court for the Southern District of New York pursuant to 28 U.S.C. § 1391(b)(2).

**PARTIES**

3. Plaintiff East Fishkill Fire District is a New York State public corporation and subdivision of the State of New York, organized and existing under the laws of the State of New York, with its principal place of business in Hopewell Junction, New York.

4. Plaintiff is a full-service fire department, with operations including fire suppression; emergency medical services; hazardous materials mitigation; fire investigation; and rescue support services.

5. Defendant Ferrara Fire Apparatus, Inc. (“Ferrara”), is a corporation, organized and existing under the laws of the State of Louisiana, maintains a principal place of business in Holden, Louisiana, and conducts business in the State of New York.

6. Ferrara is a manufacturer and retailer of various types of fire trucks and emergency response vehicles.

#### **STATEMENT OF FACTS**

7. In or before May 2013, Plaintiff negotiated with Ferrara for the purchase and delivery of a rear mount platform ladder truck (the “Truck”), with serial number 1F9508135EH140084.

8. On or about May 13, 2013, Plaintiff executed an Apparatus Contract (the “Contract”) for the purchase of the Truck, in the amount of nine hundred ninety-six thousand, nine hundred fifty-one dollars (\$996,951.00) to be paid to Ferrara.

9. Various extras were later added to the Truck, which increased the purchase price to \$1,002,351.00.

10. The Contract called for delivery of the Truck within two hundred seventy (270) days from signing of the final shop order after a pre-build conference.

11. The Contract requires that Louisiana substantive law applies to any disputes under the Contract.

12. On or about January 18, 2015, the Truck was delivered to Plaintiff in Hopewell Junction, New York.

13. Beginning in or about March 2015, Plaintiff began to experience problems with the Truck's avoidance and anti-cab systems, which are directly related to the functioning and operation of the Truck's bucket.

14. During or about March 2015, the Truck was taken to Neville Apparatus Corp. ("Neville") to repair those defective systems.

15. At all times mentioned herein, Neville was acting as an agent of Ferrara in taking possession of the Truck and attempting to undertake repairs.

16. On or about April 11, 2015, the Truck was returned from Neville after repairs were purportedly made to the Truck's avoidance and anti-cab systems completed. However, the Truck's check engine light was turned on and subsequently, the Truck was sent to Cummins Inc. ("Cummins").

17. Cummins manufactured the Truck's engine and, at all times mentioned herein, was authorized by Nick Uzzolino of Ferrara to perform diagnoses for problems and certain repairs.

18. On or about April 15, 2015, the Truck was purportedly repaired at Cummins for problems with the intake manifold pressure.

19. On or about April 17, 2015, the Truck was returned to Plaintiff from Cummins.

20. On or about May 2, 2015, the Truck's check engine light turned on again.

21. On or about May 4, 2015, Cummins informed Plaintiff that the check engine light was turned on due to an issue with the Truck's avoidance system.

22. On or about May 5, 2015, a technician from Cummins went to Plaintiff's location in Hopewell Junction, New York.

23. On or about May 14, 2015, representatives of Plaintiff had a meeting with representatives from Ferrara regarding the issue experienced to date with the Truck and potential remedies.

24. In or before June 2015, Plaintiff had a conference call with Ferrara regarding the installation of the Smeal Fire Apparatus (“Smeal”) brand AL-11 avoidance system on the Truck.

25. On or about July 6, 2015, the Truck left Hopewell Junction, New York for Nebraska, where the Smeal brand AL-11 avoidance system was to be installed.

26. In or about August 2015, the Truck was returned to Plaintiff in Hopewell Junction, New York from Louisiana.

27. In or before September 2015, Plaintiff began experiencing issues with the Truck’s manifold.

28. On or about September 23, 2015, the Truck was delivered to Ferrara’s shop in Little Ferry, New Jersey.

29. On or about September 29, 2015, the Truck returned from Little Ferry, New Jersey and the check engine light was turned on again.

30. On or about October 1, 2015, the air cooler in the Truck was replaced by authorized Ferrara technicians. However, such repair did not result in the shutting off of the check engine light.

31. On or about October 7, 2015, Plaintiff was advised by Ferrara to put the Truck back in service, while the reason for the chronic check engine light was diagnosed.

32. On or about October 30, 2015, Plaintiff received a notification that there was excessive pressure in the Truck’s exhaust system and the Truck was delivered back to Cummins for additional repairs.

33. On or about November 12, 2015, Plaintiff was notified by Cummins that the Truck repairs were completed.

34. On or about December 9, 2015, a Ferrara authorized technician came to Hopewell Junction, New York to repair the bucket joystick control, because the bucket's down function was not working properly.

35. On or about January 20, 2016, a Ferrara authorized technician came to Hopewell Junction, New York to repair the proximity switches and adjust the door track.

36. On or about March 31, 2016, a Ferrara authorized technician came to Hopewell Junction, New York to repair the panel light and rear scene lights in the bucket, both of which were malfunctioning.

37. On or about April 29, 2016, a Ferrara authorized technician came to Hopewell Junction, New York to replace the Truck's regulator on the driver's side window.

38. On or about June 23, 2016, a Ferrara authorized technician came to Hopewell Junction, New York to inspect a system malfunction message, for which a corroded connector was replaced.

39. On or about August 8, 2016, a Ferrara authorized technician came to Hopewell Junction, New York to repair the air bag warning light.

40. On or about August 18, 2016, a Ferrara authorized technician came to Hopewell Junction, New York to inspect the check engine light and determined the air intake pipe needed to be replaced.

41. On or about October 21, 2016, Plaintiff discovered the cab pump was actively leaking fluid down the side of the Truck.

42. On or about May 3, 2017, a Ferrara authorized technician came to Hopewell Junction, New York to tighten loose screws and bolts, which hold pins in place in the Truck's bucket.

43. On or about October 17, 2017, a Ferrara authorized technician came to Hopewell Junction, New York to inspect the ladder controls and the bucket on the Truck, both of which were malfunctioning.

44. On or about November 21, 2017, a technician came to Hopewell Junction, New York to install a new software update and discovered that the ladder did not retract. Upon this discovery, Plaintiff contacted Smeal.

45. On or about November 22, 2017, a Smeal technician returned to Hopewell Junction, New York to download a new program, which was supposed to repair the ladder retraction malfunction. In addition, the Smeal technician repaired a pinched wire between the Truck's control panel and bucket, which resulted in a loss of power to the bucket.

46. On or about November 30, 2017, a Ferrara authorized technician came to Hopewell Junction, New York to inspect the reengagement of the check engine light and the bucket not leveling properly.

47. On or about December 20, 2017, a Ferrara technician came to Hopewell Junction, New York to perform a mansaver bar recall installation.

48. On or about July 11, 2018, a Ferrara authorized technician came to Hopewell Junction, New York to tighten and reseal the lines to the Truck's generator pump. Upon further inspection, the technician was unable to determine why the bucket was not leveling smoothly.

49. On or about July 17, 2018, a Ferrara authorized technician came to Hopewell Junction, New York to inspect why the bucket's joystick, directional lights and hazard lights

were not functioning. In addition, the technician inspected the Truck's ladder function and discovered a corroded wire connection at the driver boards, which was repaired.

50. On or about August 21, 2018, a hydraulic leak in the Truck was confirmed and it was determined the Truck needed to be taken out of service for repairs.

51. On or about September 7, 2018, Plaintiff discovered the Truck's bucket joystick was malfunctioning and the bucket was dangerously listing to one side.

52. On or about January 12, 2019, the Truck was returned to Plaintiff and put back into service after multiple repairs.

53. On or about July 10, 2019, Plaintiff completely lost control of the down function on the Truck's bucket and had to use the Truck's emergency override function to get the bucket down.

54. On or about July 11, 2019, Ferrara sent technicians to Hopewell Junction, New York to repair a problem with the Truck's ladder turntable.

55. On or about July 31, 2019, Ferrara informed Plaintiff that the turntable cannot be repaired and that there in fact was no mechanical defect with it.

56. Despite Ferrara's advice that the turntable can and may briefly stop but can easily be moved slightly and the Truck is suitable to proceed with operations, the Truck was in fact unsuitable for operation.

57. On or about August 5, 2019, the Truck's bucket dropped, while the Truck was out of service.

58. From the time Plaintiff originally accepted delivery of the Truck on January 18, 2015, it has been out of service for the numerous mechanical failures for approximately one calendar year.

**FIRST CAUSE OF ACTION UNDER LOUISIANA CIVIL CODE ARTICLE 2520**

59. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

60. Under Louisiana Civil Code Article 2520, Louisiana grants purchasers a warranty against redhibitory defects such that the thing sold is absolutely useless for its intended purpose(s) or that the purchaser would not have purchased the thing had the purchaser known of the defect.

61. In order for a purchaser to obtain the protection of the warranty, the defect(s) must have existed at the time of purchase, but were neither known nor apparent to the purchaser and the seller must have been given the opportunity to repair the defect(s).

62. The defects, related to the Truck's bucket and ladder, have rendered the Truck absolutely useless for its intended purpose of being used in rescue operations by Plaintiff.

63. The several defects with the Truck existed at the time Plaintiff purchased the Truck, but when Plaintiff inspected the Truck such defects were neither known nor apparent.

64. Ferrara was given numerous opportunities to cure the defects on the Truck.

65. Ferrara's last opportunity to cure the defects on the Truck was made on or about July 31, 2019, when Ferrara informed Plaintiff that the defects could not be cured.

66. Due to the fact Ferrara is unable to repair, remedy or correct the defects on the Truck, Ferrara is bound under Louisiana law to return the full purchase price of the Truck to Plaintiff, with interest from the time Ferrara was paid, to reimburse Plaintiff for reasonable expenses both occasioned by the sale of the Truck and incurred for the preservation of the Truck, for any loss Plaintiff sustained due to the redhibition, and reasonable attorneys' fees and costs.

**SECOND CAUSE OF ACTION FOR BREACH OF CONTRACT**

67. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

68. Plaintiff fully performed according to the terms of the Contract, including by tendering the full amount due to Ferrara, which was one million two thousand three-hundred and fifty-one dollars (\$1,002,351.00).

69. Ferrara breached its obligation under the terms of the Contract by delivering a defective Truck, and by failing to repair, remedy or correct the defects on the Truck.

70. Plaintiff has sustained damages as a result of Ferrara's breach of contract.

**THIRD CAUSE OF ACTION FOR UNJUST ENRICHMENT**

71. Plaintiff repeats and realleges all prior paragraphs as though fully set forth herein.

72. Ferrara has failed to make restitution for the defective Truck sold and delivered to Plaintiff.

73. Ferrara is legally obligated, under the terms of the Contract, to perform by tendering a non-defective Truck to Plaintiff or, in the alternative, by tendering the full purchase price of the Truck to Plaintiff, with interest from the time Ferrara was paid.

74. Ferrara has been unjustly enriched by continuing to hold the purchase payment by Plaintiff when Ferrara has failed to perform under the terms of the Contract.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for:

1. Return of the full purchase price of the Truck, with interest from the time Ferrara was paid, reimbursement to Plaintiff for reasonable expenses both occasioned by the sale of the Truck and incurred for the preservation of the Truck, for any loss Plaintiff sustained due to the redhibition and reasonable attorneys' fees and costs under the First Cause of Action;

2. The sum of \$1,002,351.00, with interest, costs and fees under the Second Cause of Action;

3. The sum of \$1,002,351.00, with interest from the time Ferrara was paid under the Third Cause of Action; and

4. Such other and further relief as the Court may deem just and proper.

Dated: January 21, 2020  
Poughkeepsie, New York

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By: 

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