

(a) The Complaint fails to state a claim for relief against the Defendant BERTRAM in that it fails to establish privity of contract;

(b) Any defects that existed in the 63' Bertram that is the subject matter of this lawsuit were created, or came into existence after the vessel had left the possession and/or control of BERTRAM;

(c) The 63' vessel was modified and/or altered after it left the care and control of BERTRAM and any damage that occurred to the vessel was the result of those alterations and/or modifications;

(d) The loss of the vessel was in whole or in part the result of negligent operation of the vessel by the delivery company, the captain, Jason Milius, and/or his mate;

(e) There is no privity of contract between BERTRAM and the Plaintiffs, therefore under the applicable law there can be no warranty claims;

(f) Plaintiffs are not the proper parties in interest to bring this lawsuit, in that they did not have proper ownership interest in the vessel;

(g) Plaintiffs have failed to mitigate their damages;

(h) Due to negligent or deficient maintenance and care of the vessel by the Plaintiff, the co-Defendant or other entities not named herein, the vessel was not fit for offshore use and/or was not properly prepared for the voyage in question;

(i) Plaintiffs are barred from bringing a claim under either Magnuson-Moss or the Uniform Commercial Code in that any purchase of the vessel was not consummated with the United States;

(j) Plaintiffs are barred from bringing an action under Magnuson-Moss in that this vessel was not a consumer product, but was intended to be a commercial product;

(k) Plaintiffs are barred from recovery from BERTRAM under Magnuson-Moss in that there was no privity of contract between BERTRAM and the Plaintiffs;

(l) Plaintiffs are barred from recovery because they were not U.S. consumers and were intending to export the vessel for use overseas;

(m) If any Bertram warranties existed, they became null and void due to the use of the vessel by MarineMax in fishing tournaments and for commercial purposes;

(n) Plaintiffs purchased the vessel for commercial chartering use, which voids any warranty that would have been issued by Bertram;

(o) Any damage suffered by the Plaintiffs was proximately caused and occasioned by an Act of God, inevitable accident or inscrutable fault; and

(p) As a manufacturer in a commercial context has no duty under a strict products-liability theory to prevent a product from injuring itself, no such claim lies in admiralty since the only injury claimed is economic loss.

(q) Plaintiffs are barred from recovery from BERTRAM under Magnuson-Moss in that such claims are inconsistent with and preempted by the general maritime law of the United States;