

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0275 CAF**

**MICHAEL CARESSIMO,
Complainant**

v.

**GENERAL MOTORS LLC,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Michael Caressimo (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-.613 (Lemon Law) for an alleged defect in his 2013 Chevrolet Camaro RS. Complainant asserts that the vehicle makes unusual noises (knocking, pinging, and banging) from the front end. General Motors LLC (Respondent) asserts that the noises that Complainant is hearing are normal for the vehicle. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on September 24, 2014 in Fort Worth, Texas before Hearings Examiner Edward Sandoval. The record closed on September 26, 2014. Complainant was represented by Adam Hamilton, attorney with the Lemon Law Group. Complainant was also present to testify. Respondent was represented by Kevin Phillips, Business Resource Manager. Also present for Respondent was Irfaun Bacchus, Field Service Engineer.

II. DISCUSSION

A. Applicable Law

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Act with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.¹ Fourth, the owner must have mailed

¹ Tex. Occ. Code § 2301.604(a)(1) and (2).

written notice of the alleged defect or nonconformity to the manufacturer.² Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.³

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.⁴

B. Complainant's Evidence and Arguments

Complainant purchased a 2013 Chevrolet Camaro RS from AutoNation Chevrolet in Fort Worth, Texas, on March 19, 2013, with mileage of six (6) at the time of delivery.⁵ On the date of hearing the vehicle's mileage was 25,799. Respondent has provided a basic warranty for the vehicle for the first three (3) years of ownership or the first 36,000 miles, whichever comes first.⁶

Complainant testified that he noticed a problem with the new vehicle immediately upon purchasing it. While driving the vehicle, Complainant heard banging and popping from the front end of the vehicle. He took the vehicle back to the dealership the day after he purchased it to complain about the noise. Complainant was told by a dealer representative that there were no loaner vehicles to give him and that he should drive the vehicle over the weekend. Complainant returned to the dealership the following Monday, March 25, 2013. He informed a service advisor of the noise that he was hearing and that he wanted to trade the vehicle for one that didn't make any unusual noises. Complainant was informed that since he had already driven the vehicle for 250 miles, he could not trade the vehicle for another one. As a result, a repair order was initiated by the dealer representative. Complainant indicated to the dealer's service advisor that not only was the vehicle making unusual noises when he was driving, but that the front window was

² Tex. Occ. Code § 2301.606(c)(1).

³ Tex. Occ. Code § 2301.606(c)(2).

⁴ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

⁵ Complainant Ex. 1, Retail Purchase Agreement.

⁶ Respondent Ex. 1, New Vehicle Limited Warranty.

leaking water. The mileage on the vehicle on this date was 410.⁷ The service technician who inspected the vehicle could not find a leak in the window. However, the technician was able to duplicate the noise heard by Complainant. The technician informed Complainant that there was no fix for the noise, but that “the concern is under investigation by GM engineering” and they would contact Complainant when more information regarding the issue became available.⁸ The vehicle was in the dealer’s possession until March 28, 2013. Complainant was provided with a loaner vehicle during this period of time.

On June 25, 2013, Complainant returned the vehicle to Respondent’s authorized dealer (AutoNation Chevrolet) because of the same noise concerns. He informed the dealer’s service advisor that he was hearing a “popping noise” in the front suspension when he drove the vehicle at low speed. The dealer’s service technician verified Complainant’s concerns and found a Product Information statement (this is a technical service bulletin which Respondent identifies as a PI) that dealt with the issue. Following the instructions from the PI, the dealer’s service technician replaced both front struts on the vehicle. The mileage on the vehicle when Complainant took it to the dealer on this occasion was 5,329.⁹ The vehicle was returned to Complainant on June 26, 2013. Complainant was provided with a loaner vehicle while his vehicle was being repaired. When the vehicle was returned to Complainant, he informed the service advisor that the vehicle was still making unusual noises. Complainant was told that there was nothing else that could be done at the time.

Complainant continued to hear noises from the front of the vehicle when he was driving it. So, he took the vehicle back to AutoNation on July 9, 2013. Complainant informed the dealer’s service advisor that he was hearing “knocking” noises from the front driver’s side of the vehicle when he was going over uneven spots in the road while driving around 20 miles per hour. The vehicle was inspected by dealer’s service technician who determined that the noises were normal for this type of vehicle. No repairs were made to the vehicle during this visit. The mileage on the vehicle when he delivered it to the dealer on this occasion was 5,993.¹⁰ The vehicle was returned to Complainant on July 12, 2013. Complainant was provided with a loaner vehicle while his vehicle was in the dealer’s possession.

On September 9, 2013, Complainant returned the vehicle to AutoNation because he was still hearing unusual noises from the front of the vehicle. Complainant informed the dealer’s service advisor of his concerns regarding the noises he was hearing. The vehicle was inspected by a service technician who checked the vehicle’s bolt torque and struts. The technician determined

⁷ Complainant Ex. 2, Repair Order dated March 25, 2013.

⁸ *Id.*

⁹ Complainant Ex. 3, Repair Order dated June 25, 2013.

¹⁰ Complainant Ex. 4, Repair Order dated July 9, 2013.

that the sounds were normal. The service advisor returned the vehicle to Complainant on September 13, 2013. However, when Complainant received the vehicle, he felt that the noises were worse. So, he had the dealership look at the vehicle again and the decision was made to replace the coil springs in the vehicle. This was recommended by Respondent's technical assistance office in an effort to reduce the noise that Complainant was hearing. The vehicle was not released back to Complainant until September 24, 2013. The vehicle's mileage when it was initially turned over to the dealer for repairs was 9,023.¹¹ Complainant was provided with a loaner vehicle while his vehicle was being repaired.

On March 5, 2014, Complainant returned the vehicle to Respondent's authorized dealer because he was still hearing noises from the front end of the vehicle. Complainant informed the dealer's service advisor that the noises were worse when he drove on rougher roads. The vehicle was inspected by a service technician who determined that the noises were normal for the type of suspension on the vehicle. The technician also checked with Respondent's technical assistance center and determined that all repairs prescribed by the PI's had been performed and that there was nothing that could be done, so no additional repairs were made. The vehicle's mileage when it was delivered to the dealer on this occasion was 16,966.¹² The vehicle was returned to Complainant on March 17, 2014. Complainant was provided with a loaner vehicle while his vehicle was in the possession of the dealer.

Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles on June 17, 2014. On June 27, 2014, Respondent inspected the vehicle one final time to determine if there were any issues that could be repaired pursuant to the Lemon Law complaint. Respondent's field service technician inspected the vehicle to determine if the noises Complainant was hearing were unusual and determined that they were normal. No repairs were done, except to align the vehicle because the vehicle was pulling to the right.¹³ The vehicle's mileage at the time of inspection was 21,898.¹⁴ The vehicle was returned to Complainant on July 3, 2014. Complainant was provided with a loaner vehicle while his vehicle was being inspected.

Complainant feels that the noises that he hears from the vehicle are unusual and are not the normal noises that such a vehicle should be making. Complainant also stated that he hears a banging noise in the vehicle when he drives at high speeds, as well as at lower speeds. He test drove two similar vehicles and did not hear any unusual noises during those test drives. In

¹¹ Complainant Ex. 5, Repair Orders dated September 9, 2013.

¹² Complainant Ex. 6, Repair Order dated March 5, 2014.

¹³ Complainant advised the service advisor when he took the vehicle in for inspection that the vehicle was pulling to the left. However, the service technician indicated on the Repair Order dated June 27, 2014, the vehicle was pulling to the right during the test drive.

¹⁴ Complainant Ex. 7, Repair Order dated June 27, 2014.

addition, he has noticed that the front tires on the vehicle have been wearing down quicker than the back tires and he feels that this evidences an issue with the vehicle. Complainant feels that the vehicle is not safe to drive long distances, that the noises impair the market value of the vehicle and substantially impair the use of the vehicle.

During cross examination, Complainant indicated that he has never had an accident in the vehicle. He has not added any after-market items to the vehicle. The check engine light has never illuminated and the vehicle has not stalled or died on him. Complainant has never had any fires or explosions in the vehicle. He is the primary driver of the vehicle and drives primarily to and from work in the vehicle. Complainant denied ever being told that the knocking noises that he heard from the vehicle were normal sounds that the vehicle makes.

C. Respondent's Evidence and Arguments

Irfaun Bacchus testified that he works as a Field Service Engineer for Respondent. He's been working for Respondent for approximately ten (10) months. Prior to his employment with Respondent, Mr. Bacchus worked as a service technician for twelve (12) years with different auto dealers. His last work prior to being hired by Respondent was with Grand Prairie Ford. In addition, Mr. Bacchus is a Ford Senior Master and Automotive Service Excellence (ASE) Master. Also, he is 70% trained in GM World Class.

Mr. Bacchus was dispatched by Respondent's Technical Assistance Center to inspect Complainant's vehicle on July 2, 2014. He test drove the vehicle to determine if Complainant's concerns were warranted and to determine if any repairs needed to be performed on the vehicle. The noise that Complainant complained of was characterized as a "loose lumber" noise in the front suspension. Mr. Bacchus testified that he did not hear any unusual noises at high speed. However, he did hear a low thud in the front of the vehicle at around 30 mph. He felt that this noise was normal for the vehicle in question. Mr. Bacchus test drove two other 2013 RS Camaro's on the same day and felt that the noises were similar in all three vehicles. Mr. Bacchus feels that the noise is caused by the strut and strut mount jouncing at the same frequency. He also thinks that the vehicle's wider tires may have some effect on the noise that Complainant hears when driving the vehicle. The tires on the vehicle are considered to be low profile and are 20 inch rims. The ride experienced in vehicles with such tires makes the ride stiffer. The vehicle in question is a performance vehicle, so it has more of a road feel. There's also more road noise in the vehicle than a vehicle with standard tires would have. Mr. Bacchus did not feel that there was a defect with the vehicle or that any parts were rubbing together inappropriately. Since the car has a lower profile and a sports suspension, it has a rougher ride. Mr. Bacchus did not feel that there was any risk of fire or explosion with this vehicle.

Mr. Bacchus was aware of two technical service bulletins issued by Respondent for this year and model vehicle. One bulletin had to deal with an issue with the struts on this type of vehicle. The second bulletin indicated that some noise was normal for this model vehicle. Mr. Bacchus felt that the vehicle was safe and did not have any defects.

During cross examination, Mr. Bacchus clarified what he felt was the cause of the noise heard by Complainant when driving the vehicle. He stated that the noise is created by the struts and the strut mounts jouncing and rebounding in correlation. The struts and the mounts are jouncing at the same frequencies which causes the interaction noise and is exhibited through the strut mount. He feels that the noise is normal, since the vehicle has a sports car suspension. Mr. Bacchus feels that a lower profile tire can affect how much the suspension actually moves and lessen the dampening of the suspension. The vehicle will also have a rougher feel with a lower profile tire. This is an issue with all fifth generation Camaros which have been manufactured since 2010.

D. Analysis

Under Texas' Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

In order to determine whether Complainant has a remedy under the Lemon Law, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent and that such defect creates a serious safety hazard as defined in the Occupations Code or substantially impairs the use or market value of the vehicle. The evidence provided by the parties establishes that there is a "lumber" noise when driving the vehicle at around 30 miles per hour or when driving over rough roads. The dispute arises due to the fact that Complainant feels that the noise is evidence of a defect in the vehicle, while Respondent feels that the noise is normal due to the type of suspension and tires on the vehicle.

Respondent admits that when Complainant first purchased the vehicle there was a problem with a "popping" sound from the front of the vehicle, but this problem was addressed when the front

struts were replaced on June 25, 2013. This repair was performed pursuant to a technical service bulletin issued by Respondent to address this specific issue. After June of 2013, the only other repair performed on this vehicle by Respondent to address the noise issue was to replace coil springs in September of 2013. After this date, Complainant was advised that the noises he was hearing were normal for this model vehicle.

The preponderance of the evidence establishes that the vehicle noises heard by Complainant are normal and not a defect. The testimony established that some of the noises heard by Complainant were due to the strut and strut mount jouncing and rebounding at the same frequency. This is normal for the type of struts and suspension in this model vehicle. The vehicle is a performance vehicle and has a sports suspension. In addition, the tires on the vehicle are considered to be low profile. Low profile tires can affect how much the vehicle's suspension moves and can lessen the dampening of the suspension. As such, the vehicle can be expected to make more noise than other vehicles when being driven. Therefore, the hearings examiner finds that there is no defect with the vehicle as defined in the Occupations Code and, as such, is not grounds to grant repurchase or replacement relief for Complainant.

Respondent's express warranty applicable to Complainant's vehicle provides "bumper to bumper" coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 25,799 and it remains under this warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Michael Caressimo (Complainant) purchased a new 2013 Chevrolet Camaro RS on March 19, 2013, from AutoNation Chevrolet of Fort Worth, Texas, with mileage of six (6) at the time of delivery.
2. The vehicle's mileage on the date of hearing was 25,799.
3. At the time of hearing the vehicle was still under warranty.
4. Immediately upon purchasing the vehicle in question, Complainant noticed that there were popping and banging noises coming from the front end of the vehicle.

5. Complainant immediately attempted to return the vehicle to the dealer from which he purchased the vehicle and trade it for a similar vehicle, but was told that he had driven too many miles in the vehicle for such a trade.
6. Complainant's vehicle was serviced by AutoNation Chevrolet in Fort Worth, Texas, one of Respondent's authorized dealers, because Complainant heard unusual noises from the front end of the vehicle on the following dates:
 - a. March 25, 2013, at 410 miles;
 - b. June 25, 2013, at 5,329 miles;
 - c. July 9, 2013, at 5,993 miles;
 - d. September 9, 2013, at 9,023 miles; and
 - e. March 5, 2014, at 16,966 miles.
7. Complainant was provided with a loaner vehicle from AutoNation Chevrolet for all of the service visits.
8. On the March, 25, 2013 service visit, Complainant was informed by the dealer's service technician that Respondent's engineers were investigating the cause of the noises being heard by Complainant, but that there was no fix for the issue.
9. On the June 25, 2013 service visit, the vehicle's front struts were replaced pursuant to Respondent's PI which addressed a "popping" noise coming from the front end of vehicles of the same model and year.
10. During the September 2013 service visit, the vehicle's coil springs were replaced in an effort to address Complainant's concerns.
11. On June 17, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On June 27, 2014, Respondent inspected the vehicle to determine if there were any issues that could be repaired pursuant to the Lemon Law complaint. Respondent determined that the noises Complainant was hearing were normal and did not attempt any repairs to the vehicle for this issue during this visit.
13. On July 23, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice

stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.

14. The hearing convened on September 24, 2014, in Fort Worth, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Adam Hamilton, attorney with the Lemon Law Group. Complainant also was present and testified in the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Also testifying for Respondent was Irfaun Bacchus, Field Service Engineer. The hearing adjourned and the record closed on September 26, 2014.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
8. Complainant's vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

SIGNED October 22, 2014

A handwritten signature in black ink, appearing to read "Edward Sandoval", is written over a horizontal line.

**EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**