

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 14-0350 CAF**

**MARICELA CHACON and
ALVARO CHACON,
Complainants**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Maricela and Alvaro Chacon (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2014 Chevrolet Camaro. Complainants assert that the vehicle is defective and has lost substantial value due to the repairs performed by the service department of Respondent's authorized dealer. General Motors LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. 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 and the record was closed on November 21, 2014, in Odessa, Texas, before Hearings Examiner Edward Sandoval. Complainants, Mr. and Ms. Chacon, represented themselves at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Maria Mateos-Caldwell was also present to act as a Spanish interpreter for Complainants.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

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.⁶

B. Complainant's Evidence and Arguments

Complainants purchased a 2014 Chevrolet Camaro from All American Chevrolet of Odessa, Texas (All American) on May 3, 2014, with mileage of six (6) at the time of delivery.⁷ On the date of hearing the vehicle's mileage was 6,565. At this time, Respondent's warranty coverage for the vehicle remains in place, with "bumper to bumper" coverage for three years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides for coverage for the powertrain for five years or 100,000 miles.

Complainant, Alvaro Chacon, test drove the vehicle prior to purchasing it. While on the test drive with the sales person, Mr. Chacon heard a noise coming from the engine. He asked the sales person about the noise and was told that the noise was normal for the vehicle. Even though Mr. Chacon heard the noise coming from the engine, he decided to purchase the vehicle. Mr. Chacon took the vehicle home and he and his wife drove it for a few weeks. One of Mr. Chacon's friends, who is a mechanic, advised him that the noise coming from the engine was not normal and that he should take the vehicle back to the dealer.

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated May 3, 2014.

Mr. Chacon attempted to contact All American by telephone in late June of 2014 to complain about the vehicle. However, he was not able to speak to anyone until July 8, 2014.⁸ When Mr. Chacon was finally able to speak to someone at the dealership, he was advised that he needed to take the vehicle to the dealership so they could take a look at it. Mr. Chacon took the vehicle to All American on July 9, 2014. He informed the dealer representative that the vehicle was defective and that he wanted them to replace it. (The mileage on the vehicle when he took it to the dealer was 2,475.⁹) The dealer representative informed Mr. Chacon that the dealer could not replace the vehicle, but that they could repair it. However, the representative did inform Mr. Chacon he could trade in the vehicle and the dealer would give him \$20,000 for it. Since Mr. Chacon had originally paid approximately \$34,000 for the vehicle, he refused the offer.¹⁰ Mr. Chacon did leave the vehicle at the dealership, although he did not give the dealership permission to repair it. Mr. Chacon was not provided with a loaner or rental vehicle while his vehicle was in the dealer's possession.

While the vehicle was with the dealer, Mr. Chacon contacted Respondent's call center and spoke to a representative regarding the vehicle. Mr. Chacon told the representative that he did not feel safe driving the vehicle and that he wanted it replaced. The representative informed Mr. Chacon that the vehicle would not be replaced, but that it could be repaired. Mr. Chacon indicated that he did not want the vehicle repaired because he felt that the vehicle's value would be decreased if any work was done on it. The parties finally agreed to perform a diagnostic inspection of the vehicle and determine what to do after this was performed.¹¹

On July 23, 2014, Mr. Chacon contacted a representative from All American's service department about the vehicle. During this conversation, Mr. Chacon was advised that it would take two weeks to perform the diagnostics on the vehicle. Mr. Chacon indicated that he would pick up the vehicle if it was going to take that long, since the vehicle had already been in the dealer's possession for two weeks by that time. He was informed that he could pick up the vehicle if he wanted, since it was his vehicle.¹²

On July 29, 2013, Mr. Chacon went to All American to pick up the vehicle. However, the vehicle was disassembled. Complainant was upset since he had not given the dealer permission to repair the vehicle.¹³

⁸ Complainant Ex. 5, Call Log, undated.

⁹ Complainant Ex. 2, Repair Order dated July 15, 2014.

¹⁰ Complainant Ex. 5, Call Log, undated.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

On July 31, 2014, Mr. Chacon received a call from All American to inform him that the vehicle was repaired and that he could pick it up. Mr. Chacon could not get the vehicle until August 2, 2014, due to work issues.¹⁴ When Mr. Chacon picked up the vehicle, it was working fine.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles on August 22, 2014.¹⁵

There have been no problems with the vehicle since the repair and the engine is no longer making any noises. Mr. Chacon feels that the vehicle is working perfectly. However, he feels that the vehicle has been devalued and wants compensation or an offset for the loss of value if he cannot have the vehicle replaced.

Mr. Chacon testified that Respondent made a settlement offer to him of one car payment and one month's insurance payment in order for Complainants to drop the Lemon Law complaint. Complainants refused the offer, as they felt it was not sufficient.

During cross examination, Mr. Chacon indicated that the vehicle is working perfectly. He has put 4,000 miles on the vehicle since the repair due to he and his wife driving to El Paso in it every other weekend. Ms. Chacon is the primary driver of the vehicle. There have been no insurance claims and no damage to the vehicle. The vehicle still has all the original equipment. It has not stalled nor died on the Complainants. The only change to the vehicle was the installation of a tint to the windows which was done by a window tinting company in El Paso. There is no continuing defect with the vehicle. The vehicle has operated perfectly since the repair was performed. Only one repair was ever performed on the vehicle.

Ms. Chacon testified that she and her husband have had a lot of problems with the vehicle. They took the vehicle to the dealer and just wanted to talk about the problems, but the person who was second in command at the dealership treated them badly which she didn't like. They wanted to return the vehicle to the dealer and the dealer repaired the vehicle without Complainant's authorization.

During cross examination, Ms. Chacon testified that she feels comfortable in the vehicle. It was repaired and she has never been stranded in the vehicle nor has it stalled on her.

¹⁴ *Id.*

¹⁵ Complainant Ex. 3, Lemon Law Complaint. Complainant signed and dated the complaint on August 9, 2014. However, the complaint was not received by the Texas Department of Motor Vehicles until August 22, 2014, which is the effective date of the complaint.

C. Respondent's Evidence and Arguments

Kevin Phillips, Business Resource Manager, has thirty years' experience with Respondent. He has a degree in mechanical engineering. He's a registered professional engineer. He has worked at Respondent's Arlington assembly plant for five years and worked in the field for two years. In addition, Mr. Phillips worked in design engineering and manufacturing for Respondent for seventeen years.

Mr. Phillips testified that that the vehicle has been repaired and is working fine now. He stated that there was a problem with a damaged cam lobe in the engine and that was what was causing the noise heard by Complainants. The dealer's service technician replaced the left hand cam and followers and all the gaskets and seals necessary to effectuate the repair. If the repair had not been performed then the service engine light would have eventually come on advising Complainants to take the vehicle to the dealer for repairs. Also, if not repaired, the issue could have caused the engine to misfire and could have caused the engine to fail. There is an open recall for the vehicle regarding the ignition. This can be repaired whenever Complainant decides to take the vehicle to the dealer for repair. Complainant did contact Respondent's call center due to his concerns with the vehicle. A call center would normally listen to a caller's concerns and then try to resolve the caller's issues if possible.

D. Analysis

Under the 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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or 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 or condition, Complainant is entitled to have the vehicle repurchased or replaced.

Complainants purchased the vehicle on May 3, 2014 and presented the vehicle to an authorized dealer of Respondent due to his concerns with the fact that engine was making an unusual noise. The vehicle was repaired in July of 2014 and Complainants have indicated that the vehicle was fully repaired and there is no longer any problem with the vehicle.

Texas Occupations Code § 2301.603 provides that “a manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer’s converter’s or distributor’s express warranty.” In the present case, the evidence indicates that Complainants’ primary concern is that the vehicle has lost substantial value due to the repair performed by the service department of Respondent’s authorized dealer. Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer’s warranty. If a vehicle has been repaired then no relief can be possible. A loss of value to the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a “lemon” the “nonconformity continues to exist” after the manufacturer has made repeated repair attempts.¹⁶ In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer’s warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainants is not warranted.

Respondent’s express warranty applicable to Complainants’ vehicle provides “bumper to bumper” coverage for 3 years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for 5 years or 100,000 miles. On the date of hearing, the vehicle’s mileage was 6,565 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.

Complainants’ request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Maricela and Alvaro Chacon (Complainants) purchased a new 2014 Chevrolet Camaro on May 3, 2014, from All American Chevrolet of Odessa, Texas, with mileage of 6 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent) issued a bumper to bumper warranty for 3 years or 36,000 miles, whichever occurs first and a separate powertrain warranty for 5 years or 100,000 miles.
3. The vehicle’s mileage on the date of hearing was 6,565.
4. At the time of hearing the vehicle was still under warranty.

¹⁶ Tex. Occ. Code § 2301.605.

5. Complainant took the vehicle to Respondent's authorized dealer, All American Chevrolet of Odessa, Texas, in order to address his concerns with engine noise on July 9, 2014.
6. The dealer during the repair visit replaced the engine's exhaust cam and followers.
7. The vehicle was ready for pick up by Complainant on July 31, 2014. However, Complainant did not pick up the vehicle for several days afterwards because of personal reasons.
8. The vehicle has been repaired and the engine is no longer making any unusual noise.
9. On August 22, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On October 21, 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.
11. The hearing in this case convened and the record was closed on November 21, 2014, in Odessa, Texas, before Hearings Examiner Edward Sandoval. Complainants, Maricela and Alvaro Chacon, represented themselves at the hearing. Respondent was represented by Kevin Phillips, Business Resource Manager. Maria Mateos-Caldwell was also present to act as a Spanish interpreter for Complainants.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a 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, 2301.603.
8. Complainants' 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 Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED November 26, 2014



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