

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0038 CAF**

**VERA G. BROOKS,**  
**Complainant**

v.

**MERCEDES-BENZ USA, LLC,**  
**Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Vera G. Brooks (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2014 Mercedes-Benz E350. Complainant asserts that the vehicle is defective and has lost value due to the repairs performed by the service department of Respondent's authorized dealer. In addition, Complainant feels that the vehicle is noisier than it was prior to the repairs being performed on it. Mercedes-Benz USA, LLC (Respondent) argues 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 January 8, 2015, in Mesquite, Texas, before Hearings Examiner Edward Sandoval. Complainant, Vera G. Brooks, represented herself at the hearing. Respondent was represented by Collin Kennedy, attorney with Hanshaw, Kennedy, Marquis, PLLC. Mark Byrd, Field Technical Specialist, also appeared to offer testimony for Respondent.

**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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the owner must have mailed written notice of the alleged defect or

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

<sup>2</sup> *Id.*

nonconformity to the manufacturer.<sup>3</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>4</sup>

In addition to these conditions, Section 2301.605 of the Occupation Code specifies that there are three tests which can establish a rebuttable presumption that a reasonable number of attempts have been undertaken by a Respondent to conform a motor vehicle to an applicable express warranty. The first test provides that 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, then Complainant has established that Respondent has been provided with a reasonable number of attempts to repair the vehicle.<sup>5</sup> The second test applies to a nonconformity that creates a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupation Code. The third test provides that Complainant can establish a rebuttable presumption that a reasonable number of attempts to conform a motor vehicle to an applicable express warranty if a nonconformity continues to exist which substantially impairs the vehicle's use or market value and (1) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever comes first, following the date of original delivery to the owner and (2) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.<sup>6</sup> However, the Occupations Code also provides that the 30 day period described by this section does not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.<sup>7</sup>

## **B. Complainant's Evidence and Arguments**

Complainant purchased a 2014 Mercedes-Benz E350 from Mercedes-Benz of Waco, Texas on April 18, 2014, with mileage of 79 at the time of delivery.<sup>8</sup> On the date of hearing the vehicle's mileage was 15,877. At this time, Respondent's warranty coverage for the vehicle remains in place, with coverage for four (4) years or 50,000 miles, whichever comes first.<sup>9</sup>

Complainant testified that on July 29, 2014, about three months after purchasing the vehicle, she was driving the vehicle from Waco to Dallas, when the check engine light illuminated.

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<sup>3</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>5</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

<sup>7</sup> Tex. Occ. Code § 2301.605(c).

<sup>8</sup> File Ex. 2, Odometer Disclosure Statement dated April 18, 2014.

<sup>9</sup> File Ex. 10, Mercedes-Benz Service and Warranty Information 2014.

Complainant immediately called Respondent's authorized dealer, Park Place Motor Cars (Park Place) in Dallas, to notify a service representative of the light coming on. Complainant was asked if the vehicle was making any noise, in addition to the light being illuminated. However, the vehicle was not making any unusual noises at the time. The dealer's service representative advised Complainant to take the vehicle to the dealer in order to have the issue addressed. Complainant was on her way out of town and was not able to take the vehicle to the dealer immediately. Instead she parked the vehicle while she was out of town and took it to Park Place on August 5, 2014.

On August 5, 2014, Complainant delivered the vehicle to Park Place for repairs. She waited at the dealership while the vehicle was being repaired. The check engine light was still on when she delivered the vehicle to the dealership. Complainant was advised by the service advisor, Joe Peters, that they checked the fuel to ensure that the vehicle had the right type of fuel in it and that the problem was resolved. The vehicle was returned to Complainant that same day. The mileage when she took it to the dealer on that occasion was 8,010.<sup>10</sup>

Later the same day, August 5, 2014, while Complainant was driving the vehicle, the check engine light came on again. Complainant called Park Place and spoke to Mr. Peters who advised her to return the vehicle to the dealer. Complainant returned the vehicle to Park Place the following day, August 6, 2014. A service technician inspected the vehicle to determine what was causing the check engine light to come on. The technician determined that the problem was being caused by a sensor. The technician drained the vehicle's fuel tank and replaced the fuel with super unleaded. Complainant was advised only to use the highest octane gas in the vehicle. The vehicle was kept by Park Place for about a week while the repairs were being performed. It was returned to Complainant on August 13, 2014.<sup>11</sup> The mileage on the vehicle when it was taken to Park Place on August 6, 2014, was 8,125.<sup>12</sup> Complainant was provided with a rental vehicle while her vehicle was being repaired. However, Complainant was advised that she could not drive more than 100 miles per day when using the rental. Since Complainant has to travel a lot in her business, this negatively affected her work.

Just a couple of days later the check engine light again illuminated. Complainant returned the vehicle to Park Place on August 15, 2014. The vehicle was in the dealer's possession until September 25, 2014, on this occasion.<sup>13</sup> The service technician initially thought that the sensor was causing the problem with the vehicle. Then he thought it was the fuel filter. It was finally determined that the problem was with the fuel injectors. All of the vehicle's fuel injectors were replaced by the service technician. The mileage on the vehicle when it was delivered to Park

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<sup>10</sup> File Ex. 3, Repair Order dated August 5, 2014.

<sup>11</sup> File Ex. 4, Repair Order dated August 6, 2014.

<sup>12</sup> *Id.*

<sup>13</sup> File Ex. 5, Repair Order dated August 15, 2014.

Place on this occasion was 8,342.<sup>14</sup> Complainant was provided with two different rental vehicles while her vehicle was being repaired. Complainant was again advised that she could not drive more than 100 miles per day in the rental vehicles.

Since the vehicle was returned to Complainant on September 25, 2014, the check engine light has not come back on. However, Complainant feels that the vehicle does not sound right. She thinks that it's noisier than it was prior to the repair attempts. She feels that the vehicle is not as smooth as it once was. When Complainant raised the issue of the vehicle's noisiness during Respondent's final repair attempt, Respondent's technician determined that the noise level was normal for the vehicle.

Complainant mailed a letter to Respondent notifying them of her concerns regarding the vehicle on September 22, 2014.<sup>15</sup> In addition, she filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 8, 2014.<sup>16</sup>

Respondent was granted a final inspection and repair opportunity on December 19, 2014. The inspection was performed at Park Place. No repairs were performed at the time. Complainant was advised that the vehicle seemed to be operating properly and everything was normal. Complainant was provided with a rental vehicle while her vehicle was being inspected.

During cross examination Complainant testified that the vehicle never stalled while she was driving it. The check engine light did not affect her ability to drive the vehicle. The vehicle did not have any other symptoms except for the check engine light illuminating. She doesn't know if the issue created a serious safety hazard. There were no life threatening issues with the vehicle during the period of time when the check engine light was coming on. Complainant doesn't know for sure if the repairs affected the vehicle's fair market value, although she feels that the value has been affected. Complainant testified that there is no longer a defect with the vehicle.

### **C. Respondent's Evidence and Arguments**

Mark Byrd, Field Technical Specialist, has worked for Respondent since 1987, both as a field technical specialist and a field service manager. He provides technical support to Respondent's authorized dealers. He has extensive experience as a technician. He receives annual technical training from Respondent. He does not have any current Automotive Service Excellence (ASE) certifications, since Respondent doesn't require that he maintain them.

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<sup>14</sup> *Id.*

<sup>15</sup> File Ex. 8, Letter to Mercedes-Benz dated September 22, 2014.

<sup>16</sup> File Ex. 7, Lemon Law Complaint. Complainant signed and dated the complaint on September 25, 2014. However, the complaint was not received by the Texas Department of Motor Vehicles until October 8, 2014, which is the effective date of the complaint.

Mr. Byrd performed the inspection and final repair attempt on Complainant's vehicle on December 19, 2014. He ran a "short test," an evaluation of the control modules on the vehicle, to try to have the issue with the check engine light illuminating recur, but was unable to duplicate the problem. In addition, he checked the vehicle's engine control module (ECM) for any fault codes and could not find any. In addition, he updated the ECM's software. He drove the vehicle to ascertain whether it was abnormally noisy and determined that it was similar to other vehicles of the same model and year.

Regarding the check engine light issue, Mr. Byrd testified that the dealer opened a technical case (which is asking Respondent's technical specialists for assistance in performing a repair) regarding the vehicle during the August 15, 2014, service visit because the technicians were unable to determine why the check engine light kept coming on. The dealer's service technician checked the vehicle's fuel quality (ethanol) sensor, since the vehicle was designed as a flex fuel vehicle and can use ethanol as well as super unleaded gas. The sensor checks the quality of the fuel and determines which fuel is being used. The sensor provides the information obtained regarding the fuel to the ECM which will then change its parameters to operate using the different fuels. However, drivers should not mix the fuels, since it can cause problems with the sensor. Respondent's technical specialist asked the dealer's technician to ensure that the vehicle did not have any vacuum leaks for the intake. Once it was determined that there were no leaks, the determination was finally made to replace all six of the vehicle's fuel injectors. Since the injectors were replaced, the vehicle's check engine light has not illuminated.

Mr. Byrd also testified that the repairs performed should not affect the fair market value of the vehicle. There is no defect with the vehicle and it is operating as designed. The fact that the check engine light illuminated does not mean that there was a serious safety hazard with the vehicle.

Under cross examination, Mr. Byrd testified that he cannot guarantee that the check engine light illuminating would not occur again in the future. He reiterated that the repairs performed did not affect the vehicle's value. Mr. Byrd also testified that he did not believe that there was a class action law suit regarding the type of engine in Complainant's vehicle, although there may be such a suit regarding another type of engine manufactured by Respondent.

#### **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.

Complainant purchased the vehicle on April 18, 2014 and presented the vehicle to an authorized dealer of Respondent on August 5, 2014, August 6, 2014, and August 15, 2014, because the vehicle's check engine light illuminated. The vehicle was finally repaired during the last repair visit to the dealer (August 15, 2014) and Complainant has indicated that the check engine light has not turned back on since then. However, she now complains that the vehicle makes more noise when being driven than it had prior to the repairs.

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 Complainant's primary concern is that the vehicle has lost 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.<sup>17</sup> In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty.

In addition, Complainant indicated that the vehicle was making more noise than it used to when being driven. However, Complainant could not provide more specificity regarding the noise complaint. Respondent indicated that the noise level is normal for the vehicle. The hearings examiner did not notice any untoward noise during the test drive taken at the time of hearing. As such, 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 Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides coverage for four (4) years or 50,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 15,877 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.

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<sup>17</sup> Tex. Occ. Code § 2301.605.

### III. FINDINGS OF FACT

1. Vera G. Brooks (Complainant) purchased a new 2014 Mercedes-Benz E350 on April 18, 2014, from Mercedes-Benz of Waco, Texas, with mileage of 79 at the time of delivery.
2. The manufacturer of the vehicle, Mercedes-Benz USA, LLC (Respondent) issued a warranty for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 15,877.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant took the vehicle to Respondent's authorized dealer, Park Place Motor Cars in Dallas, Texas, on the following dates in order to address the issue of the check engine light illuminating:
  - a. August 5, 2014, at 8,010 miles;
  - b. August 6, 2014, at 8,125 miles; and
  - c. August 15, 2014, at 8,342 miles.
6. The dealer during the final repair visit on August 15, 2014, replaced all six of the vehicle's fuel injectors.
7. The check engine light has not illuminated since the final repair visit of August 15, 2014.
8. Complainant was unable to provide specificity regarding the allegation that the vehicle is making more noise when being driven now that it was prior to the repairs being performed.
9. On October 8, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On November 24, 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 January 8, 2015, in Mesquite, Texas, before Hearings Examiner Edward Sandoval. Complainant, Vera G. Brooks, represented herself at the hearing. Respondent was represented by Collin Kennedy, attorney with Hanshaw, Kennedy, Marquis, PLLC. Mark Byrd, Field Technical Specialist, also appeared to offer testimony for Respondent.

#### 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. 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 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. 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 §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED January 15, 2015**



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