

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0099 CAF**

**AMANDA NACOL and
BUCK NACOL,
Complainants**

v.

**HEARTLAND RECREATIONAL
VEHICLES, LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Amanda Nacol and Buck Nacol (Complainants) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their Heartland Torque 325 Fifth Wheel recreational vehicle. The Complainants filed a Lemon Law complaint (Complaint) asserting that the vehicle had: a misaligned slide out that damaged the flooring; bolts shifting on the fifth wheel tongue; bent jack stand pins that no longer line up correctly; loose and unattached trim; a leaking roof in the master bedroom; a replacement wall panel that did not match the color of the existing wall panels; and damage to the sweep/seals under a slideout from the replacement of the linoleum.¹ Prior to the hearing, Heartland Recreational Vehicles, LLC (Respondent), the manufacturer of the vehicle, appears to have successfully repaired the issues identified in the Complaint, except for the bent bottom jack stand pins and the mismatched wall panel. The Respondent essentially maintained that the Complainants' dissatisfaction largely stemmed from the dealer's handling of the issues and that the Respondent has addressed the vehicle's issues to the Complainants' satisfaction. The Complainants did not timely file their Complaint for repurchase/replacement relief. Consequently, the Complainants' vehicle does not qualify for repurchase/replacement.

¹ The complaint identifies the issues to be addressed at the hearing. *See* TEX. OCC. CODE § 2301.204(b), (d); TEX. GOV'T CODE §§ 2001.051-2001.052.

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 closed on August 26, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainants represented and testified for themselves. David Partin, Heartland Litigation and Consumer Affairs, represented and testified for the Respondent.

II. Discussion

A. Applicable Law

The Lemon Law, in part, requires a manufacturer of a motor vehicle to repurchase or replace a vehicle when the manufacturer is “unable to conform a motor vehicle to an applicable express warranty.”² Additionally, warranty repair under Section 2301.204 of the Texas Occupations Code requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”³ Accordingly, for a vehicle to be eligible for repurchase or replacement, or even warranty repair, the vehicle must have a defect under an applicable warranty (warrantable defect). The Complainants must prove the existence of a warrantable defect by a preponderance, that is, the evidence must show that a warrantable defect more likely than not exists.⁴

Further, for a vehicle to qualify for replacement or repurchase, a warrantable defect must either (1) create a serious safety hazard or (2) substantially impair the use or market value of the vehicle despite a “reasonable number of attempts” at repair.⁵ The Lemon Law defines “serious safety hazard” as a life threatening malfunction or nonconformity that: (1) substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or (2) creates a substantial risk of fire or explosion.⁶ Under the Lemon Law, a rebuttable presumption is

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.204.

⁴ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

⁵ TEX. OCC. CODE § 2301.604(a).

⁶ TEX. OCC. CODE § 2301.601(4).

established that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if:

[T]he same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) two of the repair attempts were made in the 12 months . . . following the date of original delivery to the owner; and (B) the other two repair attempts were made in the 12 months . . . immediately following the date of the second repair attempt.⁷

The statutory rebuttable presumption does not preclude otherwise finding a reasonable number of attempts to repair the vehicle based on different circumstances and fewer attempts.⁸

However, regardless of the existence of a warrantable defect, the Lemon Law prohibits repurchase or replacement unless: (1) the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;⁹ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹⁰ and (3) the owner filed the Lemon Law complaint within six months after the warranty's expiration date.¹¹

B. Complainants' Evidence and Arguments

The Complainants' Complaint originally included seven issues: a misaligned slide out that damaged the flooring; bolts shifting on the fifth wheel tongue; bent jack stand pins that did not line up correctly; loose and unattached trim; a leaking roof in the master bedroom; a replacement wall panel that did not match the color of the existing wall panels; and damage to the sweep/seals under a slideout from the replacement of the linoleum. After filing of the Complaint and before the hearing on the merits, Heartland made various repairs to the vehicle. Mr. Nacol initially

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for establishing a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Section 2301.605(a)(2) only applies 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.

⁸ “[T]he existence of statutory presumptions does not forbid the agency from finding that different circumstances or fewer attempts meet the requisite ‘reasonable number of attempts.’” *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

⁹ TEX. OCC. CODE § 2301.606(c)(1).

¹⁰ TEX. OCC. CODE § 2301.606(c)(2).

¹¹ TEX. OCC. CODE § 2301.606(d)(2).

testified that: he could not test if Heartland's final repair had successfully addressed the dragging slideout and he could not tell if the roof leaked because the Complainants kept the vehicle covered; the bolts appeared repaired since they remained intact on the trip back from the manufacturer in Indiana; Heartland replaced the top jack stand pins but the bottom pins remained bent; Heartland successfully fixed the trim; and the dealer replaced a wall panel in the "toy box" but the new panel did not match the color of existing panels (the color could not be accurately matched because of the vendor's manufacturing variations). However, the manufacturer has been trying to match the color more closely. Mr. Nacol added that the dealer, Lone Star RV Sales, failed to tighten a plumbing fitting on the toilet (not a part of the Complaint), leading to flooding, though it did not appear to cause water damage. Mr. Nacol also alleged that additional electrical damage (not included in the Complaint) occurred during the repair at the manufacturer. The inspection of the vehicle showed that the bottom pins on the jack stands on both sides had bent and that the replacement wall panel was a shade darker than the other panels.

The Complainants brought the vehicle for service to address the issues in the Complaint as follows:

- a. October 2, 2013, for the slideout, wall panel, bolts, jack stand pins;¹²
- b. January 3, 2014, for the linoleum torn by the slideout;¹³
- c. April 14, 2014, for the wall panel, trim, slideout trimming;¹⁴
- d. June 2, 2014, for the slideout;¹⁵
- e. December 3, 2014, for the slideout and roof;¹⁶
- f. January 29, 2015, for the roof and slideout; and¹⁷
- g. June 16, 2015, for the slideout and stripped bolts.¹⁸

¹² Complainants' Ex. 9.

¹³ Respondent's Ex. 3.

¹⁴ Complainants' Ex. 8.

¹⁵ Complainants' Ex. 10.

¹⁶ Complainants' Ex. 7.

¹⁷ Complainants' Ex. 6.

¹⁸ Complainants' Ex. 5.

C. Respondent's Evidence and Arguments

During the inspection of the vehicle, Mr. Partin noted that bent bottom pins on the jack stands usually would not be an issue because the pins hold plates that ordinarily do not need to be removed for use. Significantly, Mr. Partin explained that Lippert Components, Inc. manufactured the jack stands and its components, which come with their own warranty. Also, a third party vendor manufactured the wall panels. The slideout functioned normally without dragging or scratching the floor. The upper cabinets did not exhibit any signs of water damage.

Mr. Partin testified that the vehicle was exposed to rain while at Heartland's facilities with no sign of leaks. Additionally, Heartland tested the vehicle in a rain bay, which sprayed water from the sides and top, simulating one engine hour of rain, including 30 minutes with the slideouts in and 30 minutes with the slideouts out. Mr. Partin stated that a disassembly and inspection of the area of the possible leak showed no signs of water ingress or water damage. Mr. Partin theorized that an employee of the dealer may have spilled water in the vehicle during a repair visit.

D. Analysis

1. Warrantable Defect

To qualify for replacement/repurchase or warranty repair, the vehicle must have an existing warrantable defect, i.e., the manufacturer's warranty must apply to the defect. Heartland's warranty covers "defects in material and/or workmanship in the construction of the vehicle and its original components."¹⁹ However, Heartland's warranty specifically excludes components not actually manufactured by Heartland:

Additional components which have been installed in the recreational vehicle, including but not limited to microwave ovens, ranges, refrigerators, leveling jacks, furnaces/heaters, DVD/CD players, air conditioning, icemakers, vacuum cleaners, televisions, hot water heaters, generators, power converters, batteries, and other items not specifically manufactured by Heartland RV, LLC, are warranted by the component manufacturers as detailed in their individual manufacturers' warranties, and are not covered by this Limited Warranty.²⁰

¹⁹ Respondent's Ex. 3, Heartland RV, LLC Limited Warranty in the United States and Canada at para. 1.

²⁰ Respondent's Ex. 3, Heartland RV, LLC Limited Warranty in the United States and Canada at para. 4 (emphasis added).

Consequently, Heartland's warranty does not apply to any defects in components produced by third parties. Therefore, Heartland's warranty does not cover the bent bottom pins on the jack stands or the wall panels. With respect to the warrantable defects identified in the Complaint, the evidence shows that these items have been successfully repaired.

2. Filing Deadline for Repurchase/Replacement Relief

Under § 2301.606(d)(1) of the Texas Occupations Code to qualify for repurchase or replacement relief, the vehicle owner must have filed a Lemon Law complaint no later than six months after the expiration of the warranty. In this case, the warranty expired on February 15, 2014, one year after the vehicle's purchase. Consequently, the Complainants must have filed their Complaint by August 15, 2014, six months after the warranty's expiration. However, the Complainants filed their Complaint on December 17, 2014, approximately four months after the deadline. As a result, the Complainants' vehicle does not qualify for repurchase or replacement relief.

III. Findings of Fact

1. On February 15, 2013, the Complainants, Amanda Nacol and Buck Nacol, purchased a new Heartland Torque 325 from Lone Star RV Sales in Houston, Texas.
2. The manufacturer's limited warranty covered the vehicle for one year from the original date of purchase.
3. The warranty expired on February 15, 2014.
4. The Complainants brought the vehicle for service to address the complained of issues as follows:
 - a. October 2, 2013, for the slideout tearing the flooring, repair wall panel incorrectly showing TV mount location, shifting bolts on the hitch, misaligned jack stand pins;²¹
 - b. January 3, 2014, for the linoleum flooring torn by the slideout;²²

²¹ Complainants' Ex. 9.

²² Respondent's Ex. 3.

- c. April 14, 2014, for the wall panel, trim, slideout trimming;²³
 - d. June 2, 2014, for the slideout tearing the flooring;²⁴
 - e. December 3, 2014, for the slideout and roof leak;²⁵
 - f. January 29, 2015, for the roof leak and slideout; and²⁶
 - g. June 16, 2015, for the slideout.²⁷
5. On December 16, 2014, the Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
 6. On June 24, 2014, the Complainants mailed written notice of the vehicle's defects to the Respondent.
 7. On April 15, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the Respondent, Heartland Recreational Vehicles, LLC, 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.
 8. The hearing in this case convened and the record closed on August 26, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainants, represented themselves. David Partin, Litigation and Consumer Affairs, represented the Respondent.
 9. During the inspection at the hearing, the vehicle's slideout operated normally and did not scratch or tear the flooring; the master bedroom did not exhibit any indication of water damage; the bolts remained intact on the hitch; the upper jack stand pins were in good condition; the lower jack stand pins were bent; and the replacement wall panel was a different shade than the other panels.

²³ Complainants' Ex. 8.

²⁴ Complainants' Ex. 10.

²⁵ Complainants' Ex. 7.

²⁶ Complainants' Ex. 6.

²⁷ Complainants' Ex. 5.

10. The Respondent did not manufacturer the jack stands, the jack stand pins, or the wall panels.
11. The Respondent's warranty excludes items not manufactured by the Respondent.
12. The warrantable defects identified in the Complaint have been successfully repaired.


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. The Complainants filed a sufficient complaint with the Department. TEX. OCC. CODE § 2301.204; 43 TEX. ADMIN. CODE § 215.202.
4. The Complainants did not timely file the complaint for repurchase or replacement relief. TEX. OCC. CODE § 2301.606(d).
5. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
6. The Complainants bear the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
7. The Complainants did not prove that the vehicle has an existing defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
8. The Respondent remains responsible to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's franchised dealer before the warranty expired. TEX. OCC. CODE §§ 2301.204, 2301.603.

V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that the Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED October 1, 2015



ANDREW KANG
HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES