

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0128 CAF**

**JUANA M. GUERRERO and
PABLO G. GUERRERO,
Complainants**

v.

**GENERAL MOTORS LLC,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Juana M. Guerrero and Pablo G. Guerrero (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2014 Chevrolet Camaro 1LT. The Complainants asserted that the vehicle had: the check engine light turning on; water leaking on the right side; the left front seat squeaking; excessive wind noise from the left side of the windshield; a missing right fog light; noise from the rear when coming to a stop in reverse; the steering wheel adjuster coming apart; misfiring at idle; and the right window not working intermittently. The issues regarding: the seat, the fog light, the noise from the rear of the vehicle, the steering wheel adjuster, and the check engine light (engine misfiring) had all been resolved prior to the hearing. General Motors LLC (Respondent or GM) argued that the vehicle had been repaired and did not have any existing defects, thereby not warranting relief. The Respondent also argued that the Complainants did not undertake a reasonable number of repair attempts. The hearings examiner concludes that the Complainants did not undertake a reasonable number of repair attempts. Therefore, the Complainants' vehicle is not eligible for repurchase or replacement relief.

I. Procedural History, Notice and Jurisdiction

The parties did not contest matters of notice and jurisdiction, which are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on June 11, 2015, in Houston, Texas. The Complainants, Pablo G. Guerrero and Juana M. Guerrero, represented themselves at the hearing. Minerva Garcia interpreted at the hearing.

Kevin Phillips, Business Resource Manager, represented the Respondent. Field Service Engineer Bruce Morris 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.”¹ Additionally, warranty repair under § 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.”² Accordingly, the vehicle must have a defect under an applicable warranty to be eligible for relief, whether replacement/repurchase or warranty repair.

Further, for a vehicle to qualify for replacement or repurchase, a warrantable defect or condition 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.³ 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.⁴ Under the Lemon Law, a rebuttable presumption is 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 or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) the other

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt.⁵

Significantly, the presumption for a reasonable number of repairs requires that the defect continue to exist after four or more repair attempts for the same defect. In other words, each alleged defect must have at least four repair attempts, as opposed to having a total of four repair attempts overall, and the defect must continue to exist despite the repair attempts.

B. Complainants' Evidence and Arguments

On June 7, 2014, the Complainants purchased a new 2014 Chevrolet Camaro 1LT from Monument Chevrolet (Dealer) of Pasadena, Texas. The vehicle had seven (7) miles on the odometer at the time of purchase.⁶ Mrs. Guerrero primarily drove the vehicle; Mr. Guerrero drove the vehicle infrequently. At the time of purchase, the Respondent provided the Complainants with a limited warranty with coverage for the first 36 months or 36,000 miles, whichever came first.⁷

On August 5, 2014, at 5,814 miles, the Complainants brought the vehicle to the Dealer to address a problem with water dripping onto the passenger side floorboard. The Dealer did not find a leak. The Dealer also could not duplicate the excessive wind noise complained of by the Complainants.⁸

On September 30, 2014, at 6,859 miles, the Complainants informed the Dealer that they could hear noise during acceleration. The Dealer verified the noise, but no repairs were needed since the noise was normal.⁹

The vehicle was returned to the Dealer on October 27, 2014, at 7,581 miles. The steering wheel adjustment lever had come apart so the Dealer reinstalled the lever.¹⁰ On November 24,

⁵ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B) (emphasis added). 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.

⁶ Complainant's Ex. 2, Motor Vehicle Buyer's Order.

⁷ Complainant's Ex. 16, 2014 Chevrolet Limited Warranty and Owner Assistance Information.

⁸ Complainant's Ex. 5, Repair Order 33691 dated 08/12/2014.

⁹ Complainant's Ex. 6, Repair Order 37965 dated 10/03/2014.

2014, at 9,383 miles, the Dealer special ordered a new column because the steering wheel adjustment lever had come loose again.¹¹

On January 20, 2015, the Complainants filed their Lemon Law complaint with the Texas Department of Motor Vehicles (Department). The complaint listed the following issues: the check engine light turning on; water leaking on the right side; the left front seat squeaking; excessive wind noise from the left side of the windshield; a missing right fog light; noise from the rear when coming to a stop in reverse; steering wheel adjuster coming apart; misfiring at idle;¹² and the right window not working intermittently. On May 21, 2015, the Complainants provided a notice letter to the Respondent. At the hearing, the evidence showed that the issues regarding: the seat, the fog light, the noise from the rear of the vehicle, the steering wheel adjuster, and the check engine light (which appeared to relate to the engine misfiring)¹³ had all been resolved. Repair order no. 33691 showed the replacement of the missing fog light.¹⁴ Mr. Guerrero testified that: the seat had been repaired, the noise from the vehicle's rear was not an issue, the steering wheel adjuster had been fixed, and the check engine light had not turned on since reprogramming of the engine control module.

On January 29, 2015, at 11,154 miles, the vehicle was brought in for service because of vibration when idling and accelerating. The Dealer did not find any problems.¹⁵ On February 9, 2015, at 11,458 miles, the vehicle was again taken to the Dealer because the vehicle continued to feel like it was going to stall when idling. The Dealer could not duplicate the Complainants' concern.¹⁶

On February 19, 2015, at 12,472 miles, a GM Field Service Engineer (FSE), Bruce Morris, inspected the vehicle. The FSE checked for wind noise but determined that the vehicle was "operating to designed intent." He also tested the vehicle to try to reproduce the hard idle or

¹⁰ Complainant's Ex. 7, Repair Order 40190 dated 10/31/2014.

¹¹ Complainant's Ex. 8, Repair Order 42476 dated 11/25/2014.

¹² The Complainants appeared to allege that the misfiring could occur in relation to a lack of engine oil. "the car has misfire when at idle - when cold or hot, and lacks engine oil." Lemon Law Complaint at 2. The complaint did not appear to allege oil consumption as a separate issue.

¹³ Complainant's Ex. 7, Repair Order 40190 dated 10/31/2014.

¹⁴ Complainant's Ex. 5, Repair Order 33691 dated 08/12/2014.

¹⁵ Complainant's Ex. 9, Repair Order 47582 dated 01/30/2015.

¹⁶ Complainant's Ex. 10, Repair Order 48365 dated 02/10/2015

stalling issues. He test drove the vehicle for 20 miles, but could not reproduce the Complainants' concern. The FSE also could not replicate the water leak.¹⁷

At the hearing, Mr. Guerrero testified that he noticed issues with the vehicle driving from the dealership after the vehicle's purchase. He testified that the seat frame was broken, smoke came out of the exhaust, and the motor vibrated. Mr. Guerrero also noted that the vehicle hesitated as if it wanted to stall but never actually stalled.

During the test drive at the hearing, at 15,543 miles, a faint wind noise could be heard at highway speeds; however, the noise could not be heard from the back seat and did not appear to involve any air entering the cabin. At the end of the test drive, water dripped on the passenger side floorboard under the dash. The water appeared to be condensation associated with the air conditioning system. The vehicle did not otherwise exhibit any unusual characteristics.

C. Respondent's Evidence and Arguments

Bruce Morris, Field Service Engineer, testified about his findings from the February 19, 2015, inspection on the Complainants' vehicle. Mr. Morris holds 10 GM certifications and 24 ASE (Automotive Service Excellence) certifications. He also has 29 years of experience in the automotive industry. Some of his former positions included automotive technician and dealership shop foreman. During the February 19th inspection, Mr. Morris found no evidence of a noise or a leak. He also noted in his report that the vehicle did not exhibit a rough idle or stall concerns.¹⁸

At the test drive at the hearing, Mr. Morris observed that the vehicle had leaves under the hood and asked whether the Complainants had parked the vehicle under a tree. Mr. Morris testified that leaves could collect in the air intake duct and clog the evaporator drain, causing water to drip. However, the dripping water was not a manufacturing defect but rather a consequence of environmental conditions. Additionally, during the test drive, Mr. Morris noted that wind noise could occur from the side mirror although he could not hear any wind noise from the back seat. Mr. Morris testified that when he checked the oil, it was a half-quart low, which was within manufacturer's standards. Mr. Morris explained that all cars consume oil and that one liter (one quart) per 2,000 miles was the acceptable limit for the Complainants' vehicle.

¹⁷ Complainant's Ex. 11, Repair Order 49287 dated 02/19/2015.

¹⁸ Respondent's Ex. 4, Vehicle Legal Inspection Report.

The Respondent also contended that the Complainants did not undertake a reasonable number of repair attempts. The repair orders and cross-examination of the Complainants confirmed that they did not undertake at least four repair attempts for each alleged defect. During cross-examination, Mr. Guerrero testified that the vehicle had been brought in for service three times for the water drip, once or twice for the wind noise and three or four times for the check engine light. However, Mr. Guerrero confirmed that the check engine light had not turned on since reprogramming of the engine control module. Mr. Guerrero did not know how many times the vehicle had been taken in for service due to the right window malfunction.

D. Analysis

The issues regarding: the seat, the fog light, the noise from the rear of the vehicle, the steering wheel adjuster, and the check engine light (engine misfiring)¹⁹ had all been resolved prior to the hearing, leaving only the issues of the leaking water, wind noise, and the intermittent malfunctioning of the right window. The Complainants failed to undertake a reasonable number of repair attempts for each of the remaining issues, consisting of the leaking water, wind noise, and the intermittent malfunctioning of the right window. To satisfy the presumption for a reasonable number of repairs, the Lemon Law requires that “the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer.”²⁰ However, the Complainants’ testimony showed that they did not undertake at least four repairs for the water leak or wind noise. Moreover, the repair orders did not show any attempted repairs of the right window.²¹ The repair orders confirmed that the outstanding issues in the Complainants’ Lemon Law complaint were not addressed a sufficient number of times. Because the relevant complained of issues have not been subject to at least four repair attempts, the Complainants’ request for repurchase or replacement relief is denied.

¹⁹ The Lemon Law Complaint mentioned that engine misfiring could occur in relation to a lack of engine oil, but did not appear to allege the lack of engine oil as a separate issue. Nevertheless, the repair orders reflect that Mr. Guerrero requested a check of the engine oil level on January 29, 2015. Complainant’s Ex. 9, Repair Order 47582 dated 01/30/2015. The oil consumption test, completed May 7, 2015, showed the use of 3/4 of a quart in 2,020 miles, which fell within GM’s standard of one quart per 2,000 miles. Complainant’s Ex. 12, Repair Order 55599 dated 05/07/2015.

²⁰ TEX. OCC. CODE § 2301.605(a)(1) (emphasis added).

²¹ Repair orders only showed that Mr. Morris inspected the right window but attempted no repairs. Complainant’s Ex. 11; Repair Order 49287 dated 02/19/2015.

III. Findings of Fact

1. Juana M. Guerrero and Pablo G. Guerrero (Complainants) purchased a new 2014 Chevrolet Camaro 1LT on June 7, 2014, from Monument Chevrolet (Dealer) of Pasadena, Texas. The vehicle's mileage was seven (7) at the time of purchase.
2. The manufacturer of the vehicle, General Motors LLC (Respondent) issued a New Vehicle Limited Warranty for 36 months or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 15,543.
4. At the time of hearing the vehicle was still under warranty.
5. The Complainants took the vehicle to the Dealer on the following dates to address the wind noise issue:
 - a. August 5, 2014, at 5,814 miles; and
 - b. February 19, 2015, at 12,472 miles.
6. The Complainants took the vehicle to the Dealer on the following dates to address the water dripping issue:
 - a. August 5, 2014, at 5,814 miles; and
 - b. February 19, 2015, at 12,472 miles.
7. The Field Service Engineer, during the final inspection on February 19, 2015, found no faults with the vehicle.
8. No attempts were undertaken to repair the issue of the right window intermittently malfunctioning.
9. On January 20, 2015, the Complainants filed their Lemon Law complaint with the Texas Department of Motor Vehicles (Department), listing the following issues: the check engine light turning on; water leaking on the right side; the left front seat squeaking; excessive wind noise from the left side of the windshield; a missing right fog light; noise from the rear when coming to a stop in reverse; the steering wheel adjuster coming apart; misfiring at idle; and the right window not working sometimes.
10. The issues regarding: the seat, the fog light, the noise from the rear of the vehicle, the steering wheel adjuster, and the check engine light (engine misfiring) had all been

resolved prior to the hearing, leaving only the issues of the leaking water, wind noise, and the intermittent malfunctioning of the right window.

11. On April 16, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the 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.
12. The hearing in this case convened and the record was closed on June 11, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainants, Pablo G. Guerrero and Juana M. Guerrero, represented themselves at the hearing. Minerva Garcia interpreted for the Complainants. The Respondent was represented by Kevin Phillips, Business Resource Manager. Field Service Engineer Bruce Morris appeared and testified for the Respondent.

IV. Conclusions of Law

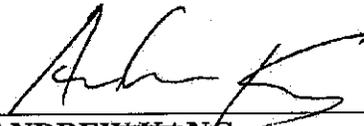
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (Lemon Law).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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. The 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. The Complainants bear the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).

6. The Complainants failed to undertake a reasonable number of repair attempts. TEX. OCC. CODE § 2301.605(a).
7. The Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.
8. The Respondent remains responsible to address and repair or correct any defects covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.

V. Order

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

SIGNED August 10, 2015



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