

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0147 CAF**

**SYED RIZVI,
Complainant**

v.

**GULF STATES TOYOTA, INC.,
Respondent**

§
§
§
§
§
§
§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Syed Rizvi (Complainant) seeks relief under Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for an alleged defect in his 2013 Toyota Corolla. The Complainant claimed that the vehicle made a squeaking noise during cold starts. Gulf States Toyota, Inc. (Respondent) argued that the squeaking noise was not a defect, did not impair the value of the vehicle, and was not a safety hazard. The hearings examiner concludes that the Complainant failed to provide mailed written notice to the manufacturer or distributor, failed to provide evidence of the vehicle's warranty, and failed to prove the existence of a defect. Consequently, the Complainant's vehicle is not eligible for repurchase or replacement relief.

I. Procedural History, Notice and Jurisdiction

The parties did not contest matters of jurisdiction, which are only addressed in the Findings of Fact and Conclusions of Law. Matters of notice are addressed in the Analysis subsection, as well as in the Findings of Fact and Conclusions of Law. The hearing in this case convened and the record closed on June 16, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, Syed Rizvi, represented himself and appeared by telephone. Donna Martin, Customer Relations Manager, represented the Respondent. Bill New, Field Technical Specialist, testified for the Respondent.

II. Discussion

A. Applicable Law

The Lemon Law, in part, requires a manufacturer or distributor of a motor vehicle to repurchase or replace a vehicle when the manufacturer or distributor 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 . . . or distributor’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 repurchase/replacement or warranty repair. Additionally, § 2301.606(c) of the Lemon Law specifies that:

An order issued under this subchapter may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.³

In other words, to qualify for repurchase or replacement relief, the vehicle owner must have mailed, as opposed to e-mailed or faxed, written notice of the defect to the manufacturer or distributor.

B. Complainant’s Evidence and Arguments

The Complainant purchased a new 2013 Toyota Corolla from AutoNation Toyota Scion of Houston, Texas, on May 31, 2013.⁴ The vehicle’s mileage was five (5) at the time of purchase.⁵ In November 2013, the Complainant started to experience the vehicle squeaking on cold starts in the morning.

On January 13, 2014, the Complainant took the vehicle to Sterling McCall Toyota/Scion (servicing dealer) of Houston, Texas. The Complainant complained of a squeaking noise during

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ TEX. OCC. CODE § 2301.606(c).

⁴ Complainant’s Ex. 5, Motor Vehicle Retail Installment Sales Contract.

⁵ Complainant’s Ex. 3, Odometer Disclosure Statement.

cold starts. The technician determined that a belt was glazed, which was repaired. The technician verified the repair through a test drive.⁶

The Complainant returned to the servicing dealer on January 15, 2014. The noise had recurred. The technician concluded that the belt repaired two days earlier had been overtightened. After loosening the belt, the technician could not duplicate the complained-of noise.⁷

The Complainant returned to the servicing dealer on January 21, 2014. The Complainant stated that he still heard a squeak on cold starts. The technician diagnosed the source of the problem as the alternator pulley making noise. He replaced the alternator pulley and retested it and could not duplicate the squeaking.⁸

The Complainant sent an e-mail regarding the squeaking noise to Toyota Motor Sales, U.S.A., Inc. on February 7, 2014.⁹ On May 27, 2014, the Respondent attempted one final repair on the vehicle. Bill New, Field Technical Specialist for the Respondent, attended the final inspection. He ordered the final repairs: replacement of the water pump assembly and a belt.¹⁰ The Complainant alleged that this repair only temporarily fixed the squeaking and that the squeaking persisted. The Complainant filed his Lemon Law complaint on January 28, 2015.

At the hearing, the Complainant testified that the squeaking began about October or November of 2013. The Complainant explained that the squeaking occurred when starting the vehicle but did not continue. The Complainant noted that the squeaking occurred every morning in colder weather. The Complainant also stated that the vehicle might squeak in warmer weather when the vehicle had been sitting without running for an extended period, but again, the squeak only occurred when starting the vehicle and did not continue.

⁶ Complainant's Ex. 8, Repair Order 3938087 dated January 14, 2014.

⁷ Complainant's Ex. 9, Repair Order 3938511 dated January 15, 2014.

⁸ Complainant's Ex. 11, Repair Order 3940354 dated January 24, 2014.

⁹ Complainant's Ex. 1, e-mail dated February 7, 2014.

¹⁰ Complainant's Ex. 12, Repair Order 3980162 dated May 30, 2014.

C. Respondent's Evidence and Arguments

Bill New, Field Technical Specialist for the Respondent, testified for the Respondent. Mr. New has worked on Toyota vehicles since 1982. He has been a Field Technical Specialist for the past twelve years. He had been a technician for twenty years prior to becoming a Field Technical Specialist. Mr. New testified that during the final inspection, he did not hear any squeaking when he started the car. However, he speculated that the belt and water pump were causing the problem, so he ordered them replaced as a precaution. Mr. New testified that the best explanation for why the vehicle squeaked during cold starts in the morning was that condensation formed on the belts overnight, so in the morning, the belt squeaked as it slipped, but the squeaking did not occur after the car warmed up because the moisture disappeared. This squeaking from the formation of condensation fit the Complainant's description of the issue. Mr. New also testified that the squeaking was not a safety hazard and would not substantially impair the use of the vehicle. The Complainant admitted that the squeaking was not hindering his use of the vehicle but was "just simply annoying."

The Respondent asserted that condensation causing a belt to squeak during a cold start did not constitute a defect. The Respondent also argued that the issue did not pose a threat to safety or substantially impair the use or value of the vehicle.

D. Analysis

1. Mailed Written Notice

The Complainant does not appear to have complied with the notice requirement in § 2301.606(c)(1) of the Texas Occupations Code, which expressly requires mailing notice of the defect to the manufacturer or distributor.¹¹ The Complainant only provided evidence of notice by e-mail.¹² The record does not include any evidence of written notice of the defect mailed to the Respondent by the Complainant or on behalf of the Complainant.

2. Warranty

The Complainant failed to provide any evidence of the vehicle's warranty. Without the terms of the warranty, whether the warranty applies to a defect cannot be determined. However,

¹¹ TEX. OCC. CODE § 2301.606(c)(1).

¹² Complainant's Ex. 1, e-mail dated February 7, 2014.

to qualify for repurchase/replacement or repair relief respectively under §§ 2301.604(a) and 2301.204 of the Texas Occupations Code, a warranty must apply to the complained of defect.

3. Manufacturing Defect

The squeaking does not appear to be a defect. Mr. New testified that environmental conditions, specifically condensation, could cause the squeak. In part, Mr. New explained that during colder weather, condensation (moisture from the air) may collect on the pulley causing belt slippage (and therefore squeaking) at start-up, but returning to normal after the moisture dissipates. The squeak, as described by the Complainant, comports with a squeak caused by condensation resulting from environmental conditions. The Complainant testified that the noise occurred during every start-up on colder days in the morning but also that the squeak did not recur after start-up. Squeaking caused by environmental conditions, as opposed to a defective part or defective workmanship, is not a manufacturing defect.

III. Findings of Fact

1. Syed Rizvi (Complainant) purchased a new 2013 Toyota Corolla on May 31, 2013, from AutoNation Toyota Scion of Houston, Texas. The vehicle's mileage was five (5) at the time of purchase.
2. The Complainant did not show the terms of the vehicle's warranty.
3. The Complainant e-mailed notice of the alleged defect to the Respondent rather than mailing such notice.
4. The Complainant took the vehicle to Sterling McCall Toyota/Scion on the following dates to address the squeaking noise:
 - a. January 13, 2014, at 9,017 miles;
 - b. January 15, 2015, at 9,020 miles;
 - c. January 21, 2014, at 9,225 miles; and
 - d. May 27, 2014, at 13,028 miles.
5. The Field Technical Specialist, during the final repair attempt, found no faults with the vehicle. He replaced a belt and a water pump as a precautionary measure.

6. On January 28, 2015, the Complainant filed his Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
7. On April 16, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant 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.
8. The hearing in this case convened and the record closed on June 16, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, Syed Rizvi, appeared by telephone and represented himself. Donna Martin, Customer Relations Manager, represented the Respondent. Field Technical Specialist Bill New 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 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. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. The Complainant failed to mail written notice of the alleged defect to the Respondent. TEX. OCC. CODE 2301.606(c)(1).

7. The Complainant failed to show that the vehicle has a defect. TEX. OCC. CODE § 2301.604(a).
8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.
9. The Complainant's vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.

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 August 12, 2015



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