

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0192 CAF**

KEN MARSDEN,
Complainant

v.

FCA US LLC,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Ken Marsden (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for an alleged defect in his 2012 Dodge Ram 3500. The Complainant claimed that the vehicle's drag link bolt or surrounding parts possibly had a defect. FCA US LLC (Respondent) argued that the vehicle had been repaired and that no defect existed. The hearings examiner concludes that the Complainant failed to prove that the vehicle has an existing defect. Therefore, the Complainant's vehicle is not eligible for repurchase or replacement 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 closed on July 2, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, Ken Marsden, represented himself. Peggy Marsden, the Complainant's wife, testified on behalf of the Complainant. Jan Kershaw, Early Resolution Case Manager, represented the Respondent. Stuart Ritchey, Technical Advisor, testified on behalf of 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 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.”² Accordingly, for a vehicle to be eligible for repurchase or replacement, or even warranty repair, the vehicle must have an existing defect under an applicable warranty (a warrantable defect). The Complainant 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.³

B. Complainant’s Evidence and Arguments

The Complainant purchased a new 2012 Dodge Ram 4x4 3500 Crew Cab Chassis from Brenham Chrysler Jeep Dodge (Dealer) of Brenham, Texas, on September 3, 2013.⁴ The vehicle had 34 miles at the time of purchase.⁵ The vehicle’s basic warranty covers the first three years or 36,000 miles, whichever comes first.⁶

On June 9, 2014, the vehicle’s drag link bolt came loose and wedged itself against the steering linkage, preventing the vehicle from turning left, causing the Complainant to drive the vehicle into a ditch. The Complainant testified that the Dealer replaced the drag link bolt, which corrected the problem temporarily. The vehicle’s mileage at the time of this repair was 17,749.⁷

On November 3, 2014, the vehicle lost leftward steering again. The Complainant testified that the drag link bolt slipped out and jammed the steering linkage while driving on a rough dirt road in Big Bend National Park, causing him to drive onto a field. The bolt was bent, but the

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

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

⁴ Complainant’s Ex. 1, Motor Vehicle Buyer’s Order; Respondent’s Ex. 3, VIP Summary Report.

⁵ Complainant’s Ex. 1, Motor Vehicle Buyer’s Order.

⁶ Respondent’s Ex. 3, VIP Summary Report.

⁷ Complainant’s Ex. 8, Repair Order 107646 dated June 10, 2014.

Complainant temporarily secured the bolt to get the vehicle back to the Dealer. The Dealer replaced the drag link bolt again, the same repair as before, except that this time the technician added Loctite to secure the bolt. The vehicle's mileage at this repair was 23,373.⁸

The Complainant expressed concern that this second repair would fail since the same prior repair failed. The Complainant stated that he had the bolt tack welded after the second repair. The Complainant speculated that the vehicle's wobbling could have caused unseen damage in the ball joints and the bolt. The Complainant noted that when the loss of steering occurred the second time, the bolt (which the Complainant estimated to be 5/8" in diameter) had been under sufficient pressure to bend significantly. Therefore, he surmised that the steering was significantly stressed. He further speculated that other components must have failed or may fail. The Complainant claimed that the Respondent had not disassembled the suspension components to inspect them for possible latent damage. The Complainant noted that he often traveled in the Rocky Mountains and that losing steering posed a serious hazard.

On February 5, 2015, the Complainant mailed written notice of the defect to the manufacturer. On February 24, 2015, the Complainant filed a Lemon Law complaint with the Department of Motor Vehicles.

C. Respondent's Evidence and Arguments

Stuart Ritchey, a technical advisor for the Respondent, inspected the vehicle and found no defects. Mr. Ritchey has been a technical advisor with Chrysler since 1994 and was a district parts and service manager before that. He is a National Institute for Automotive Service Excellence certified technician. On May 12, 2015, he inspected the vehicle. He did not find any loose suspension bolts, the bushings appeared intact, and the ball joints were not damaged. Mr. Ritchey noted that because the Complainant had the track bar and drag link bolts tack welded in place, he could not inspect them to see if they were stripped or properly torqued.⁹

The Complainant had complained that, around the same times that the bolt came loose, the front end of the vehicle wobbled after driving over changes in pavement. The Complainant explained that the Mr. Ritchey looked for suspension and steering problems, but could not

⁸ Complainant's Ex. 9, Repair Order 111468 dated November 5, 2014.

⁹ Respondent's Ex. 1, Inspection Report dated May 12, 2015.

identify any during his test drive. Mr. Ritchey testified that ball joint damage would either be seen or felt. The Complainant acknowledged that the vehicle has not had any wobble or bolt failure but he remained concerned about the possibility that the bolt could slip out or that a ball joint could fail. During the test drive at the hearing, the vehicle operated normally and exhibited no indications of a loose bolt or other defect.

The Respondent supplemented the repair orders presented by the Complainant with a VIP Summary Report.¹⁰ This report indicated that the Dealer did not bill the Respondent for any of the repairs performed on the November visit. However, the Dealer may have performed the November repairs informally on its own to address a deficient repair by the Dealer during the June visit.

In sum, the Respondent argued that the bolts were secure, hence the lack of wobble, and therefore no defect existed. The Respondent also claimed that the Complainant failed to satisfy the statutory requirement of attempting at least one repair attempt within the first 12 months or 12,000 miles of delivery.¹¹

D. Analysis

To qualify for repurchase or replacement relief, the Complainant has the burden of proving by a preponderance that the vehicle has a warrantable defect.¹² The Complainant must show more than just the possibility that a defect exists but must prove that the vehicle more likely than not has an existing defect.¹³ The inspection of the vehicle at the hearing showed no visible damage to any of the relevant components and the vehicle did not exhibit any unusual characteristics during the test drive. The Complainant speculated that a defect could exist in a non-visible part, citing that the Respondent did not rule out the existence of a defect by disassembling various components to inspect for latent damage after the vehicle experienced severe vibration/wobble. However, Mr. Ritchey testified that damage to the ball joint would

¹⁰ Respondent's Ex. 3, VIP Summary Report.

¹¹ Note: although the Complainant did not meet the requirements for the statutory presumption of a reasonable number of repair attempts (TEX. OCC. CODE § 2301.605(a)), the statutory presumption does not preclude otherwise showing a reasonable number of repair attempts. *Ford Motor Company v. Texas Department of Transportation*, 936 S.W.2d 427, 432 (Tex. App.—Austin 1996, no writ).

¹² TEX. OCC. CODE § 2301.604(a); 43 TEX. ADMIN. CODE § 215.206.66(d).

¹³ E.g., *Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

either be seen or felt and the Complainant testified that the vehicle did not exhibit any wobble or steering problems since the November repair. Significantly, the drag link bolt, which previously caused the steering problem, has remained in place. The totality of the evidence here does not show that the vehicle more likely than not has an existing defect. Accordingly, the Complainant's request for replacement or repurchase relief is denied.

III. Findings of Fact

1. Ken Marsden (Complainant) purchased a new 2012 Dodge Ram 4x4 3500 Crew Cab Chassis, with 34 miles shown on the odometer, from Brenham Chrysler Jeep Dodge (Dealer) of Brenham, Texas, on September 3, 2013.
2. The vehicle's basic warranty provides three years or 36,000 miles of coverage, whichever comes first.
3. The Complainant took the vehicle to the Dealer on the following dates to address the drag link bolt slipping into the steering linkage:
 - a. June 9, 2014, at 17,749 miles; and
 - b. November 3, 2014, at 23,373 miles.
4. On February 24, 2015, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
5. The vehicle operated normally after the November 3, 2014, repair and during the Respondent's May 12, 2015, inspection and during the inspection at the hearing.
6. The Respondent's May 12, 2015, inspection and the inspection of the vehicle at the hearing revealed no visible or otherwise discernable defects.
7. The vehicle's mileage was 30,823 at the time of the hearing.
8. On May 7, 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.

9. The hearing in this case convened and the record closed on July 2, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. The Complainant, Ken Marsden, represented himself. Peggy Marsden, the Complainant's wife, testified for the Complainant. Jan Kershaw, Early Resolution Case Manager, represented the Respondent. Stuart Ritchey, Technical Advisor, 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 prove that the vehicle has a defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. 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.
8. 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED August 25, 2015



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