

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0135 CAF**

**TRAVIS G. HONEYSUCKLE and
LINDA L. HONEYSUCKLE,
Complainants**

v.

**FOREST RIVER, INC.,
Respondent**

§
§
§
§
§
§
§
§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Linda L. Honeysuckle and Travis G. Honeysuckle (Complainants) filed a complaint with the Texas Department of Motor Vehicles seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in their recreational vehicle manufactured by Forest River, Inc. (Respondent). The evidence does not show that the vehicle, more likely than not, has a currently existing warrantable defect. Consequently, the Complainants' vehicle does not qualify for any relief.

I. Procedural History, Notice and Jurisdiction

Matters of notice of hearing¹ 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 June 1, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. Linda L. Honeysuckle represented herself and her husband, Travis G. Honeysuckle. The Complainants testified on their own behalf. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented and testified for the Respondent.

¹ TEX. GOV'T CODE § 2001.051.

II. Discussion

A. Applicable Law

1. Repurchase/Replacement Relief

A vehicle qualifies for repurchase or replacement if the manufacturer cannot “conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”² In other words, (1) the vehicle must have a defect covered by an applicable warranty (warrantable defect); (2) the defect must either (a) create a serious safety hazard or (b) substantially impair the use or market value of the vehicle; and (3) the defect must continue to exist after a “reasonable number of attempts” at repair.³ In addition, the Lemon Law imposes other requirements for repurchase/replacement relief, including (1) a mailed written notice of the defect to the manufacturer, (2) an opportunity to repair by the manufacturer, and (3) a deadline for filing a Lemon Law complaint.

a. Serious Safety Hazard

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

b. Substantial Impairment of Use or Value

i. Impairment of Use

In determining substantial impairment of use, the Department considers “whether a defect or nonconformity hampers the intended normal operation of the vehicle.” For instance, “while a vehicle with a non-functioning air conditioner would be available for use and transporting passengers, its intended normal use would be substantially impaired.”⁵

² TEX. OCC. CODE § 2301.604(a).

³ TEX. OCC. CODE § 2301.604(a).

⁴ TEX. OCC. CODE § 2301.601(4).

⁵ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012).

ii. Impairment of Value

The Department applies a reasonable purchaser standard for determining whether a defect substantially impairs the value of a vehicle. The reasonable purchaser standard “does not require an owner to present an expert witness or any technical or market-based evidence to show decreased value.” Instead, under this standard, “factfinders should put themselves in the position of a reasonable prospective purchaser of the subject vehicle and determine (based on the evidence presented) if the current condition of the vehicle would deter them from buying the vehicle or substantially negatively affect how much they would be willing to pay for the vehicle.”⁶

c. Reasonable Number of Repair Attempts

Generally, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts 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 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.⁷

Additionally, for vehicles out of service at least 30 days, a rebuttable presumption may be established that the vehicle had a reasonable number of repair attempts if:

[A] nonconformity still exists that substantially impairs the vehicle’s use or market value and: (A) 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 occurs first, following the date of original delivery to the owner; and (B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.⁸

⁶ *Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 228 (Tex. App.—Austin 2012) (“[T]he Division’s interpretation that expert testimony or technical or market-based evidence is not required to show diminished value or use is consistent with the statute’s goal of mitigating manufacturers’ economic advantages in warranty-related disputes.”).

⁷ TEX. OCC. CODE § 2301.605(a)(1)(A) and (B).

⁸ TEX. OCC. CODE § 2301.605(a)(3).

However, 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.⁹ Furthermore, the Department adopted a decision indicating that if a consumer presents the vehicle to a dealer for repair and the dealer fails to repair the vehicle, then that visit would constitute a repair attempt unless the consumer was at fault for the failure to repair the vehicle.¹⁰

d. Other Requirements

Even if a vehicle satisfies the preceding requirements for repurchase/replacement relief, the Lemon Law prohibits repurchase or replacement unless: (1) the owner or someone on behalf of the owner mailed written notice of the alleged defect or nonconformity to the manufacturer;¹¹ (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹² and (3) the Lemon Law complaint was filed within six months after the earliest of: the warranty's expiration date or the dates on which 24 months or 24,000 miles had passed since the date of original delivery of the motor vehicle to an owner.¹³

2. Warranty Repair Relief

Even if repurchase or replacement relief does not apply, a vehicle may still qualify for warranty repair if the vehicle has a “defect . . . that is covered by a manufacturer's, converter's, or

⁹ “[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).

¹⁰ “[O]nly those occasions when failure to repair the vehicle was the fault of the consumer would not be considered a repair attempt under the statute.” *DaimlerChrysler Corporation v. Williams*, No. 03-99-00822-CV (Tex. App.—Austin, June 22, 2000, no writ) (not designated for publication).

¹¹ TEX. OCC. CODE § 2301.606(c)(1). Note: the Lemon Law does not define the words “mailed” or “mail”, so under the Code Construction Act, the common usage of the word applies. TEX. GOV'T CODE § 311.011. Dictionary.com defines “mail” as “to send by mail; place in a post office or mailbox for transmission” or “to transmit by email.” mail. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://www.dictionary.com/browse/mail> (accessed: April 01, 2016). Also, 43 TEX. ADMIN. CODE § 215.204 provides that “[u]pon receipt of a complaint for lemon law or warranty performance relief, the department will provide notification of the complaint to the appropriate manufacturer, converter, or distributor.” The Department's notice of the complaint to the Respondent may satisfy the requirement that someone on behalf of the owner mailed notice of the defect/nonconformity to the Respondent.

¹² TEX. OCC. CODE § 2301.606(c)(2). Note: a repair visit to a dealer can satisfy the “opportunity to cure” requirement if the manufacturer authorized repairs by the dealer after written notice to the manufacturer, i.e., the manufacturer essentially authorized the dealer to attempt the final repair on the manufacturer's behalf. *See Dutchmen Manufacturing, Inc. v. Texas Department of Transportation, Motor Vehicle Division*, 383 S.W.3d 217, 226 (Tex. App.—Austin 2012).

¹³ TEX. OCC. CODE § 2301.606(d)(2).

distributor's . . . warranty agreement applicable to the vehicle.”¹⁴ The manufacturer, converter, or distributor has an obligation to “make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty.”¹⁵

3. Burden of Proof

The law places the burden of proof on the Complainants.¹⁶ The Complainants must prove all facts required for relief by a preponderance, that is, the Complainants must present evidence showing that all of the required facts are more likely than not true.¹⁷ For example, the Complainants must show the fact that a warrantable defect more likely than not exists. For any required fact, if the evidence weighs in favor of the Respondent or if the evidence equally supports the Complainants and the Respondent, the Respondent will prevail.

4. The Complaint Limits the Issues in this Case

The Complaint identifies the issues to be addressed in this proceeding.¹⁸ The pleadings should state “sufficient facts to enable the department and the party complained against to know the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law.”¹⁹

A. Complainants' Evidence and Arguments

On May 28, 2014, the Complainants, purchased a new 2014 Prime Time Manufacturing Crusader CSF295RST from Tom Raper, Inc., an authorized dealer of the Respondent, Forest River, Inc., in Richmond, Indiana.²⁰ The vehicle's limited warranty covers the vehicle for one year

¹⁴ TEX. OCC. CODE § 2301.204.

¹⁵ TEX. OCC. CODE § 2301.603(a).

¹⁶ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁷ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹⁸ “In a contested case, each party is entitled to an opportunity . . . for hearing after reasonable notice of not less than 10 days.” TEX. GOV'T CODE §§ 2001.051; “Notice of a hearing in a contested case must include . . . a short, plain statement of the matters asserted.” TEX. GOV'T CODE § 2001.052. *See* TEX. OCC. CODE § 2301.204(b) (“The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.”); TEX. OCC. CODE § 2301.204(d) (“A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.”).

¹⁹ 43 TEX. ADMIN. CODE § 215.202(b).

²⁰ Complainants' Ex. 1, Purchase Agreement.

after the date of purchase.²¹ On December 9, 2015, the Complainants mailed a written notice of defect to the Respondent. On December 22, 2015, the Complainants filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the rear wall delaminated.

In relevant part, the Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
January 26, 2015	Rear wall is bubbling. ²²
June 10, 2015	Delamination at rear of unit. ²³
August 5, 2015	Replace rear wall ²⁴
December 21, 2015	Rear wall replace with new ²⁵

Mrs. Honeysuckle testified that the repairs only resolved the delamination temporarily. She explained that the wall would delaminate shortly after repair. Specifically, when picking up the vehicle after repair, the wall would appear in good condition but would delaminate again after two to three months. The Complainants first noticed the delamination issue in October of 2014. Mrs. Honeysuckle contended that the stickers on recreational vehicles have been proven to cause delamination. She stated that the delamination on their vehicle always started at the top and progressed downward, which she believed to be caused by the infiltration of water—some kind of leakage from the roof to the wall. Mrs. Honeysuckle explained that delamination may allow leaks inside the vehicle. She did not notice any leaks from the delamination but did note that the second (replacement) wall had some leakage at the top. Mrs. Honeysuckle confirmed that the manufacturer extended the warranty to June 28, 2016. She explained that the delamination only occurred on the one wall and that currently, it did not look bad, but she believed she saw one spot that looked like it wanted to delaminate by the ladder. When presented with weather data from the Weather Underground website²⁶ showing precipitation in Floresville, Texas,²⁷ the Complainants questioned the reliability of the information, noting that the data came from a personal weather

²¹ Complainants' Ex. 9, Owner's Manual at 2.

²² Complainants' Ex. 4, Invoice 661275.

²³ Complainants' Ex. 5, Work Order 88758.

²⁴ Complainants' Ex. 6, Work Order 88758A.

²⁵ Complainants' Ex. 8, Work Order 90730.

²⁶ www.wunderground.com

²⁷ Respondent's Ex. 3, Weather History for Floresville, TX.

station and that the Weather Underground only suppressed the weather data for large discrepancies.²⁸ The Complainants added that the weather could vary in the area. For example, the west side of San Antonio may get rain but the Complainants would not get any. In one instance, a tornado hit Floresville but the Complainants did not know about it. In closing, the Complainants stated that they owned the vehicle for two years but really had no use of it because of repairs; the vehicle lost more than half of its value to depreciation; and they did not trust the vehicle after three wall replacements. The Complainants expressed a preference for repurchase of the vehicle.

B. Respondent's Evidence and Arguments

Mr. Murphy noted that the Respondent did not have the vehicle for an opportunity to repair since a dealer had the vehicle for repair (from December 21, 2015, through January 14, 2016) at the time the Complainants filed their Complaint. Mr. Murphy presented weather history from the Weather Underground, starting on February 7, 2016, and ending on May 6, 2016, showing of 7.97 inches and 16 days of precipitation in Floresville, Texas.²⁹ The weather data came from a personal weather station located in the Bentwood Subdivision, bounded by US Highway 181, Bentwood Drive, Kicaster Drive, and Shamrock Drive.³⁰ The weather station is less than two miles from the Complainants' location.³¹ Mr. Murphy concluded that five months after repair (completed January 14, 2016), the replacement wall appears to be holding.

C. Inspection

During the inspection of the vehicle at the hearing, the rear wall did not appear to exhibit any delamination.

D. Analysis

A preponderance of the evidence does not show that the vehicle has a currently existing defect. The parties do not dispute that delamination occurred on the rear wall of the vehicle. Rather

²⁸ Complainants' Ex.

²⁹ Respondent's Ex. 3, Weather History for Floresville, TX.

³⁰ Respondent's Ex. 2, Weather Underground – Current Station; Respondent's Ex. 1, Google Maps – 250 Shannon Ridge Drive, Floresville, Texas.

³¹ Respondent's Ex. 1, Google Maps – 250 Shannon Ridge Drive, Floresville, Texas; Respondent's Ex. 2, Weather Underground – Current Station.

this case hinges on whether such a defect continues to exist. The Complainants provided testimony that the rear wall repairs only lasted two or three months. However, at the hearing, the rear wall did not exhibit delamination after four months and 18 days from the last repair completed on January 14, 2016. Additionally, the manufacturer itself did not appear to have an opportunity to repair as required under the Lemon Law.³² Consequently, the vehicle does not qualify for repurchase/replacement or warranty repair. Nevertheless, the parties should note that because the Complainants had raised the delamination issue during the warranty period, the Respondent has a continuing duty to repair such defect, even if this nonconformity recurs after the warranty expires.³³

III. Findings of Fact

1. On May 28, 2014, the Complainants, purchased a new 2014 Prime Time Manufacturing Crusader CSF295RST from Tom Raper, Inc., an authorized dealer of the Respondent, Forest River, Inc., in Richmond, Indiana.
2. The vehicle's limited warranty covers the vehicle for one year after the date of purchase.
3. The Respondent extended the warranty through June 28, 2016.
4. The Complainants took the vehicle to a dealer for repair as shown below:

Date	Issue
January 26, 2015	Rear wall is bubbling.
June 10, 2015	Delamination at rear of unit.
August 5, 2015	Replace rear wall.
December 21, 2015	Rear wall replace with new.

5. On December 9, 2015, the Complainants mailed a written notice of defect to the Respondent.
6. On December 22, 2015, the Complainants filed a Lemon Law complaint (Complaint) with the Texas Department of Motor Vehicles (Department) alleging that the rear wall delaminated.

³² TEX. OCC. CODE § 2301.606(c)(2).

³³ TEX. OCC. CODE §§ 2301.204, 2301.603.

7. On March 2, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainants and the Respondent, Forest River, Inc., 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 1, 2016, in San Antonio, Texas, before Hearings Examiner Andrew Kang. Linda L. Honeysuckle represented herself and her husband, Travis G. Honeysuckle. The Complainants testified on their own behalf. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented and testified for the Respondent.
9. The Respondent itself did not have an actual attempt to repair the vehicle.
10. The vehicle's rear wall appeared normal during the inspection at the hearing.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles 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 sufficient complaint with the Department. TEX. OCC. CODE §§ 2301.204, 2301.606(d); 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 § 206.66(d).
6. The Complainants did not prove that the vehicle has a currently existing defect covered by the Respondent's warranty. TEX. OCC. CODE § 2301.604(a).

7. The Respondent did not have an opportunity to cure the alleged defect(s). TEX. OCC. CODE § 2301.606(c)(2).
8. The Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § TEX. OCC. CODE § 2301.604(a) and 2301.606(c).
9. The Respondent has a continuing obligation after the expiration date of the warranty to address and repair or correct any warrantable nonconformities reported to the Respondent or Respondent's designated agent before the warranty expired. TEX. OCC. CODE §§ 2301.603 and 2301.204.

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 July 28, 2016



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