

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0209 CAF**

RAMON LEOS,
Complainant

v.

GENERAL MOTORS LLC,
Respondent

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§

BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Ramon Leos (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2014 Chevrolet Silverado. Complainant asserts that the paint is peeling off the vehicle. General Motors LLC (Respondent) argued that the vehicle does not have a defect that needs repair. The hearings examiner concludes that the vehicle does have a currently existing warrantable defect, and Complainant is eligible for repair 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 in Pharr, Texas on June 29, 2016, before Hearings Examiner Edward Sandoval. Complainant, Ramon Leos, represented himself in the hearing. Respondent was represented by Rose Crookston, District Manager for After-Sales. Also testifying for Respondent was John Ferrell, Field Service Engineer, and Lupe Salazar, Service Manager for Weslaco Motors.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.606(d) provides that a “[a] proceeding under this subchapter [Subchapter M – Warranties: Rights of Vehicle Owners (Lemon Law)] must be commenced not later than six months after the earliest of: (1) the expiration date of the express warranty term; or (2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.” If a vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” This section applies only if the Complainant raised his concern while the vehicle’s warranty was still in effect.

B. Complainant's Evidence and Arguments

Complainant purchased a new 2014 Chevrolet Silverado from AutoNation Chevrolet in Corpus Christi, Texas on March 14, 2014.¹ The vehicle's mileage was 884 at the time of purchase.² Respondent's new vehicle limited bumper-to-bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first.³ On June 29, 2016, the date of hearing, the vehicle's mileage was 49,627. At this time, Respondent's bumper-to-bumper warranty on the vehicle has expired.

Complainant testified that approximately a month after purchasing the vehicle, he noticed that the clear coat was not even. He could tell there was a difference in the clear coat on the vehicle's panels. A few months later, Complainant noticed that the paint on the vehicle seemed to be buckling and peeling on the rear driver's side door and next to the driver's side window. Complainant called and spoke to an AutoNation representative about his concerns regarding the vehicle's paint job. The representative informed Complainant that he could take the vehicle to any Chevrolet dealer and they could repair it.

Complainant took the vehicle to Respondent's authorized dealer, Weslaco Motors, in Weslaco, Texas, for repair on August 19, 2015. Complainant informed the dealer's service advisor that the paint was peeling from the left rear door and from the right front door. However, the only repair performed by the dealer was to repaint the left rear door.⁴ The vehicle's mileage on this occasion was 33,351.⁵ The vehicle was in the dealer's possession for a couple of days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he took the vehicle to Weslaco Motors for repair for additional paint issues on October 7, 2015. The dealer's service technician verified that the paint was peeling off of the vehicle's right fender and the dealer had the problem area repainted.⁶ The vehicle's mileage when it was turned over to the dealer on this occasion was 35,568.⁷ The dealer retained possession of the vehicle for ten (10) days in order to complete the repair. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

¹ Complainant Ex. 1, Retail Purchase Agreement dated March 14, 2014.

² *Id.*

³ Complainant Ex. 8, 2014 Chevrolet Limited Warranty and Owner Assistance Information, p. 2.

⁴ Complainant Ex. 2, Repair Order dated August 19, 2015.

⁵ *Id.*

⁶ Complainant Ex. 3, Repair Order dated October 7, 2015.

⁷ *Id.*

Complainant testified that he noticed that the paint was peeling from other areas on the vehicle. He was unhappy with the vehicle and spoke to a dealer representative who advised him to speak to Rose Crookston, District Manager for After-Sales. Complainant spoke to Ms. Crookston on November 15, 2015, about his concerns with the vehicle's paint job. Complainant then met with Ms. Crookston on November 23, 2015, so she could see the problems with the vehicle's paint. Complainant informed Ms. Crookston that he was concerned with the paint job and wanted to have the entire vehicle repainted. Ms. Crookston informed Complainant that repainting the entire vehicle would not be a good idea because it would affect the integrity of the paint and wouldn't look the same. So, Ms. Crookston made arrangements to have the problem areas repainted. Complainant took the vehicle to Weslaco Motors for repair on December 3, 2015. Complainant informed the service advisor that the paint was peeling from the driver's side pillar, the front of the roof near the windshield, and the right rear door. Ms. Crookston approved the repairs for the areas in question. The vehicle's mileage on this occasion was 35,875.⁸ The vehicle was in the dealer's possession for seven (7) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle's paint continued to peel. He took the vehicle back to Weslaco Motors on January 7, 2016. The vehicle's driver's rear side door panel and driver's door and driver's side front panel were repainted per Ms. Crookston's instructions.⁹ The vehicle's mileage on this occasion was 40,488.¹⁰ The vehicle was in the dealer's possession for almost two weeks while the repairs the panels were repainted Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective March 11, 2016.¹¹ In addition, Complainant mailed a letter to Respondent on December 16, 2015, expressing his dissatisfaction with the vehicle.¹²

Complainant testified that the paint on the vehicle's passenger side pillar, the passenger's side front wheel well, the hood of the vehicle, and the rear quarter panel all have paint issues. He wants the vehicle repaired correctly and completely repainted. In addition, he indicated that there was a rust spot on the vehicle that needs to be repaired.

⁸ Complainant Ex. 4, Repair Order dated December 3, 2015.

⁹ Complainant Ex. 5, Repair Order dated January 7, 2016.

¹⁰ *Id.*

¹¹ Complainant Ex. 6, Lemon Law complaint dated March 11, 2016. Although the complaint was signed by Complainant on March 7, 2016, it was not received by Texas Department of Motor Vehicles until March 11, 2016, which is the effective date of the complaint.

¹² Complainant Ex. 7, Letter to Chevrolet dated December 16, 2015.

During cross-examination, Complainant testified that one of Weslaco Motors' representatives had looked at the front wheel well during the August 19, 2015, repair visit and indicated that there was just a small spot that was a problem and that it didn't need to be repainted at the time. Complainant also stated that the dealer's service advisors never documented any of his complaints about a rust spot on the vehicle.

C. Respondent's Evidence and Arguments

1. John Ferrell's Testimony

John Ferrell, Field Service Engineer, testified for Respondent. He has 18 years' experience in the automotive repair industry. The majority of that time he has been working for Respondent. Mr. Ferrell has worked as a Field Service Engineer for Respondent for the past year. He is a General Motors World Class certified technician. He has ten Automotive Service Excellence (ASE) certifications and is an ASE Master certified technician.

Mr. Ferrell performed an inspection of the vehicle on January 6, 2016. He looked at the vehicle's passenger side pillar and determined that there were small imperfections (divots) in the vehicle's clear coat. He could not tell if the divots were due to a defect or due to road debris. Mr. Ferrell felt that the issue should be repaired for "customer satisfaction."¹³ The vehicle's mileage on this occasion was 40,488.¹⁴

2. Lupe Salazar's Testimony

Lupe Salazar, Weslaco Motors' Service Manager, testified for Respondent. He has worked for Weslaco Motors for 22 years. Mr. Salazar has been the parts and service director for the last six (6) years. He has some training from General Motors (GM), but has never worked as a service technician.

Mr. Salazar testified that he was involved in all four (4) repairs to the vehicle's paint job. He doesn't recall being informed by Complainant about a rust spot on the vehicle. Mr. Salazar testified that he was never asked by Complainant to paint the entire vehicle.

¹³ Respondent Ex. 1, Vehicle Inspection Report dated January 6, 2016.

¹⁴ *Id.*

3. Rose Crookston's Testimony

Rose Crookston, District Manager for After-Sales has been in the automotive industry for 40 years. She has always worked for Respondent, but in different areas of the United States. She does not have a technical background, but does have GM training.

Ms. Crookston testified that she was informed by a representative of Weslaco Motors of Complainant's dissatisfaction with the vehicle's paint job. Ms. Crookston met with Complainant in late November of 2015. She informed Complainant that she would ensure that any manufacturing defect with the vehicle would be repaired. Ms. Crookston does not recall being told about any rust spots on the vehicle. Complainant did ask that the entire vehicle be repainted. However, Ms. Crookston informed Complainant that if the vehicle was completely repainted, that this would break the factory finish and the vehicle would not look as good. She also indicated that if the vehicle was repainted that they could not ensure that contaminants wouldn't get under the paint, since all of Respondent's vehicles were originally painted in a dust free room.

Ms. Crookston also testified that she met with Mr. Ferrell in January of 2016 regarding the inspection of Complainant's vehicle. She agreed to approve repairs to the vehicle's paint job, even though the vehicle's warranty had expired.

Ms. Crookston testified that she stands behind the vehicle's warranty.

D. Analysis

In the present case, the only remedy available to Complainant is an order to repair the vehicle under the provisions of Section 2301.204 of the Occupations Code, since Complainant filed the Lemon Law complaint on March 11, 2016, more than six months after May 5, 2015, which was the date on which the vehicle's mileage surpassed 24,000.¹⁵

In order to determine whether Complainant has a remedy under this section of the Occupations Code, there has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent.

Complainant's first hand testimony establishes that the vehicle's paint job is defective to a certain extent. This was verified by Mr. Ferrell during the vehicle inspection in which he pointed out areas of the vehicle where the paint job may be defective. The hearings examiner must

¹⁵ Complainant Ex. 6, Lemon Law Complaint Form dated March 11, 2016.

therefore hold that Complainant has met his burden of proof to establish that there is a defect or condition in the vehicle that has not been repaired by Respondent or its authorized dealers. As such, Respondent is under an obligation to repair the vehicle in order to conform it to Respondent's express warranty.

Respondent's warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. The vehicle's bumper-to-bumper warranty has expired, since the vehicle's mileage on the date of hearing was 49,627. However, Respondent is still responsible to make repairs to the vehicle for any issue raised before the expiration of the warranty. *See* Tex. Occ. Code § 2301.603(b)(1). Therefore, Respondent is still obligated to repair any defects in the vehicle's paint job.

Complainant's request for repair relief is granted. Respondent is hereby ordered to determine which areas of the vehicle have defects in the paint and to perform any necessary repairs to conform the vehicle to Respondent's express bumper-to-bumper warranty.

III. FINDINGS OF FACT

1. Ramon Leos (Complainant) purchased a new 2014 Chevrolet Silverado on March 14, 2014, with mileage of 884 from AutoNation Chevrolet, in Corpus Christi, Texas.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued an express bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles.
3. On June 29, 2016, the date of hearing, the vehicle's mileage was 49,627.
4. At the time of hearing the vehicle's bumper-to-bumper warranty was expired.
5. A few months after purchasing the vehicle, Complainant began to notice that the vehicle's paint seemed to be peeling and buckling.
6. Complainant's vehicle was serviced by Respondent's authorized dealer, Weslaco Motors, for paint issues on the following dates:
 - a. August 19, 2015, at 33,351 miles;
 - b. October 7, 2015, at 35,568 miles;
 - c. December 3, 2015, at 35,875 miles; and
 - d. January 7, 2016, at 40,488 miles.

7. On August 19, 2015, the vehicle's outer rear door panel was repainted because the original paint was peeling off.
8. On October 7, 2015 the vehicle's right wheel fender/bumper area was repainted because the original paint was peeling off of this area.
9. On December 3, 2015, the vehicle's pillar, roof, and right rear door were all repainted because the original paint was peeling off of those areas.
10. On January 7, 2016, the vehicle's driver's side rear quarter panel, driver door, and driver side front panel were all repainted because the vehicle's original paint was peeling off of those areas.
11. On March 11, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On April 15, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and 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.
13. The hearing in this case convened and the record closed in Pharr, Texas on June 29, 2016, before Hearings Examiner Edward Sandoval. Complainant, Ramon Leos, represented himself in the hearing. Respondent was represented by Rose Crookston, District Manager for After-Sales. Also testifying for Respondent was John Ferrell, Field Service Engineer, and Lupe Salazar, Service Manager for Weslaco Motors.

IV. CONCLUSIONS OF LAW

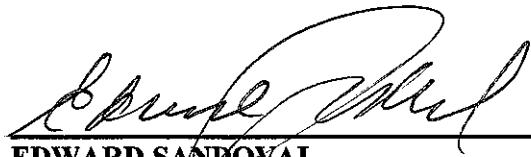
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance).
2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, 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. 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. Complainant bears the burden of proof in this matter.
6. Complainant established by a preponderance of the evidence that the vehicle currently has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent is further **ORDERED** to repaint the areas of the vehicle which contain a paint defect in order to conform the vehicle to Respondent's express warranty.

SIGNED August 15, 2016



EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES