

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0225 CAF**

**TIMOTHY STEINMULLER,
Complainant**

v.

**FOREST RIVER, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Timothy Steinmuller (Complainant) filed a complaint (Complaint) with the Texas Department of Motor Vehicles (Department) seeking relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged warrantable defects in his recreational vehicle manufactured by Forest River, Inc. (Respondent). A preponderance of the evidence does not show that the subject vehicle has a warrantable defect that creates a serious safety hazard or substantially impairs the vehicle's use or market value. Consequently, the Complainant's vehicle does not qualify for repurchase/replacement but does qualify for warranty repair.

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 August 2, 2016, in Conroe, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for himself. 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

Alternatively, for serious safety hazards, a rebuttable presumption is established that the vehicle had a reasonable number of repair attempts if:

[T]he same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and: (A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and (B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt.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)(2).

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.⁹

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.¹⁰ 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.¹¹

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;¹² (2) the manufacturer was given an opportunity to cure the defect or nonconformity;¹³ and (3) the

⁹ TEX. OCC. CODE § 2301.605(a)(3).

¹⁰ “[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).

¹¹ “[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).

¹² TEX. OCC. CODE § 2301.606(c)(1). 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.

¹³ TEX. OCC. CODE § 2301.606(c)(2). 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).

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.¹⁴

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 distributor's . . . warranty agreement applicable to the vehicle."¹⁵ The manufacturer, converter, or distributor has an obligation to "make repairs necessary to conform a new motor vehicle to an applicable . . . express warranty."¹⁶

3. Burden of Proof

The law places the burden of proof on the Complainant.¹⁷ The Complainant must prove all facts required for relief by a preponderance, that is, the Complainant must present evidence showing that every required fact is more likely than not true.¹⁸ For example, the Complainant 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 Complainant and the Respondent, the Respondent will prevail. If the Complainant fails to prove one (or more) of the required facts, the Complainant cannot prevail.

4. The Complaint Identifies the Issues in this Proceeding

The Complaint identifies the issues to be addressed in this proceeding.¹⁹ The Complaint should state "sufficient facts to enable the department and the party complained against to know

¹⁴ TEX. OCC. CODE § 2301.606(d)(2).

¹⁵ TEX. OCC. CODE § 2301.204.

¹⁶ TEX. OCC. CODE § 2301.603(a).

¹⁷ 43 TEX. ADMIN. CODE § 215.66(d).

¹⁸ *E.g., Southwestern Bell Telephone Company v. Garza*, 164 S.W.3d 607, 621 (Tex. 2005).

¹⁹ "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.").

the nature of the complaint and the specific problems or circumstances which form the basis of the claim for relief under the lemon law."²⁰ However, the parties may expressly or impliedly consent to trying issues not included in the pleadings.²¹ Trial by implied consent occurs when a party introduces evidence on an unpleaded issue without objection.²²

A. Summary of Complainant's Evidence and Arguments

On August 8, 2015, the Complainant, purchased a new 2015 Rockwood 3025W from RV Station Ltd, an authorized dealer of the Respondent, Forest River, Inc., in Cleveland, Texas.²³ The vehicle's limited warranty covers the vehicle for one year from the date of purchase. On March 31, 2016, the Complainant mailed a written notice of defect to the Respondent.²⁴ On April 4, 2016, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles alleging that the bedroom slide catches the bathroom door; backsplash wallpaper was falling off; facia board in the bedroom was damaged; stove vent fan does not work; fireplace heater did not work. In addition to the items already identified on the complaint itself, the notice of defect attached to the complaint alleged that: the sewer cap had not been installed; the sink faucet hardly worked; the upgraded TV the dealer installed was not hooked up to the surround sound system; the pullout couch did not look like some of the couches in specification sheets.

²⁰ 43 TEX. ADMIN. CODE § 215.202(b).

²¹ 43 TEX. ADMIN. CODE § 215.42; TEX. R. CIV. P. 67.

²² See *Gadd v. Lynch*, 258 S.W.2d 168, 169 (Tex. Civ. App.—San Antonio 1953, writ ref'd).

²³ Complainant's Ex. 2, Purchase Agreement and Retail Installment Contract.

²⁴ Complainant's Ex. 3, Lemon Law Complaint.

The Complainant took the vehicle to a dealer for repair as shown below:

Date	Issue
January 8, 2016	Kitchen faucet pressure; bathroom door damage; slide facia ²⁵
February 3, 2016	Replace door and faucet; sewer cap missing; back door sticks; backsplash coming off; check TV playing through surround ²⁶
April 19, 2016	Replace bathroom door; slide hitting door; install backsplash; stove vent not working; fireplace not heating ²⁷
June 14, 2016	Hall light not working; ceiling batten trim peeling; check bedroom heating strip; blind holders pulling out ²⁸

The Complainant testified that all of the issues identified on the complaint form itself had been successfully repaired. However, the Complainant stated that the dealer had agreed to install a larger TV, but this TV's sound did not go through the vehicle's surround sound system. Additionally he represented that the sticking back door had not been fixed. The Complainant did not know whether the door or the frame was warped, but explained that at times, he had to use his shoulder to push open the door. He first noticed the sticking the day he inspected the vehicle before buying it and the sticking has occurred since then.

B. Summary of Respondent's Evidence and Arguments

During cross-examination, the Complainant stated that he first raised the sticking door issue probably when dealing with Mr. Murphy. The Complainant also stated that the dealer chose the TV installed in the vehicle. Mr. Murphy explained that the Respondent changed vendors for the doors, so the door had to be ordered and delivery has taken longer than wanted. With regard to the TV and the surround sound, he pointed out that that was not something the Respondent designed or installed. In closing, Mr. Murphy contended that the Respondent did not get notice of the door until June 22, 2016, and that the TV issue was not substantial enough to affect the use or value of the vehicle.

²⁵ Complainant's Ex. 4, Work Order 8025.

²⁶ Complainant's Ex. 5, Work Order 8090.

²⁷ Complainant's Ex. 6, Work Order 8264.

²⁸ Complainant's Ex. 7, Work Order 8415.

C. Inspection

At the inspection during the hearing, the rear door frame showed visible wear on the upper left corner when viewed from the exterior. The door exhibited some stiffness in opening but could be opened with one hand without strenuous effort. The TV could not be tested because a power source was not available.

D. Analysis

The record shows that all of the issues identified in the Complaint and most of the issues identified in the attached notice of defect have been successfully repaired, leaving the TV sound and sticking door issues for resolution. The TV issue is not a warrantable defect that qualifies for any relief and the sticking door does not substantially impair the vehicle's value or use and therefore does not qualify for repurchase or replacement. However, the sticking door does qualify for repair relief.

1. TV Sound

The evidence shows that TV sound is not a warrantable issue. The Lemon Law does not apply to all problems that may occur with a vehicle. Rather, the Lemon Law only deals with warrantable defects, i.e., defects covered by the warranty. In this case, the warranty provides that “the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor.”²⁹ In other words, the warranty applies to defects from the Respondent's manufacturing of the vehicle. Issues that do not arise from manufacturing, such as improper dealer installation and repair (which occur after manufacturing), are not warrantable defects. In the present case, the dealer, not the Respondent, installed the TV after the manufacture of the vehicle. Accordingly, a defect in the dealer's installation of the TV is not a defect in the Respondent's workmanship, and is therefore not covered by the warranty. Moreover, any defects in the TV itself are not covered by the warranty. As explained above, the warranty only applies to the Respondent's materials and workmanship going into manufacturing the vehicle. However, the Respondent did not manufacture the TV. Further, the warranty (under the heading “EXCLUSIONS FROM THIS WARRANTY”) emphasizes that the “Warrantor makes no warranty with regard to, but not limited to, the chassis, including, without limitation, any mechanical parts or systems of

²⁹ Complainant's Ex. 3, Limited Warranty Towable Products (emphasis added).

the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items.”³⁰ Accordingly, any defect in the TV is not covered by the Respondent’s warranty.

2. Sticking Door

The sticking door does not sufficiently impair the value or use of the vehicle to qualify for Lemon Law relief. Under the reasonable prospective purchaser standard, the nonconformity would have to deter a reasonable purchaser from buying the vehicle or substantially negatively affect how much s/he would be willing to pay for the vehicle. In this case, the door, though it required greater effort than the vehicle’s front door, nevertheless opened with one hand during the inspection and with significantly less force than described before the repairs. Although the door opens more stiffly, this does not rise to the level of a substantial impairment of value under the reasonable prospective purchaser standard. Similarly, the sticking door does not substantially impair the use of the vehicle. As explained above, the level of effort required to open the door does not prevent the use of the vehicle at all. The door opens, although with greater effort as compared to the vehicle’s front door. Accordingly, the vehicle does not qualify for replacement or repurchase.³¹ Nevertheless, because the sticking door appears to be a warrantable defect, the Respondent has an obligation to repair the door to eliminate any nonconformity.

III. Findings of Fact

1. On August 8, 2015, the Complainant, purchased a new 2015 Rockwood 3025W from RV Station Ltd, an authorized dealer of the Respondent, Forest River, Inc., in Cleveland, Texas.
2. The vehicle’s limited warranty covers the vehicle for one year from the date of purchase.
3. The Complainant took the vehicle to a dealer for repair as shown below:

³⁰ Complainant’s Ex. 3, Limited Warranty Towable Products (emphasis added).

³¹ Additionally, the complaint did not allege any serious safety hazard and the record does not show the existence of any safety hazard.

Date	Issue
January 8, 2016	Kitchen faucet pressure; bathroom door damage; slide facia
February 3, 2016	Replace door and faucet; sewer cap missing; back door sticks; backsplash coming off; check TV playing through surround
April 19, 2016	Replace bathroom door; slide hitting door; install backsplash; stove vent not working; fireplace not heating
June 14, 2016	Hall light not working; ceiling batten trim peeling; check bedroom heating strip; blind holders pulling out

4. On March 31, 2016, the Complainant mailed a written notice of defect to the Respondent.
5. On April 4, 2016, the Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles alleging that the bedroom slide catches the bathroom door; backsplash wallpaper was falling off; facia board in the bedroom was damaged; stove vent fan does not work; fireplace heater did not work. In addition to the items identified on the complaint itself, the notice of defect attached to the complaint alleged that: the sewer cap had not been installed; the sink faucet hardly worked; the upgraded TV the dealer installed was not hooked up to the surround sound system; the pullout couch did not look like some of the couches in specification sheets.
6. On May 4, 2016, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant 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.
7. The hearing in this case convened and the record closed on August 2, 2016, in Conroe, Texas, before Hearings Examiner Andrew Kang. The Complainant, represented and testified for himself. Warren Murphy, Assistant Director, Parts, Service, & Warranty, represented and testified for the Respondent.
8. The vehicle's warranty was in effect at the time of the hearing.
9. The warranty provides that "the body structure of this recreational vehicle shall be free of substantial defects in materials and workmanship attributable to Warrantor."

10. The warranty specifies that “Warrantor makes no warranty with regard to, but not limited to, the chassis, including, without limitation, any mechanical parts or systems of the chassis, axles, tires, tubes, batteries and gauges, routine maintenance, equipment and appliances, or audio and/or video equipment. Their respective manufacturers and suppliers may warrant some of these items.”
11. The dealer, RV Station Ltd, installed the television.
12. The Respondent did not manufacture the television.
13. During the inspection at the hearing, the rear door frame showed visible wear on the upper left corner when viewed from the exterior, the door exhibited some stiffness in opening but could be opened with one hand without strenuous effort.

IV. Conclusions of Law

1. The Texas Department of Motor Vehicles has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613.
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 Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 206.66(d).
6. The Complainant did not prove that Respondent’s warranty covered the television or its installation. TEX. OCC. CODE § 2301.604(a).

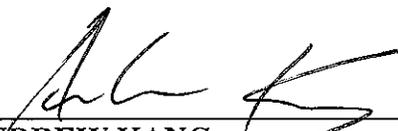
7. The Complainant's vehicle does not qualify for replacement or repurchase. The sticking door does not create a serious safety hazard or substantially impair the use or market value of the vehicle. TEX. OCC. CODE § 2301.604
8. The Respondent remains responsible to address and repair or correct any defects that are covered by the Respondent's warranties. TEX. OCC. CODE §§ 2301.603 and 2301.204.
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 or franchised dealer 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 Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**. It is **FURTHER ORDERED** that the Respondent shall make any repairs needed to conform the vehicle's door to the applicable warranty, so that it opens without sticking. The Complainant shall deliver the subject vehicle to the Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.³² Within 30 days after receiving the vehicle from the Complainant, the Respondent shall complete repair of the subject vehicle. However, if the Department determines the Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair, the Department may consider the Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

³² (1) If a party does not timely file a motion for rehearing, this Order becomes final when the period for filing a motion for rehearing expires, or (2) if a party timely files a motion for rehearing, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Decision and Order.

SIGNED September 23, 2016



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