

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0316 CAF**

**McKENZIE PRICE and  
MIEKO CAMPBELL,  
Complainants**

**v.**

**JAGUAR LAND ROVER NORTH  
AMERICA LLC,  
Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

McKenzie Price and Mieke Campbell (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2015 Range Rover. Complainants assert that the vehicle's brakes intermittently squeal at slow speeds or when coming to a stop. Jaguar Land Rover North America LLC (Respondent) argued that there is no defect with the vehicle and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainants are 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 November 10, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants, McKenzie Price and Mieke Campbell, represented themselves and testified in the hearing. Also testifying for Complainants were Christopher Rucker, friend, Marie Campbell, Ms. Campbell's mother, and Brandie Dinsmore-Thompson, friend. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins and Irons LLP. Mr. Chambless did not testify in the hearing.

**II. DISCUSSION**

**A. Applicable Law**

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or

substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>1</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>2</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>3</sup>

In addition to the five conditions, a rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>4</sup>

## **B. Complainant's Evidence and Arguments**

Complainants purchased a new 2015 Range Rover from Land Rover North (Land Rover) in Houston, Texas on March 25, 2015, with mileage of 30 at the time of delivery.<sup>5,6</sup> Respondent's bumper-to-bumper warranty for the vehicle provides coverage for four (4) years or 50,000 miles, whichever comes first.<sup>7</sup> On the date of hearing the vehicle's mileage was 31,967. At this time, Respondent's warranty for the vehicle is still in effect.

### **1. McKenzie Price's Testimony**

McKenzie Price, co-Complainant, testified that approximately five (5) months after purchasing the vehicle, he and Ms. Campbell began noticing a squealing noise from the vehicle's brakes when coming to a stop. The noise would start gradually and increase over time.

Complainants took the vehicle to Land Rover on or about August 27, 2015, to address the noise issue. Land Rover's service technician replaced the vehicle's brake pads and cleaned the pistons

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<sup>1</sup> Tex. Occ. Code § 2301.604(a)(1) and (2).

<sup>2</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>3</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>4</sup> Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) provides an alternative method for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only to a nonconformity that creates a serious safety hazard.

<sup>5</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated March 25, 2015.

<sup>6</sup> Complainant Ex. 2, Odometer Disclosure Statement dated March 25, 2015.

<sup>7</sup> Respondent Ex. 1, Land Rover Passport to Service, p. 5.

and piston seals with brake cleaner.<sup>8</sup> The vehicle's mileage on this occasion was 7,098.<sup>9</sup> The vehicle was in the dealer's possession for one (1) day. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Ms. Campbell was the primary driver of the vehicle. She drove the vehicle for a while and started to hear the squealing noise from the brakes again. She took the vehicle back to Land Rover for repair for the issue on or about December 8, 2015. Land Rover's service technician verified the noise and replaced the vehicle's front brake pads to address the concern.<sup>10</sup> Mr. Price stated that the new brake pads were supposed to be sports brake pads which were different from the original brake pads on the vehicle. The vehicle's mileage on this occasion was 14,016.<sup>11</sup> The vehicle was in Land Rover's possession until December 18, 2015. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Mr. Price testified that the brakes seemed to be repaired and he and Ms. Campbell did not hear the squealing noise for a while. However, the noise began to occur again and seemed to increase over time. As a result, Complainants took the vehicle to Land Rover to address the brake noise issue on January 14, 2016. Land Rover's technician verified hearing a "squeaking" noise from the brakes which he suspected was caused by the vehicle's front rotors.<sup>12</sup> The technician replaced the front rotors, settled the brake pads, and test drove the vehicle to verify that the noise was no longer present.<sup>13</sup> The vehicle's mileage on this occasion was 15,658.<sup>14</sup> The vehicle was in Land Rover's possession for one (1) day. Complainants received a loaner vehicle while their vehicle was being repaired.

Mr. Price stated that the vehicle seemed fine, but the squealing noise began to occur again about a month later. Complainants took the vehicle to Land Rover on February 2, 2016, to have the noise issue addressed again. Land Rover's service technician inspected the front brakes and found scratches on the rotors.<sup>15</sup> The technician replaced the vehicle's front rotors and brake pads, removed and supported the brake calipers, and cleaned all pistons and piston seals with brake cleaner.<sup>16</sup> The vehicle's mileage on this occasion was 16,497.<sup>17</sup> The vehicle was in Land Rover's possession for three (3) days. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

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<sup>8</sup> Complainant Ex. 3, Repair Order dated August 27, 2015.

<sup>9</sup> *Id.*

<sup>10</sup> Complainant Ex. 4, Repair Order dated December 18, 2015.

<sup>11</sup> *Id.*

<sup>12</sup> Complainant Ex. 5, Repair Order dated January 14, 2016.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Complainant Ex. 6, Repair Order dated February 5, 2016.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Complainants mailed a letter to Respondent on March 18, 2016, advising them of their dissatisfaction with the vehicle.<sup>18</sup>

Complainants were contacted by Respondent's representative to ask them for an opportunity to repair the vehicle. Pursuant to the request, Complainants took the vehicle to Land Rover on April 14, 2016, to allow Respondent's representative to perform a final repair attempt on the vehicle.<sup>19</sup> The technician replaced the front pads and rotors as a set to "ensure proper brake pad bed in with new rotor."<sup>20</sup> The vehicle's mileage on this occasion was 20,839.<sup>21</sup> The vehicle was in the dealer's possession for eight (8) days. Complainants were provided with a loaner vehicle while the final repair attempt was performed.

Mr. Price testified that the vehicle drove fine for a few days, but the squealing noise returned soon thereafter. Complainants filed a Lemon Law complainant with the Texas Department of Motor Vehicles (Department) on June 16, 2016.<sup>22</sup>

Mr. Price stated that Ms. Campbell was driving the vehicle in August of 2016, when the panoramic sun roof shattered. Mr. Price took the vehicle to Land Rover for repair for the sun roof. While there, Mr. Price asked about the service advisor about addressing the brake noise. He was informed by Land Rover's general manager that the dealer could not talk about the issue because the Lemon Law complaint was pending hearing. However, the dealer did attempt to resolve the issue. The technician installed high performance front brake pads to the vehicle, removed and supported the brake calipers, and cleaned the pistons and piston rings with brake cleaner.<sup>23</sup> The vehicle's mileage on this occasion was 28,754.<sup>24</sup> The vehicle was in Land Rover's possession until September 13, 2016.<sup>25</sup> Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Mr. Price stated that he was frustrated with the vehicle. He feels that the squealing noise is evidence of a safety issue or an impending safety issue. Mr. Price stated that the problem should have been resolved by now. He hears the squealing noise intermittently when he or Ms. Campbell drive the vehicle.

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<sup>18</sup> Complainant Ex. 8, Letter to Jaguar Land Rover North America LLC dated March 18, 2016.

<sup>19</sup> Complainant Ex. 7, Repair Order dated April 14, 2016.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. 9, Lemon Law complaint dated June 16, 2016. Although the complaint was signed on June 6, 2016, the effective date of the complaint is the date that it was received by the Texas Department of Motor Vehicles, which was June 16, 2016.

<sup>23</sup> Complainant Ex. 10, Repair Order dated August 26, 2016.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

During cross-examination, Mr. Price testified that he and Ms. Campbell have no other complaint with the vehicle beyond the noise issue. The brakes do stop the vehicle without a problem.

Mr. Price stated that he and Ms. Campbell received a loaner vehicle every time that they took the vehicle to Land Rover for repair. He thinks that the dealer's representatives have bitter feelings towards him and Ms. Campbell. He's never had the vehicle appraised nor offered the vehicle for sale.

## **2. Mieko Campbell's Testimony**

Mieko Campbell, co-Complainant, testified that she is the primary driver of the vehicle. She feels that the vehicle has brake issues. She has noticed a squealing noise that occurs when she's driving at slow speeds in the vehicle and she steps on the brakes.

Ms. Campbell stated that she took the vehicle to Land Rover for repair on August 27, 2016. She did not inform the dealer's service advisor of the brake issue. However, the service technician performed repairs on the brakes.

Ms. Campbell stated that the squealing noise is not heard from the brakes for a short time after a repair is performed on the brakes, but that the noise returns after a while. She stated that after Respondent's technician performed a final repair attempt on the vehicle, the squealing noise returned after three (3) days.

During cross-examination, Mr. Campbell testified that she is not a mechanic and does not know what might be causing the squealing noise. She stated that although the brakes squeal, they do serve their function and stop the vehicle. Ms. Campbell stated that the squealing noise is intermittent. She has no other complaint about the vehicle. Ms. Campbell testified that she will not take a trip in the vehicle because of the noise.

## **3. Christopher Rucker's Testimony**

Mr. Rucker, friend, testified for Complainants. He stated that he has heard the vehicle's brakes squeal on occasion. He took a video of the vehicle being driven by Ms. Campbell and when she stepped on the brakes, he could hear them squealing.

Mr. Rucker also testified that he was present with Mr. Price when he took the vehicle to Land Rover because the sun roof needed repair. Mr. Rucker stated that Land Rover's general manager

informed them that he could not have his technicians work on the vehicle's brakes at the time because of the Lemon Law complaint.

#### **4. Brandie Dinsmore-Thompson's Testimony**

Brandie Dinsmore-Thompson, friend, testified for Complainants. She stated that she has heard the vehicle's brakes squeal when she was riding as a passenger in the vehicle. Ms. Dinsmore-Thompson stated that she was told about the brake noise by Ms. Campbell.

Ms. Dinsmore-Thompson stated during cross-examination that the vehicle's brakes do stop the vehicle.

#### **5. Marie Campbell's Testimony**

Marie Campbell, Meiko Campbell's mother, testified for Complainants. Ms. Campbell stated that she takes care of Meiko Campbell's daughter and will sometimes use the vehicle in question. Ms. Campbell feels that it's annoying to ride in the vehicle due to the squealing noise from the brakes. Ms. Campbell will drive her own vehicle rather than use Complainants' vehicle.

Ms. Campbell stated that she is not a mechanic, but she's afraid of what might happen when driving the vehicle. She's heard the squealing noise primarily when the vehicle is slowing down and the brake is being depressed.

#### **C. Respondent's Evidence and Arguments**

John Chambless, attorney, represented Respondent at the hearing. He did not offer any testimony.

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#### **D. Analysis**

Under Texas' Lemon Law, Complainant bears the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainant is entitled to have the vehicle repurchased or replaced.

Complainants have not met the burden of proof to establish that their vehicle has a defect which creates a serious safety hazard or which substantially impairs its use or market value. Complainants testified that the vehicle's brakes intermittently make a squealing noise at slow speeds or when coming to a stop. The noise, in and of itself, is not evidence of the presence of a defect in the vehicle. The evidence presented at the hearing indicates that the brakes have worked as designed and have not slipped or failed. The evidence does not indicate the presence of a manufacturer's defect in the braking system. As such, the hearing examiner must hold that Complainants are not entitled to the requested relief.

However, there does seem to be an issue which is causing the brakes to squeal. Therefore, Respondent will be ordered to determine the cause of the squealing noise and perform any necessary repairs to resolve the issue.

Respondent's bumper-to-bumper warranty applicable to Complainants' vehicle provides coverage for four (4) years or 50,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 31,967 and the basic warranty coverage is still in effect. Respondent is still under an obligation to repair any issues with the vehicle that are covered under the warranty.

Complainants' request for repurchase or replacement relief is denied. Respondent is hereby ordered to determine the cause of the noise issues and perform any necessary repairs to resolve the issue.

### III. FINDINGS OF FACT

1. McKenzie Price and Mieko Campbell (Complainants) purchased a new 2015 Range Rover on March 25, 2015, from Land Rover North (Land Rover), in Houston, Texas with mileage of 20 at the time of delivery.

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2. The manufacturer of the vehicle, Jaguar Land Rover North America LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle good for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 31,967.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. Complainants feel that the vehicle's brakes make an abnormal squealing noise when driving slow or when stopping the vehicle.

6. Complainants took the vehicle to Respondent's authorized dealer in order to address their concerns with the vehicle's brakes, on the following dates:
    - a. August 27, 2015, at 7,098 miles;
    - b. December 8, 2015, at 14,016 miles;
    - c. January 14, 2016, at 15,658 miles; and
    - d. February 2, 2016, at 16,497 miles.
  7. On August 27, 2015, the dealer's service technician replaced the vehicle's brake pads and cleaned the pistons and piston seals with brake cleaner in order to address the squealing noise issue.
  8. On December 8, 2015, the dealer's service technician replaced the vehicle's front brake pads.
  9. On January 14, 2016, the dealer's service technician replaced the vehicle's front rotors and settled the brake pads to deal with the noise issue.
  10. On February 2, 2016, the dealer's service technician replaced the vehicle's front rotors and front brake pads, removed and supported the brake calipers, and cleaned the pistons and piston seals with brake cleaner.
  11. On March 18, 2016, Complainants mailed a letter to Respondent advising them of their dissatisfaction with the vehicle.
  12. On April 14, 2016, Respondent's representative performed a final repair attempt on the vehicle at Land Rover at which time the vehicle's front pads and rotors were replaced as a set.
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13. On June 16, 2016, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
  14. On September 26, 2016, Land Rover's service technician replaced the vehicle's brake pads with high performance pads, removed and supported the brake calipers, and cleaned the pistons and piston seals with brake cleaner.
  15. On August 29, 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.

16. The hearing in this case convened and the record closed on November 10, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants, McKenzie Price and Mieko Campbell, represented themselves and testified in the hearing. Also testifying for Complainants were Christopher Rucker, friend, Marie Campbell, Ms. Campbell's mother, and Brandie Dinsmore-Thompson, friend. Respondent was represented by John Chambless, attorney with Thompson, Coe, Cousins and Irons LLP. Mr. Chambless did not testify in the hearing.

#### IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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. Complainants 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. ~~Complainants bear the burden of proof in this matter.~~
6. Complainants failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
8. Complainants' vehicle does not qualify for replacement or repurchase. Tex. Occ. Code § 2301.604.

**ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. However, since there does seem to be an unresolved problem with the vehicle. Respondent is hereby **ORDERED** to determine the cause of the noise issues and perform any necessary repairs to resolve the issue within 20 days.

**SIGNED December 21, 2016**



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