

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0186501 CAF**

**ABELINO PEREZ,**  
**Complainant**

v.

**GENERAL MOTORS LLC,**  
**Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Abelino Perez (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) and § 2301.204 (Warranty Performance) for alleged defects in his 2017 Chevrolet Silverado. Complainant asserts that the vehicle is defective because the transmission is leaking fluid. General Motors LLC (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired, does not have an existing warrantable defect, and Complainant is not eligible for 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 was closed on November 9, 2018, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Abelino Perez, represented himself at the hearing. Also present was Complainant's wife, Ines Perez. Respondent was represented by Kevin Phillips, Business Resource Manager. Bruce Morris, Field Service Engineer, was present and testified for Respondent. Jason Gonzalez, Texas Department of Motor Vehicles' Internal Auditor, was present as an observer.

**II. DISCUSSION**

**A. Applicable Law**

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”

Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer’s, converter’s, or distributor’s express warranty.”

Occupations Code § 2301.606 provides that in order to have the options of repurchase or replacement available as remedies, Complainant must commence the Lemon Law proceeding “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.”

For Complainants who fail to meet the timelines described above repair relief is available 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.” The relief available under this section of the Code is repair of the vehicle in question.

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

### **1. Abelino Perez’ Testimony**

Complainant purchased a new 2017 Chevrolet Silverado from Westside Chevrolet (Westside) in Katy, Texas on March 7, 2017, with mileage of 5 at the time of delivery.<sup>1</sup> Respondent provided a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first.<sup>2</sup> In addition, Respondent’s powertrain warranty provides coverage for the vehicle’s powertrain for five (5) years or 60,000 miles.<sup>3</sup> On the date of hearing the vehicle’s mileage was 75,902. At this time, both warranties have expired.

Complainant testified that he has observed a red fluid leaking out of the vehicle’s transmission on at least three (3) occasions. He first noticed the issue in April of 2017. He saw a red fluid on his home’s driveway that had leaked from the bottom of the subject vehicle after he moved the vehicle.

Complainant had the vehicle towed to Westside to repair the leak on April 3, 2017. Westside’s service technician determined that the rear drive shaft yoke was not sealing properly which was causing transmission fluid to leak out of the vehicle’s transmission.<sup>4</sup> The technician replaced the yoke to repair the leak and test drove the vehicle.<sup>5</sup> The vehicle’s mileage on this occasion was

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<sup>1</sup> Complainant Ex. 2, Buyer’s Order dated March 7, 2017.

<sup>2</sup> Respondent Ex. 2, Global Warranty Management dated November 2, 2018, p. 2.

<sup>3</sup> *Id.*

<sup>4</sup> Complainant Ex. 3, Repair Order dated April 3, 2017.

<sup>5</sup> *Id.*

3,414.<sup>6</sup> The vehicle was in Westside's possession for two (2) days during this repair. Complainant was not provided with a loaner vehicle while his vehicle was being repaired.

Complainant testified that he did not see any fluid leaking from the vehicle's transmission after the repair. However, the leak seemed to return in March of 2018, several months after the original repair. Complainant took the vehicle to Westside on March 9, 2018, in order to have the issue addressed. Westside's technician determined that the vehicle's front drive shaft yoke was leaking fluid.<sup>7</sup> The technician replaced the front drive shaft yoke in order to correct the issue.<sup>8</sup> The vehicle's mileage on this occasion was 43,306.<sup>9</sup> Complainant stated that the vehicle was in Westside's possession for one (1) week. He received a loaner vehicle while his vehicle was being repaired.

Complainant testified that the vehicle seemed okay for a few days. However, he observed another fluid leak from the vehicle a few days later. Complainant took the vehicle to Westside for repair on March 17, 2018. The technician determined that the wrong part had been installed on the vehicle.<sup>10</sup> A vented yoke had been installed on the vehicle, but the vehicle required a non-vented yoke.<sup>11</sup> The technician installed the proper yoke on the vehicle.<sup>12</sup> The vehicle's mileage on this occasion was 43,711.<sup>13</sup> The vehicle was in the dealer's possession for three (3) days on this occasion. Complainant was provided with a loaner vehicle while his vehicle was being repaired. Complainant testified that he has not observed a transmission fluid leak since this repair was performed.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on May 8, 2018.<sup>14</sup>

Complainant testified that Respondent performed a final inspection and repair attempt on the vehicle on October 2, 2018. He does not believe any repairs were performed at the time. He has not observed any fluid leaks from the vehicle's transmission since March of 2018.

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<sup>6</sup> *Id.*

<sup>7</sup> Complainant Ex. 4, Repair Order dated March 9, 2018.

<sup>8</sup> *Id.*

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

<sup>10</sup> Complainant Ex. 5, Repair Order dated March 17, 2018.

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

<sup>12</sup> *Id.*

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

<sup>14</sup> Complainant Ex. 1, Lemon Law Complaint dated May 8, 2018. Complainant signed and dated the complaint on April 17, 2018. However, the complaint was not received by the Texas Department of Motor Vehicles until May 8, 2018, which is the effective date of the complaint.

During cross examination, Complainant testified that he uses the vehicle for his landscaping business. He uses the vehicle to tow a trailer containing his work equipment. He's never had an accident in the vehicle.

## **2. Ines Perez' Testimony**

Ines Perez, Complainant's wife, offered testimony in the hearing. She stated that she does not usually drive the vehicle. However, she was responsible for taking the vehicle to Westside for repair on March 9 and March 17, 2018. Ms. Perez never saw the fluid leaking from the vehicle. She was told by the service adviser that the problem with the vehicle was that there was fluid leaking from the vehicle's transmission yoke. She does not know what a yoke is or how it affects the vehicle.

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

### **1. Kevin Phillips' Testimony**

Kevin Phillips, Business Resource Manager, testified for Respondent. Mr. Phillips testified that according to his calculations, Complainant drove the vehicle an average of 123 miles per day. Mr. Phillips stated that the vehicle reached 24,000 miles on or about September 25, 2017.<sup>15</sup> Six months from September 25, 2017 is March 25, 2018.<sup>16</sup> Mr. Phillips stated that repurchase or repair relief are not warranted as possible remedies because Complainant filed his Lemon Law complaint more than six (6) months after the vehicle reached 24,000 miles on the odometer.

Mr. Phillips also testified that Respondent did perform a final inspection and repair attempt on the vehicle on October 2, 2018, at Finnegan Chevrolet in Rosenberg, Texas.

### **2. Bruce Morris' Testimony**

Bruce Morris, Field Service Engineer, testified for Respondent. He has worked in the automotive industry for 32 years. He has worked for Respondent in his present position for the past ten (10) years. He has both Automotive Service Excellence (ASE) and GM World Class certifications. Mr. Morris has also worked in the past for independent automobile service providers as a technician, service manager, and shop foreman.

Mr. Morris testified that he was assigned to inspect and repair the subject vehicle. The inspection took place on October 2, 2018, at Finnegan Chevrolet in Rosenberg, Texas.

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<sup>15</sup> Respondent Ex. 3, Odometer Chart prepared by Kevin Phillips, undated.

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

Mr. Morris indicated that he performed a visual inspection of the vehicle. He observed minor dings and dents in the vehicle. Mr. Morris also observed that the vehicle's windshield was cracked. He looked at the vehicle's undercarriage to see if there was a fluid leak. He was unable to find any leaks or evidence of a leak.<sup>17</sup> Mr. Morris determined that the vehicle was operating as designed at the time of inspection.<sup>18</sup>

#### D. Analysis

In order to be eligible for repurchase or replacement relief under the Lemon Law, Complainant must have filed his complaint within six (6) months after the vehicle has been driven 24,000 miles or within 24 months of ownership, whichever comes first. In the present case, the evidence revealed that Complainant drives the vehicle an average of 124 miles per day.<sup>19</sup> He purchased the vehicle on March 7, 2017. The mileage at the time of purchase was 5. Complainant's vehicle reached 24,000 miles on or about September 16, 2017.<sup>20</sup> Six months from September 16, 2017, is March 16, 2018. As such, Complainant would have had to file his complaint no later than March 16, 2018, in order to have the option of repurchase or replacement of the vehicle as relief for his complaint. Complainant did not file the Lemon Law complaint until May 8, 2018 (the date the complaint was received by the Department). Since he did not file the complaint within the required time frame, the hearings examiner must hold that the only remedy available to Complainant is repair of the vehicle.

Complainant purchased the vehicle on March 7, 2017, and presented the vehicle to Respondent's authorized dealer for repair due to a transmission fluid leak on the following dates: April 3, 2017; March 9, 2018; and March 17, 2018. The vehicle was repaired in March of 2018 and Complainant indicated that he has not had any issues with transmission fluid leaking from the vehicle since the final repair on March 17, 2018.

In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repair relief for Complainant is not warranted.

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<sup>17</sup> Respondent Ex. 5, Vehicle Legal Inspection report dated October 2, 2018, p. 1.

<sup>18</sup> *Id.*

<sup>19</sup> The average miles per day was figured by dividing 75,902 (the vehicle's mileage at the time of hearing) by 612 (the number of days between when Complainant purchased the vehicle and the date of hearing) which totaled 124 miles per day driven in the vehicle.

<sup>20</sup> To determine the date that the vehicle's mileage reached 24,000 miles, the hearings examiner divided 24,000 by 124 (average miles per day), which established that it took Complainant approximately 193 days to drive 24,000 miles. The date of purchase of the vehicle was March 7, 2017. Adding 193 days to March 7, 2017, establishes September 16, 2017, as the approximate date Complainant reached 24,000 miles in the vehicle.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 75,902 and the warranties have expired.

Complainant's request for repair relief is denied.

### III. FINDINGS OF FACT

1. Abelino Perez (Complainant) purchased a new 2017 Chevrolet Silverado on March 7, 2017, from Westside Chevrolet (Westside) in Katy, Texas, with mileage of 5 at the time of delivery.
2. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever occurs first, and a separate powertrain warranty for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 75,902.
4. At the time of hearing the bumper-to-bumper and powertrain warranties for the vehicle had expired.
5. Respondent feels that the vehicle is defective because there was a transmission fluid leak in the vehicle which was repaired three (3) times.
6. Complainant took the vehicle to Westside for repair for the leak described in Findings of Fact #5 on the following dates:
  - a. April 3, 2017, at 3,414 miles;
  - b. March 9, 2018, at 43,306 miles; and
  - c. March 17, 2018, at 43,711 miles.
7. On April 3, 2017, Westside's service technician determined that the vehicle's rear drive shaft yoke was not sealing properly which was causing a fluid leak. The technician replaced the yoke to resolve the issue.
8. On March 9, 2018, Westside's service technician replaced the vehicle's front drive shaft yoke to resolve the issue of a transmission fluid leak.

9. On March 17, 2018, Westside's service technician replaced the vehicle's front drive shaft yoke because they had inadvertently placed a vented yoke on the vehicle on March 9, 2018, rather than a non-vented yoke which was the required part for the vehicle.
10. On May 8, 2018, Complainant filed a Lemon Law/Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
11. On October 2, 2018, Respondent's Field Service Engineer, Bruce Morris, inspected the vehicle and determined that the vehicle is operating as designed.
12. The vehicle's transmission has not leaked any fluid since prior to the March 17, 2018 repair.
13. Complainant averages driving 124 miles per day in the vehicle.
14. The vehicle accrued 24,000 miles on the odometer on or about September 16, 2017.
15. The only remedy available to Complainant is repair of the vehicle, since he filed his Lemon Law complaint on May 8, 2018, more than six (6) months after the vehicle's mileage exceeded 24,000 miles (September 16, 2017).
16. On August 3, 2018, 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.
17. The hearing in this case convened and the record was closed on November 9, 2018, in Houston, Texas, before Hearings Examiner Edward Sandoval. Complainant, Abelino Perez, represented himself at the hearing. Also present was Complainant's wife, Ines Perez. Respondent was represented by Kevin Phillips, Business Resource Manager. Bruce Morris, Field Service Engineer, was present and testified for Respondent. Jason Gonzalez, Texas Department of Motor Vehicles Internal Auditor, was present as an observer.

#### 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. 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 failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code §§ 2301.204, 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, 2301.603.
8. Complainant's vehicle does not qualify for repair. 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 relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 and 2301.204 is hereby **DISMISSED**.

**SIGNED November 14, 2018.**



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