

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 19-0002264 CAF**

<b>OLGA VASQUEZ,</b>	§	<b>BEFORE THE OFFICE</b>
<b>Complainant</b>	§	
v.	§	
	§	<b>OF</b>
<b>BMW OF NORTH AMERICA LLC,</b>	§	
<b>Respondent</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Olga Vasquez (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for an alleged defect in her 2015 BMW 320i. Complainant asserts that the vehicle has an engine oil leak that has not been repaired. BMW of North America LLC (Respondent) asserts that the vehicle has been repaired and that no defect in the vehicle currently exists. 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 closed on April 24, 2019, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Olga Vasquez, Complainant, appeared and represented herself at the hearing. Respondent was represented by Mike Sandler, After-Sales Area Manager. Also present and testifying for Respondent was David Kaiser, Technical Support Engineer. Vincent Hudson, Service Manager for BMW of Dallas, 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**

Complainant purchased a new 2015 BMW 320i from BMW of Dallas in Dallas, Texas, on May 30, 2016, with mileage of 9,648 at the time of delivery.<sup>1</sup> Respondent provided a basic warranty for the vehicle which provides coverage for the first four (4) years of ownership or the first 50,000 miles driven from the original in-service date, whichever comes first.<sup>2</sup> On the date of hearing the vehicle’s mileage was 51,186. At the time of hearing, the vehicle’s original warranty had expired.

Complainant testified that she has experienced a series of oil leaks from the vehicle’s engine. She has noticed oil accumulating on top of the engine and has taken the vehicle for repair several times for the issue. Complainant first noticed oil on the engine after having the vehicle’s oil changed in December of 2016.

Complainant took the vehicle for repair to BMW of Dallas on April 29, 2017, due to her concerns regarding the oil on the engine. The dealer’s service technician found that engine oil was leaking from the vehicle’s valve cover gasket which is located at the top of the engine.<sup>3</sup> The technician replaced the valve cover gasket in order to resolve the issue.<sup>4</sup> The vehicle’s mileage at the time was 23,931.<sup>5</sup> The vehicle was returned to Complainant three days later. Complainant was provided with a loaner vehicle during this period of time.

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<sup>1</sup> Complainant Ex. 2, Retail Purchase Agreement dated May 30, 2016, and Webpage with Vehicle Description.

<sup>2</sup> Complainant Ex. 3, 2015 3.5.7 Series Model Warranty Guide, p. 1.

<sup>3</sup> Complainant Ex. 5, Repair Order dated April 29, 2017, pp. 2-3.

<sup>4</sup> *Id.*

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

Complainant testified that she had experienced several other issues with the vehicle prior to the oil leak and, as a result, she decided to write an email to Respondent's customer relations department to inform them of her dissatisfaction with the vehicle. The email was sent to Respondent on May 2, 2017. In addition, on May 13, 2017, Complainant took the vehicle back to BMW of Dallas to have the technician clean the engine because it had not been completely cleaned upon the conclusion of the repair.

In October of 2017, Complainant noticed that there was oil on the vehicle's engine. She took the vehicle to Sewell BMW of Grapevine (Sewell) for repair for the issue (and other issues) on October 24, 2017. Sewell's service technician verified that the vehicle's valve cover gasket was leaking oil.<sup>6</sup> As a result, the technician replaced the valve cover gasket.<sup>7</sup> The mileage on the vehicle when Complainant took it to the dealer on this occasion was 31,870.<sup>8</sup> The vehicle was in Sewell's possession for six (6) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant stated that she attempted to trade in the vehicle for a different vehicle. In conjunction with the trade-in discussions, Respondent's technical support engineer, David Kaiser, inspected the vehicle. The inspection was performed on December 9, 2017, at Sewell. Mr. Kaiser determined that there were no issues with the vehicle and it was operating as designed.<sup>9</sup> The vehicle's mileage at the time of inspection was 33,441.<sup>10</sup> Complainant did not trade in the vehicle as a deal could not be completed.

Complainant started checking the vehicle's engine on a weekly basis to see if there was oil on it. Complainant testified that she never actually saw oil leaking from beneath the vehicle. She only saw the oil when it was on the engine.

Complainant found oil on the engine in May of 2018. She took the vehicle to Classic BMW (Classic) in Plano, Texas on May 19, 2018, in order to have her concerns addressed. The technician verified that the vehicle's valve cover gasket was leaking oil and replaced the gasket.<sup>11</sup> The mileage on the vehicle when Complainant delivered it to the dealer on this occasion was 38,732.<sup>12</sup> The vehicle was in Classic's possession for two (2) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

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<sup>6</sup> Complainant Ex. 8, Repair Order dated October 24, 2017.

<sup>7</sup> *Id.*

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

<sup>9</sup> Complainant Ex. 9, Repair Order dated December 9, 2017.

<sup>10</sup> *Id.*

<sup>11</sup> Complainant Ex. 10, Repair Order dated May 19, 2018.

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

On September 6, 2018, Complainant sent a letter to Respondent advising them of her dissatisfaction with the vehicle.<sup>13</sup>

On October 9, 2018, Complainant took the vehicle to Sewell for repair for an engine oil leak. Sewell's technician found that the vehicle's valve cover gasket was leaking.<sup>14</sup> Since the gasket had been replaced several times, the technician replaced the vehicle's valve cover in order to address the issue.<sup>15</sup> The vehicle's mileage on this occasion was 43,869.<sup>16</sup> The vehicle was in Sewell's possession for one (1) day. Complainant received a loaner vehicle while her vehicle was being repaired.

Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles (Department) on October 17, 2018.<sup>17</sup>

Complainant testified that she has not noticed an oil leak in the vehicle since the repair performed on October 9, 2018. She stated that the vehicle's low oil warning light has never illuminated. She also stated that she has never seen oil leaking from the bottom of the vehicle.

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

### **1. Mike Sandler's Testimony**

Mike Sandler, After-Sales Area Manager, testified for Respondent. He has worked in the automotive industry for 34 years. Mr. Sandler has worked in the technical side of the industry and has had prior Automobile Service Excellence (ASE) certifications. Those certifications have lapsed and he does not currently have any ASE certifications.

Mr. Sandler stated that the vehicle was inspected by Sewell's shop foreman on October 9, 2018. At that time, the vehicle's valve cover was replaced in order to prevent the vehicle from continuing to leak oil from the valve cover gasket. Mr. Sandler verified that the vehicle's valve cover gasket was replaced three (3) times prior to the October 9, 2018 repair.

Mr. Sandler testified that it is not uncommon for gaskets or seals to leak on occasion. He stated that the concern was minor and did not affect the usage of the vehicle.

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<sup>13</sup> Complainant Ex. 13, Letter to BMW of North America dated September 6, 2018.

<sup>14</sup> Respondent Ex. 1, Repair Order dated October 9, 2018.

<sup>15</sup> *Id.*

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

<sup>17</sup> Complainant Ex. 1, Lemon Law complaint dated October 17, 2018.

## 2. David Kaiser's Testimony

David Kaiser, Technical Support Engineer, testified for Respondent. He has worked in the automotive industry for 34 years. Mr. Kaiser has worked for Respondent for the past 16 years. He's been in his current position for 14 years. Mr. Kaiser is an Automobile Service Excellence (ASE) Certified Master Technician.

Mr. Kaiser testified that he inspected the vehicle on December 9, 2017, at Sewell. The inspection was conducted because of a request from Respondent's customer relations department to inspect the vehicle for an oil leak. The inspection was also performed due to Complainant's desire to trade in the vehicle for another one.<sup>18</sup> Mr. Kaiser and Sewell's shop foreman looked at the vehicle's engine and did not see evidence of a leak. They raised the vehicle on a hoist and did not observe an active leak. Mr. Kaiser stated that the vehicle's engine looked clear and dry. Mr. Kaiser then allowed the vehicle to idle for a while and inspected the engine again and did not find evidence of an oil leak. Mr. Kaiser indicated that he removed the engine cover and saw a "slight perspiration" of film near the valve cover gasket, but did not see an active leak. Mr. Kaiser determined that the vehicle was operating as designed at the time.<sup>19</sup>

Mr. Kaiser stated that at no time had Complainant indicated that any warning lights or warning messages illuminated on the vehicle to indicate a problem with the vehicle's oil pressure or oil levels.

### D. Analysis

Occupations Code § 2301.606 requires that a Complainant file a Lemon Law complaint with the Department within six (6) months after the earliest of (a) the expiration of the express warranty period; or (b) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the vehicle to an owner in order to be allowed repurchase or replacement of the vehicle as possible remedies.

In the present case, Complainant purchased the vehicle on May 30, 2016, when the vehicle's mileage was 9,648. The repair orders indicate that Complainant took the vehicle for repair to Respondent's authorized dealer on December 9, 2017, when the vehicle's mileage was 33,441.<sup>20</sup> The mileage figures indicate that Complainant drove the vehicle an average of 43 miles per day during the first year and a half of ownership. Factoring in the average miles driven per day by

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<sup>18</sup> Complainant Ex. 9, Repair Order dated December 9, 2017.

<sup>19</sup> *Id.*

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

Complainant, she would have exceeded 24,000 miles driven from the date of purchasing the vehicle on or about December 14, 2017, when the vehicle's total mileage would have been approximately 33,648. Complainant would have had to have filed her complaint for Lemon Law relief by June 17, 2018, in order to be allowed to request repurchase or replacement of the vehicle as a remedy. Complainant did not file the complaint until October 17, 2018. As such, the only remedy available to complaint is repair of the vehicle.

In order to determine whether Complainant has a remedy under Section 2301.204 of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent. The evidence provided by the parties establishes that the vehicle did leak oil from the valve cover gasket and that several efforts were made to repair the leak with the final repair being performed on October 9, 2018, at which time the vehicle's valve cover was replaced. The Hearings Examiner must therefore hold that the issue has been repaired as evidenced by the fact that Complainant has not observed oil accumulating on the engine as she had prior to October of 2018.

Complainant's request for repair relief is denied.

### III. FINDINGS OF FACT

1. Olga Vasquez (Complainant) purchased a new 2015 BMW 320i on May 30, 2016, from BMW of Dallas, Texas, with mileage of 9,648 at the time of delivery.
2. The manufacturer of the vehicle, BMW of North America LLC (Respondent), issued a bumper-to-bumper warranty for the vehicle which provides coverage for four (4) years or 50,000 miles from the original in-service date, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 51,186.
4. At the time of hearing the vehicle's warranty had expired.
5. In early 2017, Complainant noticed an accumulation of oil on top of the vehicle's engine.
6. Complainant took the vehicle for repair to Respondent's authorized dealers due to her concerns that the vehicle had an oil leak on the following dates:
  - a. April 29, 2017, at 23,931 miles;
  - b. October 24, 2017, at 31,870 miles;
  - c. May 19, 2018, at 38,732 miles; and
  - d. October 9, 2018, at 43,869 miles.

7. On April 29, 2017, BMW of Dallas' service technician replaced the vehicle's valve cover gasket in order to resolve Complainant's concern.
8. On October 24, 2017, Sewell BMW of Grapevine's (Sewell) service technician replaced the vehicle's valve cover gasket in order to resolve Complainant's concern.
9. On May 19, 2018, Classic BMW's (located in Plano, Texas) service technician replaced the vehicle's valve cover gasket in order to resolve Complainant's concern.
10. On October 9, 2018, Sewell's service technician replaced the vehicle's valve cover in order to address the oil leak issue.
11. Complainant has not observed oil on the vehicle's engine since before October 9, 2018.
12. On or about December 14, 2017, the vehicle's mileage exceeded 24,000 since the date Complainant purchased the vehicle. The vehicle's total mileage at this time was approximately 33,648.
13. On October 17, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On January 25, 2019, 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.
15. The hearing in this case convened and the record closed on April 24, 2019, in Carrollton, Texas before Hearings Examiner Edward Sandoval. Olga Vasquez, Complainant, appeared and represented herself at the hearing. Respondent was represented by Mike Sandler, After-Sales Area Manager. Also present and testifying for Respondent was David Kaiser, Technical Support Engineer. Vincent Hudson, Service Manager for BMW of Dallas, was present as an observer.

**CONCLUSIONS OF LAW**

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.204(a) (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 did not file the Lemon Law complaint until more than six (6) months from the date that the vehicle's mileage exceeded 24,000 from the date of purchase. Tex. Occ. Code § 2301.606(d).
7. Complainant failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
8. Complainant's vehicle does not qualify for repair relief. 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 §§ 2301.204 is hereby **DISMISSED**.

**SIGNED May 21, 2019.**



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