

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0013060 CAF**

**DAVID HUMPHREY,
Complainant**

v.

**LEXUS, A DIVISION OF TOYOTA
MOTOR SALES, INC.,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

David Humphrey (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2017 Lexus GX 460. Complainant asserts that the vehicle has a defect or nonconformity which causes the backup camera picture to appear grainy and difficult to see at night. Lexus, a Division of Toyota Motor Sales, Inc. (Respondent) argued that the vehicle is operating as designed, does not have a defect, and that no relief is warranted. The hearings examiner concludes that the vehicle 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 originally convened on November 15, 2019, in Beaumont, Texas before Hearings Examiner Edward Sandoval. David Humphrey, Complainant, appeared and represented himself. Lexus, a Division of Toyota Motor Sales, Inc., Respondent, was represented by Matthew Hennessey, Field Technical Specialist. The hearing was continued to January 6, 2020, to allow Respondent an opportunity to repair the vehicle to Complainant's satisfaction. Prior to the new hearing date, Complainant requested a continuance in the hearing due to a work conflict. The hearings examiner issued Order No. 4: Granting Motion for Continuance and Scheduling New Hearing Date on December 23, 2019, which informed the parties that the hearing was rescheduled for January 17, 2020.

The hearing reconvened telephonically on January 17, 2020 before Hearings Examiner Edward Sandoval. David Humphrey, Complainant, appeared and represented himself. Matthew Hennessey, Field Technical Specialist, appeared and represented Lexus, a Division of Toyota Motor Sales, Inc., Respondent. The hearing record was closed on January 17, 2020.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have provided written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to these 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.⁶

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has 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: (1) at least one attempt was made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2)

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

at least one other repair attempt was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.⁷

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁸

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2017 Lexus GX 460 on June 28, 2017, from Westside Lexus (Westside) in Houston, Texas.⁹ The vehicle’s mileage at the time of delivery was 18.¹⁰ Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever comes first.¹¹ On the date of the initial hearing the vehicle’s mileage was 5,382. At the time of the hearing the vehicle’s warranty was still in effect.

Complainant testified that when the vehicle’s backup camera is used at night, it broadcasts a grainy, hard to see image to the video screen. Complainant said that the picture is very grainy and it’s hard to make out what’s behind the vehicle when he’s backing up. There is no problem with the picture quality during the day. Complainant first noticed the issue the first night he owned the vehicle when he tried to back the vehicle out of his mother’s driveway. Complainant testified that he called Westside’s salesperson who sold him the vehicle to complain about the picture. The salesperson (Alex Winnicki) informed Complainant that there was probably nothing that could be done about the picture quality.

Complainant stated that he was unhappy with the backup camera’s picture quality and decided not to drive the vehicle very often. Complainant waited to take the vehicle to a dealer for repair because the nearest dealership was approximately two (2) hours from his home and because of his work schedule. Complainant took the vehicle to Westside for repair for the backup camera and other issues on July 20, 2018, more than a year after purchasing the vehicle.¹² Westside’s

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B). Texas Occupations Code § 2301.605(a)(3) provides a third 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, this section requires that the vehicle be out of service for repair for a 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.

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Complainant Ex. 1, Motor Vehicle Buyer’s Order dated June 28, 2017.

¹⁰ Complainant Ex. 2, Odometer Disclosure Statement dated June 28, 2017.

¹¹ Complainant Ex. 8, Excerpts from Lexus’ Warranty Manual, p. 1.

¹² Complainant actually testified that he took the vehicle to Westside for repair prior to July 20, 2018, but did not recall the date when he took it in nor did he have a repair order for the visit. Respondent did not have a record of Complainant taking the vehicle for repair prior to July 20, 2018.

indicated that he could not duplicate the concern.¹³ The technician took the vehicle into a dark garage to try to recreate the problem.¹⁴ In addition, the technician compared the image from Complainant's vehicle with the image from another similar vehicle under similar circumstances.¹⁵ The technician determined that the images were similar and that the image was normal for this type of vehicle.¹⁶ No repairs were performed for the issue at the time, except to clean the backup camera lens.¹⁷ The vehicle's mileage on this occasion was 3,059.¹⁸ Complainant stated that the vehicle was in Westside's possession for a day. Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that he took the vehicle to the dealer for repair for the issue on other occasions. However, he could not remember the dates when he took it for repair. Complainant stated that he did not receive any repair invoices for any other repairs to the vehicle.

Complainant mailed a letter to Respondent on May 20, 2019, in which he indicated his dissatisfaction with the vehicle.¹⁹ Complainant then filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on July 5, 2019, in which he complained about the grainy picture from the backup camera.²⁰

Complainant stated that he complained to Respondent's customer care center several times about the picture quality from the backup camera, but no satisfactory resolution was ever provided by Respondent's representatives. In addition, Complainant spoke to Mr. Winnicki on more than one occasion about the issue. Complainant testified that Mr. Winnicki recommended an adjustment to the camera that he felt might possibly help. However, the adjustment had already been made to the camera.

Complainant stated that the picture quality from the vehicle's backup camera has remained unchanged. He's not happy with the picture and feels that it could be a safety issue. He stated that he doesn't want to back up in the vehicle and hit something or run over someone because the camera's picture quality is bad. Complainant stated that he has stopped driving the vehicle for this reason.

¹³ Respondent Ex. 4, Repair Order dated July 20, 2018.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 5, Letter to Akio Toyoda, Chairman of the Board, Toyota dated May 20, 2019.

²⁰ Complainant Ex. 6, Lemon Law Complaint dated July 5, 2019.

C. Respondent's Evidence and Arguments

Bill New, Field Technical Specialist, testified for Respondent at the hearing. Mr. New testified that he has worked in the automotive industry for 30 years. He began working for Respondent approximately 23 years ago. He was initially hired as a dealer technical specialist and worked in that position for three years. Mr. New then took a position as a field product engineer with Respondent. He worked in this position for 12 years, before returning to the position of field technical specialist. He has been an Automotive Service Excellence (ASE) Master Certified Technician for the past 20 years.

Mr. New testified that he inspected the vehicle on July 20, 2018, at Westside. He stated that he happened to be at the dealership when Complainant took the vehicle for repair. Westside's service technician informed Mr. New of the complaint and Mr. New decided to inspect the vehicle's backup camera to ascertain if there was a problem with it. Mr. New stated that he took the vehicle into a dark parking garage to see how the picture from the backup camera looked. Mr. New stated that he then took a different, similar vehicle to the garage to compare the picture with Complainant's vehicle's picture. Mr. New stated that the images were nearly identical. Mr. New determined that the backup camera was operating as designed. No repair was performed to the vehicle at the time, other than cleaning the camera lens.

Mr. New also testified that Respondent has no record of any other repairs to the vehicle's backup camera. An appointment was scheduled for Mr. New to inspect the vehicle again on November 28, 2019, but Complainant did not take the vehicle to the dealer on the scheduled date.

On the date of the original hearing in this matter (November 15, 2019), Mr. New suggested putting a different type of light bulb (LED) in the rear of the vehicle in order to provide additional light to the camera to see if the picture improved. However, Respondent's engineers advised Mr. New not to install the different bulb as it could have an adverse affect on the vehicle, including possibly melting the bulb housing.

Mr. New stated that Respondent's trucks have the worst backup camera image quality of Respondent's vehicles. He feels that the graininess in the image shown on the backup camera screen is a characteristic of the vehicle and that there is no repair for the issue.

D. Analysis

Under the 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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or 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 or condition, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Both parties agree that the picture quality from the vehicle's backup camera is grainy at night. There is no problem with the picture during the daytime.

A manufacturing defect is an isolated aberration occurring only in those vehicles not produced according to the manufacturer's specifications. A defectively manufactured vehicle has a flaw because of some error in making it, such as incorrect assembly or the use of a broken part. Unlike manufacturing defects, issues that do not arise from manufacturing, such as characteristics of the vehicle's design (which exists before manufacturing) or dealer representations and improper dealer repairs (which occur after manufacturing) are not warrantable defects. Design characteristics result from the vehicle's specified design and not from any error during manufacturing.²¹ In sum, because the warranty only covers manufacturing defects, the Lemon Law does not apply to design characteristics or design defects.

The evidence indicates that the issue complained of is a design issue with the vehicle. As such, the hearings examiner must find that there is no defect with the vehicle itself. No evidence was presented to indicate that the issue *substantially* impairs the use or market value of the vehicle and it does not create a serious safety hazard. Therefore, repurchase or replacement relief for Complainant is not warranted.

On the date of the initial hearing, the vehicle's mileage was 5,382 and it remains covered under Respondent's warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty.

Complainant's request for repurchase or replacement relief is denied.

²¹ *Torres v. Caterpillar, Inc.*, 928 S.W.2d 233, 239 (Tex. App.—San Antonio 1996), writ denied, (Feb. 13, 1997).

III. FINDINGS OF FACT

1. David Humphrey (Complainant) purchased a new 2017 Lexus GX 460 on June 28, 2017, from Westside Lexus (Westside) in Houston, Texas with mileage of 18 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Lexus a Division of Toyota Motor Sales, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for four (4) years or 50,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 5,382.
4. At the time of hearing the vehicle's warranty was still in effect.
5. Complainant feels that the vehicle's backup camera has a defect or nonconformity which causes the picture to be grainy and difficult to see at night.
6. Complainant took the vehicle for repair to Respondent's authorized dealer, Westside, on July 20, 2018, in order to address his concern with the picture from the backup camera appearing grainy at night.
7. The vehicle's mileage on July 20, 2018, was 3,059.
8. During the repair visit described in Findings of Fact #6, Westside's service technician inspected the vehicle, compared the camera's picture with that of a similar vehicle, and determined that the image was normal for the vehicle's camera. No repair was performed at the time.
9. On May 20, 2019, Complainant mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.
10. On July 5, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On September 23, 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.
12. On November 15, 2019, during the first hearing scheduled for the Lemon Law complaint, Complainant agreed to allow Respondent an opportunity to repair the complained of issue.
 13. Complainant was scheduled to deliver the vehicle to Westside for repair on November 28, 2019. Complainant did not deliver the vehicle as scheduled, no repair was performed, and the appointment was not rescheduled.
 14. The hearing in this case originally convened on November 15, 2019, in Beaumont, Texas before Hearings Examiner Edward Sandoval. David Humphrey, Complainant, appeared and represented himself. Lexus, a Division of Toyota Motor Sales, Inc., Respondent, was represented by Matthew Hennessey, Field Technical Specialist. The hearing was continued to January 6, 2020, allow Respondent an opportunity to repair the vehicle to Complainant's satisfaction. Prior to the new hearing date, Complainant requested a continuance in the hearing due to a work conflict. The hearings examiner issued Order No. 4: Granting Motion for Continuance and Scheduling New Hearings Date on December 23, 2019, which informed the parties that the hearing was rescheduled for January 17, 2020. The hearing reconvened telephonically on January 17, 2020 before Hearings Examiner Edward Sandoval. David Humphrey, Complainant, appeared and represented himself. Matthew Hennessey, Field Technical Specialist, appeared and represented Lexus, a Division of Toyota Motor Sales, Inc., Respondent. The hearing record was closed on January 17, 2020.

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 § 2301.604.
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 replacement or repurchase. Tex. Occ. Code § 2301.604.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED January 21, 2020.



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