



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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>6</sup>

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 the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.<sup>7</sup>

“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.<sup>8</sup>

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

<sup>2</sup> *Id.*

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

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> Tex. Occ. Code § 2301.605(a)(1)(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. 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.

<sup>7</sup> Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

<sup>8</sup> Tex. Occ. Code § 2301.601(4).

## B. Complainant's Evidence and Arguments

### 1. Ian Shores' Testimony

Complainant leased a new 2017 Cadillac XT5 from Crest Cadillac (Crest) in Frisco, Texas on November 30, 2017, with mileage of 6,033 at the time of delivery.<sup>9</sup> The lease was assigned to Intervenor at the time of the lease signing.<sup>10</sup> Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle for four (4) years or 50,000 miles, whichever occurs first. The vehicle's mileage on the date of hearing was 22,993. At this time, the vehicle's warranty is still in effect.

Complainant testified that he feels that the vehicle is defective because the air conditioner blows hot air and doesn't cool the vehicle. The issue first arose on June 29, 2018. On that date, Complainant pulled the vehicle out of his garage and noticed that the air conditioner was blowing warm air. He immediately drove the vehicle to Crest for repair for the issue. He was informed by Crest's representative that there was an issue with the air conditioner's damper and that the issue was resolved after about an hour at the dealer. The vehicle was returned to Complainant and he drove away. After driving about a mile, Complainant noticed that the air conditioner was still blowing hot air, so he turned around and went back to Crest for repair for the issue. Crest's service technician determined that the air conditioning system was low on Freon and recharged the system. The vehicle's mileage on this occasion was 10,867.<sup>11</sup> The vehicle was in Crest's possession for two (2) days. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant picked up the vehicle from Crest, but soon afterwards noticed that the air conditioner was still blowing warm air. He took the vehicle to Crest for the issue on July 2, 2018. Crest's service technician found that the vehicle's air conditioner's actuators was not opening completely.<sup>12</sup> The technician recalibrated the actuator in order to resolve the issue.<sup>13</sup> The vehicle's mileage on this occasion was 10,913.<sup>14</sup> The vehicle was in Crest's possession until July 3, 2018, during this repair. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that the vehicle's air conditioner worked properly until early September of 2018, when it started blowing warm air. He took the vehicle to Crest on September 4, 2018, in

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<sup>9</sup> Complainant Ex. 1, Closed End Motor Vehicle Lease dated November 30, 2017.

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

<sup>11</sup> Complainant Ex. 3, Repair Order dated June 29, 2018.

<sup>12</sup> Complainant Ex. 4, Repair Order dated July 2, 2018.

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

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

order to have the air conditioner repaired. Crest's service technician determined that the air conditioner was low on Freon and performed a Freon leak test over the weekend.<sup>15</sup> The technician was unable to find a leak and recharged the system in order to address the issue of the air conditioner blowing warm air.<sup>16</sup> The vehicle's mileage on this occasion was 11,836.<sup>17</sup> The vehicle was in Crest's possession until September 11, 2018. Complainant was provided with a loaner vehicle while the repairs were being performed.

Complainant testified that the vehicle's air conditioner worked correctly after the September 4, 2018 repair. However, in July of 2019, Complainant again experienced an issue with the air conditioner blowing hot air and not cooling the vehicle. Complainant took the vehicle to Crest on July 10, 2019, in order to have the air conditioner repaired. Crest's service technician determined that the air conditioning system was low on Freon. The system was recharged and a hose to connect to the air conditioner compressor was ordered for the vehicle because it was determined that the original hose was leaking.<sup>18</sup> (The hose was never installed.) The vehicle's mileage on this occasion was 17,891.<sup>19</sup> The vehicle was in the dealer's possession for one (1) day during this repair. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant testified that the air conditioner worked properly from July 11, 2019 until October of 2019 when it started to blow warm air again. Complainant took the vehicle to Crest for repair for the issue on October 8, 2019. Crest's technician determined that the air conditioner's evaporator core was leaking Freon.<sup>20</sup> The technician replaced the evaporator core and recharged the vehicle's air conditioning system in order to resolve the concern.<sup>21</sup> The vehicle's mileage on this occasion was 19,690.<sup>22</sup> The vehicle was in Crest's possession for four (4) days during the repair. Complainant received a loaner vehicle while his vehicle was being repaired.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 11, 2019.<sup>23</sup>

Complainant testified that the vehicle's air conditioner has been working properly since the repair performed on October 8, 2019. He has not been driving the vehicle much, but has not noticed an issue with the air conditioner.

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<sup>15</sup> Complainant Ex. 5, Repair Order dated September 4, 2018.

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

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

<sup>18</sup> Complainant Ex. 8, Texts between Complainant and Crest's Service Advisor, p. 6.

<sup>19</sup> Complainant Ex. 6, Repair Order dated July 10, 2019.

<sup>20</sup> Complainant Ex. 7, Repair Order dated October 8, 2019.

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

<sup>22</sup> *Id.*

<sup>23</sup> Complainant Ex. 2, Lemon Law Complaint dated October 11, 2019.

Complainant testified that he never sent written notice to Respondent that he was dissatisfied with the vehicle. Respondent never contacted him to ask for an inspection of the vehicle.

## **2. Susan Shores' Testimony**

Susan Shores, Complainant's wife, testified in the hearing. She stated that she is fully aware of the issues with the vehicle's air conditioning system. Twice she insisted to Crest's service advisor that Respondent's representatives inspect the vehicle to determine what was wrong with the air conditioner. At no time was an inspection of the vehicle by Respondent's representatives ever scheduled. She was never given a reason why no inspection was ever scheduled or performed.

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

Carlin Davis, Business Resource Manager, testified for Respondent. Mr. Davis stated that he has been working for thirteen and a half years (13 ½) for Respondent. He attended Southern Illinois School of Technology and is an Automotive Service Excellence (A.S.E.) Certified Master Technician.

He stated that Respondent has provided a four (4) year or 50,000 mile bumper-to-bumper warranty for the vehicle. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain.

Mr. Davis stated that all of the repairs performed to the vehicle's air conditioning system were covered under the vehicle warranty. He also stated that Respondent never received written notification from Complainant that he was dissatisfied with the vehicle.

Mr. Davis testified that Respondent did not request a final inspection of the vehicle because he felt that the vehicle had been repaired on October 8, 2019.

### **D. Intervenor's Evidence and Arguments**

Carrie Matthies, paralegal, testified for Intervenor. She stated that the vehicle had been leased for three (3) years by Complainant. The lease was originally signed by one of Crest's representatives and immediately assigned to Intervenor.

### **E. 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.

Complainant leased the vehicle on November 30, 2017, and presented the vehicle to Respondent's authorized dealer for repair due to the air conditioner blowing warm air and not cooling the vehicle on the following dates: June 29, 2018; July 2, 2018; September 4, 2018; July 10, 2019, and October 8, 2019. The evidence indicates that the vehicle's air conditioner was repaired after the evaporator core was replaced on October 8, 2019. The issue has not arisen since the final repair on that date.

Occupations Code § 2301.603 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." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.<sup>24</sup> 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, repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for four (4) years or 50,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 22,993 and it remains covered under the warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

### III. FINDINGS OF FACT

1. Ian Shores (Complainant) leased a new 2017 Cadillac XT5 on November 30, 2017, from Crest Cadillac (Crest) in Frisco, Texas, with mileage of 6,033 at the time of delivery.

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<sup>24</sup> Tex. Occ. Code § 2301.605.

2. The vehicle lease was assigned to Acar Leasing, Ltd. (Intervenor) on the date of lease signing, November 30, 2017.
3. The manufacturer of the vehicle, General Motors LLC (Respondent), issued a bumper-to-bumper warranty providing coverage for the vehicle for four (4) years or 50,000 miles.
4. The vehicle's mileage on the date of hearing was 22,993.
5. At the time of hearing the vehicle's warranty was still in effect.
6. In June of 2018, Complainant noticed that the vehicle's air conditioner was blowing warm air and not cooling the vehicle.
7. Complainant took the vehicle to Respondent's authorized dealer, Crest, for repair for the air conditioning issue on the following dates:
  - a. June 29, 2018, at 10,867 miles;
  - b. July 2, 2018, at 10,913 miles
  - c. September 4, 2018, at 11,836 miles;
  - d. July 10, 2019, at 17,891 miles; and
  - e. October 8, 2019, at 19,690 miles.
8. On June 29, 2018, Crest's service technician indicated that there was a problem with the vehicle's air conditioning system's damper and repaired it.
9. After the repair described in Findings of Fact #8, Complainant drove away and returned after driving a mile because the air conditioner was still blowing warm air. The technician then determined that the Freon level was low and recharged the system.
10. On July 2, 2018, Crest's service technician determined that the driver's side actuator was not opening all of the way and recalibrated the actuator in order to address the issue with the vehicle's air conditioner.
11. On September 4, 2018, Crest's service technician found that the air conditioning system's Freon level was low, checked for a leak and was unable to find one. The technician then recharged the vehicle's air conditioning system in order to address the issue.
12. On July 10, 2019, Crest's service technician determined that the vehicle's air conditioning system was low on Freon and recharged the system. In addition, the technician felt that the hose to the air conditioner compressor was leaking and ordered a new hose to replace it.

13. On October 8, 2019, Crest's service technician determined that the air conditioning system's evaporate core was leaking Freon and replaced the core in order to address the issue that the air conditioner was not cooling the vehicle.
14. On October 11, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. On January 6, 2020, 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 telephonically on April 8, 2020, before Hearings Examiner Edward Sandoval. Complainant, Ian Shores, represented himself in the hearing. His wife, Susan Shores, was present and offered testimony. Carlin Davis, Business Resource Manager, represented Respondent, General Motors LLC, in the hearing. Carrie Matthies, paralegal, represented Intervenor, Acar Leasing, Ltd., in the hearing. The hearing record closed on April 8, 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 repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED** April 14, 2020



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