

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0008241 CAF**

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| SYED ALI, Complainant | § § § § § § § | BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS |
| v. | | |
| GENERAL MOTORS LLC, Respondent | | |

DECISION AND ORDER

Syed Ali (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2020 Chevrolet Camaro. Complainant asserts that the vehicle has a defect or nonconformity that causes the vehicle’s check engine light (CEL) to intermittently illuminate. 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 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 telephonically on September 2, 2020, before Hearings Examiner Edward Sandoval. Syed Ali, Complainant, appeared and was represented by his nephew, Muadh Hussain, in the hearing. Mr. Hussain also testified in the hearing. Clifton Green, Business Resource Manager, appeared and represented Respondent, General Motors LLC, in the hearing. Also present and testifying for Respondent was Bruce Morris, Field Service Engineer. The hearing record closed on September 2, 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

¹ Tex. Occ. Code § 2301.604(a).

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 mailed 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 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.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 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.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

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). 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.

⁷ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

B. Complainant's Evidence and Arguments

Complainant purchased a new 2020 Chevrolet Camaro from Parkway Chevrolet (Parkway) in Tomball, Texas on January 15, 2020, with mileage of 66 at the time of delivery.^{9,10} Respondent issued a new vehicle limited warranty which provides coverage for the vehicle for three (3) years or 36,000 miles from the date of delivery, whichever occurs first. In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for five (5) years or 60,000 miles. The vehicle's mileage on the date of hearing was 7,421. At the time of hearing the vehicle's warranties were still in effect.

Complainant purchased the vehicle for his nephew, Muadh Hussain, who is the primary driver of the vehicle. Mr. Hussain testified that he and Complainant test drove the vehicle prior to purchasing it and that they did not notice any issues with the vehicle at the time of the test drive.

Mr. Hussain testified that a few days after the purchase of the vehicle, he noticed the vehicle's check engine light (CEL) illuminate three (3) to five (5) times. Mr. Hussain took the vehicle to Parkway for repair for the issue on January 18, 2020. Parkway's service technician test drove the vehicle, but was unable to find a problem with the vehicle.¹¹ The vehicle's mileage at the time was 198.¹² The vehicle was in the dealer's possession until January 21, 2020. Complainant was not provided a loaner vehicle while the vehicle was in Parkway's possession.

Mr. Hussain testified that he picked up the vehicle from Parkway and as he drove away from the dealership, the CEL illuminated. Mr. Hussain returned the vehicle to Parkway on January 24, 2020, for repair for the issue of the CEL illuminating. In an attempt to resolve the issue, Parkway's service technician swapped the vehicle's #1 cylinder coil with the #2 coil.¹³ Mr. Hussain was informed that the CEL illuminated due to the vehicle's engine misfiring. The vehicle's mileage at the time was 363.¹⁴ The vehicle was in Parkway's possession for four (4) days. Complainant was again not provided with a loaner vehicle.

Mr. Hussain stated that the CEL was not illuminated when he picked up the vehicle from Parkway. However, the light turned back on about a week later and stayed on until he took the vehicle to Parkway for repair on February 13, 2020. Parkway's service technician indicated that the issue was intermittent.¹⁵ Mr. Hussain testified that he is unsure if any repairs were actually

⁹ Complainant Ex. 2, Retail Installment Sales Contract dated January 15, 2020.

¹⁰ Complainant Ex. 3, Odometer Disclosure Statement dated January 15, 2020.

¹¹ Complainant Ex. 4, Repair Order dated January 18, 2020.

¹² *Id.*

¹³ Complainant Ex. 5, Repair Order dated January 24, 2020.

¹⁴ *Id.*

¹⁵ Complainant Ex. 6, Repair Order dated February 13, 2020. The repair order is unclear as to whether any work was actually performed during this repair visit.

performed by the technician. The vehicle's mileage on this occasion was 1,079.¹⁶ The vehicle was in Parkway's possession until February 19, 2020, during this repair visit. Complainant was not provided with a loaner vehicle while the vehicle was being repaired.

Mr. Hussain testified that he was not sure if the CEL was illuminated when he picked up the vehicle. However, he did take the vehicle back to Parkway for repair for the CEL issue on February 18, 2020. Parkway's service technician road tested the vehicle several times, but could not recreate the issue.¹⁷ In addition, he could not find any stored diagnostic codes on the vehicle's computers.¹⁸ As a result, no repair was performed at the time. The vehicle's mileage on this occasion was 1,376.¹⁹ The vehicle was in Parkway's possession until February 19, 2020. Complainant was not provided with a loaner vehicle during this repair visit.

Complainant filed a Lemon Law complaint regarding the vehicle with the Texas Department of Motor Vehicles (Department) on February 21, 2020.²⁰

Mr. Hussain testified that he took the vehicle to Parkway for repair on March 3, 2020, because the CEL illuminated again. Parkway's service technician replaced the vehicle's valve rocker arm oil control valve in order to address the concern with the vehicle.²¹ The vehicle's mileage at the time was 1,597.²² The vehicle was in Parkway's possession until March 16, 2020, during this repair visit. Complainant was not provided a loaner vehicle during this visit because the primary driver of the vehicle was under the age of 21.

Mr. Hussain testified that the vehicle's CEL has not illuminated since the valve rocker arm was replaced on March 3, 2020.

Mr. Hussain also testified that he began having an issue with low oil pressure in the vehicle. He took the vehicle to Parkway for repair for the low oil pressure issue on April 18, 2020. Parkway's service technician began an oil consumption test to determine whether the vehicle was using an inordinate amount of oil.²³ The vehicle's mileage at the time was 2,620.²⁴ The vehicle was returned to Complainant the same day.²⁵

¹⁶ *Id.*

¹⁷ Complainant Ex. 7, Repair Order dated February 18, 2020, p. 2.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 1, Lemon Law Complaint dated February 21, 2020.

²¹ Complainant Ex. 8, Repair Order dated March 3, 2020, p. 2.

²² *Id.*

²³ Complainant Ex.9, Repair Order dated April 18, 2020.

²⁴ *Id.*

²⁵ *Id.*

On June 30, 2020, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle.

Mr. Hussain testified that the vehicle's engine was replaced with a brand new GM engine by Respondent on July 14, 2020, as a result of the engine using oil excessively. Mr. Hussain also stated that the vehicle was inspected by Respondent's field service engineer (FSE), but he could not remember when this occurred.

Mr. Hussain stated that he has modified the vehicle. He had the muffler taken off of the vehicle on April 6, 2020, in order to amplify the exhaust noise. This modification was not performed by the dealer, but by a muffler shop.

The vehicle's CEL has not illuminated again since prior to the March 3, 2020 repair. Mr. Hussain testified that the vehicle has been driving all right since the final repair. He also stated that he only drives the vehicle when he needs to.

Mr. Hussain stated that he feels that the vehicle is not safe. He feels that it is not reliable. In addition, he stated that he feels that the vehicle has lost value due to the problems he has experienced with it.

C. Respondent's Evidence and Arguments

1. Clifton Green's Testimony

Clifton Green, Business Resource Manager, testified for Respondent. He stated that the vehicle has a three (3) year or 36,000 mile bumper-to-bumper new vehicle limited warranty. In addition, Respondent has provided a five (5) year or 60,000 mile powertrain warranty.

Mr. Green testified that Respondent feels that the vehicle is operating as designed. Mr. Green verified that Respondent had received written notice of an allegation that the vehicle had a defect from Complainant. As a result of that notice, a final inspection by Respondent's FSE was scheduled for the vehicle for August 18, 2020, at Parkway.

2. Bruce Morris' Testimony

Bruce Morris, Field Service Engineer, testified for Respondent at the hearing. Mr. Morris testified that he has worked in the automotive industry for 35 years. He has been in his current position for the past eleven (11) years. Mr. Morris testified that he is an Automotive Service Excellence (ASE) Master Certified Technician and a General Motors World Class Certified Technician.

Mr. Morris testified that he inspected the vehicle on August 18, 2020, at the Parkway Chevrolet location in Tomball, Texas. The inspection was performed as Respondent's final opportunity to cure. Mr. Morris stated that he performed a visual inspection of the vehicle prior to inspecting the vehicle's engine. Mr. Morris found that the vehicle had damage to the left rear wheel rim, that both rear tires were worn and had belts showing, and that the vehicle's exhaust had been modified. Mr. Morris made note of the fact that the vehicle's engine had been replaced prior to his inspection of the vehicle.²⁶ Mr. Morris testified that he did not find any stored diagnostic trouble codes (DTC's) on any of the vehicle's computers.²⁷ Mr. Morris then test drove the vehicle for 34 miles and did not indicate that there were any problems with the vehicle during the test drive.²⁸ Mr. Morris testified that he felt that the vehicle was operating as designed.

Mr. Morris also stated that the vehicle's rear tires need to be replaced, as he feels that they are not safe to drive on. Mr. Morris stated that it appears that the driver of the vehicle has been spinning the tires, causing the rear tires to wear out quicker than they should have. Mr. Morris also stated that modifying the vehicle's mufflers (they have been cut out and a straight pipe welded in) can affect the vehicle's engine and the vehicle's driveability.²⁹ Such an alteration could cause the vehicle's CEL to illuminate and can cause the engine to misfire. Mr. Morris also testified that the vehicle's CEL can illuminate due to any number of DTC's.

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 purchased the vehicle on January 15, 2020, and took the vehicle for service for issues with the vehicle's CEL intermittently illuminating on the following dates: January 18, 2020; January 24, 2020; February 13, 2020, February 18, 2020; and March 3, 2020. The evidence indicates that the vehicle was repaired for the issue of the CEL illuminating during the

²⁶ Respondent Ex. 1, Vehicle Legal Inspection dated August 18, 2020.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

March 3, 2020 repair visit. The oil consumption issue that occurred in March was corrected by replacement of the vehicle's engine on July 14, 2020, and was not included on the Lemon Law complaint and, thus, cannot be addressed by the hearings examiner. Complainant did not provide any evidence to substantiate that a problem continues to exist with the vehicle.

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.³⁰ 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 new vehicle limited warranty applicable to Complainant's vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 7,421 and the vehicle remains covered under the warranties. 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. Syed Ali (Complainant) purchased a new 2020 Chevrolet Camaro on January 15, 2020, from Parkway Chevrolet (Parkway) in Tomball, Texas, with mileage of 661 at the time of delivery.
2. The manufacturer or distributor of the vehicle, General Motors LLC (Respondent), issued a new vehicle limited warranty for the vehicle providing coverage for three (3) years or 36,000 miles, whichever comes first, from the date of delivery and a powertrain warranty providing coverage for the vehicle's powertrain for five years (5) or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 7,421.

³⁰ Tex. Occ. Code § 2301.605.

4. At the time of hearing the vehicle's warranties were still in effect.
5. Since purchasing the vehicle, Complainant has experienced several incidents where the vehicle's check engine light (CEL) illuminated. The issue occurred intermittently.
6. Complainant took the vehicle to Respondent's authorized dealer, Parkway, for repair for the issue described in Findings of Fact #5 on the following dates:
 - a. January 18, 2020, at 198 miles;
 - b. January 24, 2020, at 363 miles;
 - c. February 13, 2020, at 1,079 miles; and
 - d. February 18, 2020, at 1,376 miles.
7. On January 18, 2020, Parkway's service technician was unable to find an issue with the vehicle. No repair was performed at the time.
8. On January 24, 2020, Parkway's service technician swapped the vehicle's #1 and #2 cylinder coils to see if that resolved the issue of the vehicle's CEL illuminating.
9. On February 13, 2020, Parkway's service technician inspected the vehicle, but did not perform any repair for the issue regarding the vehicle's CEL illuminating.
10. On February 18, 2020, Parkway's service technician was not able to find any stored diagnostic trouble codes (DTC's) on the vehicle's computers and was unable to recreate the issue during test drives. No repairs were performed at the time.
11. On February 21, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On March 3, 2020, Complainant took the vehicle to Parkway for repair because the CEL illuminated. The vehicle's mileage was 1,597 at the time of repair.
13. During the repair visit described in Findings of Fact #12, Parkway's service technician replaced the vehicle's valve rocker arm oil control valve in order to resolve the issue.
14. The vehicle's CEL has not illuminated since the repair visit described in Findings of Fact #12 and #13.
15. On April 18, 2020, Complainant took the vehicle to Parkway because the vehicle was experiencing low oil pressure. The vehicle's mileage at the time was 2,620.

16. During the repair visit described in Findings of Fact #15, Parkway's service technician began an oil consumption test on the vehicle to determine if the vehicle was using oil excessively.
17. On June 30, 2020, Complainant mailed a letter to Respondent advising them that he was dissatisfied with the vehicle.
18. Respondent replaced the vehicle's engine with a new engine on July 14, 2020.
19. On June 8, 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.
20. Respondent's field service engineer, Bruce Morris, performed a final inspection and repair of the vehicle on August 18, 2020, at Parkway. The vehicle's mileage was 6,759 at the time.
21. Mr. Morris did not perform any repairs to the vehicle during the final inspection and determined that the vehicle was operating as designed.
22. There have been no other issues with the vehicle since the final inspection and repair performed on August 18, 2020.
23. The hearing in this case convened telephonically on September 2, 2020, before Hearings Examiner Edward Sandoval. Syed Ali, Complainant, appeared and was represented by his nephew, Muadh Hussain, in the hearing. Mr. Hussain also testified in the hearing. Clifton Green, Business Resource Manager, appeared and represented Respondent, General Motors LLC, in the hearing. Also present and testifying for Respondent was Bruce Morris, Field Service Engineer. The hearing record closed on September 2, 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 November 2, 2020



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