

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 21-0008799 CAF**

**MADONNA FARAG and PETER  
YOUSSEF,**

**Complainants**

v.

**GULF STATES TOYOTA, INC.,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Madonna Farag and Peter Youssef (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their new 2020 Toyota Sienna. Complainants assert that the vehicle has a defect or nonconformity which causes the vehicle's tires to wear out prematurely and that a middle seat guide pin is wearing abnormally. Gulf States Toyota, 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 Complainants are 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 on August 18, 2021, at the Texas Department of Motor Vehicles regional service center located in Carrollton, Texas before Hearings Examiner Edward Sandoval. Madonna Farag and Peter Youssef (Complainants) were represented by Ms. Farag. In addition, Nadir Habib, a friend, appeared and testified for Complainants. Gulf States Toyota, Inc. (Respondent) was represented by Dan Lee, Senior Manager Service Support. Also, present was Jay Hamdan, Arabic interpreter. The hearing record closed on August 18, 2021.

**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.<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

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

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

repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have provided 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>

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

Complainants purchased a new 2020 Toyota Sienna on September 21, 2020, from Toyota of Richardson (ToR) located in Richardson, Texas.<sup>9</sup> The vehicle’s mileage at the time of delivery

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<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).

<sup>9</sup> Complainant Ex. 2, Motor Vehicle Retail Installment Sales Contract dated September 21, 2020.

was 15.<sup>10</sup> Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain. On the date of hearing the vehicle's mileage was 40,558. At the time of hearing the new vehicle limited warranty had expired. However, the powertrain warranty was still in effect.

### 1. Madonna Farag's Testimony

Madonna Farag, co-Complainant, represented Complainants and testified in the hearing. She stated that Complainants feel that the vehicle has two (2) issues. Complainants feel that the vehicle's tires wear out prematurely and that a middle seat guide pin is wearing abnormally

Ms. Farag testified that she does not drive. However, she was present when Complainants purchased the vehicle and rode in the vehicle with Mr. Youssef when he test drove it prior to purchase. Ms. Farag indicated that the vehicle felt normal when they took the test drive.

Ms. Farag stated that sometime prior to November 23, 2020, she noticed that the middle seat in the middle row of seats was hard to put back in its position. She looked at the guide pin and saw that there was plastic that seemed damaged. She also felt that the pin looked like it had been welded on the seat. Complainants mentioned the issue to the service advisor when they took the vehicle to ToR for an oil change on November 23, 2020. Ms. Farag stated that during the same repair visit, Complainants informed the service advisor that the vehicle's tires were wearing abnormally. During the repair visit, ToR's service technician rotated and balanced all four (4) tires, in addition to the oil change.<sup>11</sup> The vehicle's mileage on this occasion was 9,938.<sup>12</sup> The vehicle was in the dealer's possession for about three (3) hours during the repair visit. Complainants were not provided with a loaner vehicle at the time.

Ms. Farag stated that Complainants took the vehicle to ToR for an oil change and maintenance on February 22, 2021. The dealer's service technician performed the oil change and inspected the vehicle. The technician determined that the vehicle's front tires needed to be replaced and that the tires needed to be aligned and balanced.<sup>13</sup> Ms. Farag stated that Complainants were not told why the tires and alignment were needed. Complainants decided not to purchase the tires or have the balance and alignment performed.<sup>14</sup> Ms. Farag also testified that Complainants informed the

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<sup>10</sup> Complainant Ex. 3, Odometer Disclosure Statement dated September 21, 2020.

<sup>11</sup> Complainant Ex. 5, Repair Order dated November 22, 2020. Although Complainants indicated that they raised the issues regarding the abnormal tire wear and the seat guide pin, the issues were not included on the repair order.

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

<sup>13</sup> Complainant Ex. 6, Repair Orders dated February 22, 2021.

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

service advisor about their concern with the middle seat's guide pin. However, the issue was not included on the repair invoice. The vehicle's mileage on this occasion was 20,138.<sup>15</sup> Complainants were not provided a loaner vehicle while their vehicle was being repaired.

Ms. Farag stated that the following day, February 23, 2021, the vehicle's left rear tire was flat. Complainants took the vehicle to ToR for the tire repair. The service technician found a puncture on the tire's outer shoulder, so the tire was not repairable.<sup>16</sup> Complainants had a new tire installed and balanced to replace the flat tire.<sup>17</sup> The vehicle's mileage at the time was 20,138.<sup>18</sup> Complainants did not receive a loaner vehicle while their vehicle was being repaired.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on April 1, 2021.<sup>19</sup> In addition, Complainants mailed a letter to Respondent on April 16, 2021, in which they indicated their dissatisfaction with the vehicle.<sup>20</sup>

Ms. Farag stated that Respondent did not respond to Complainants letter. She stated that Respondent's representatives refused to inspect the vehicle.

Complainants purchased three (3) new tires for the vehicle on June 14, 2021, from Plano Discount Tires.<sup>21</sup> However, Complainants did not have a wheel alignment performed at the time.

Ms. Farag stated that the vehicle has sustained damage on three (3) different occasions. On April 13, 2021, the vehicle was involved in a hit and run accident while parked in a hospital parking lot. On May 21, 2021, the vehicle was hit while parked on the street in front of Complainants' home. Approximately one (1) month prior to the hearing date of August 18, 2021, the vehicle was rear ended by another vehicle.

Ms. Farag testified that she feels that the vehicle is unsafe to drive. She also stated that approximately one (1) month prior to the hearing date, one of the vehicle's tires came apart. As a result, they put the vehicle's spare tire on the vehicle.

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

<sup>16</sup> Complainant Ex. 7, Repair Order dated February 23, 2021.

<sup>17</sup> *Id.* Complainants did not have to purchase a new tire as it was covered by a road hazard warranty purchased at the time of the vehicle purchase.

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

<sup>19</sup> Complainant Ex. 1, Lemon Law Complaint dated April 1, 2021.

<sup>20</sup> Complainant Ex. 11, Letter to Gulf States Toyota dated April 16, 2021.

<sup>21</sup> Complainant Ex. 9, Invoice from Plano Discount Tires dated June 14, 2021.

Ms. Farag testified that Mr. Youssef has used the vehicle as a food delivery vehicle in the past which has resulted in the high mileage readings.

## 2. Nadir Habib's Testimony

Nadir Habib, Complainants' friend, testified in the hearing. Mr. Habib testified that he has driven the subject vehicle twice. He stated that he noticed that the vehicle's steering wheel was not stable and that the drive in the vehicle was not smooth. Mr. Habib stated that when driving the vehicle, he felt a vibration from the tires.

### C. Respondent's Evidence and Arguments

Dan Lee, Senior Manager Service Support, testified for Respondent at the hearing. Mr. Lee testified that he has worked in the automotive industry since 1975. He began working in 1975 as a service technician for independent auto repair shops. Mr. Lee also worked as an auto mechanics instructor for eleven (11) years at Texas State Technical College in Waco, Texas. Mr. Lee has worked for Respondent for over 20 years and has been in his current position for the past six (6) years. Mr. Lee has been an Automotive Service Excellence (ASE) Master Certified Technician since 1977.

Mr. Lee testified that he had not seen the subject vehicle prior to the hearing date. However, Joel Allen, Respondent's field technical specialist, inspected the vehicle on May 13, 2021, at ToR. The vehicle's mileage was 29,795 on the date of the inspection.<sup>22</sup> Mr. Allen indicated that Complainants concerns were that there was abnormal wear on the guide pins of the rear #1 center seat assembly and that there was premature tire wear on the vehicle.<sup>23</sup> After inspecting the vehicle and taking it for a test drive, Mr. Allen determined that the tire alignment was within the required specifications.<sup>24</sup> Three (3) of the vehicle's tires were worn out (the fourth tire had been replaced due to a puncture), but there was not any abnormal wear on any of the tires.<sup>25</sup> In regards to the guide pin issue, Mr. Allen found that the plastic sheathing had some wear which will result from removing and installing the seat.<sup>26</sup> Mr. Allen compared the wear on the guide pin to that from a similar vehicle and found the same type of wear on the pins in both vehicles.<sup>27</sup> After

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<sup>22</sup> Respondent Ex. 1, GST FTS Inspection Report dated May 12, 2021.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

inspecting the subject vehicle, Mr. Allen determined that only a minor wheel alignment was necessary for the vehicle and that the complained of issues were due to wear.<sup>28</sup>

Mr. Lee testified that pictures taken by Mr. Allen show that the tire tread is worn away. However, he feels that this is not due to the wheel alignment. He feels that the wear shows that the driver of the vehicle has been performing some hard cornering in the vehicle or that it's been driven a lot in a parking garage. In addition, one of the vehicle's front tires showed signs of curb contact which can affect a vehicle's alignment. Mr. Lee stated that the vehicle's tires are not warranted by Respondent but are warranted by the tire manufacturer.

Mr. Lee also stated that the vehicle's tires show wear. The average annual mileage for a vehicle in ordinary use is 15,000 miles. Complainants had put over 40,000 miles on the vehicle in less than a year. Mr. Lee stated that there would be accelerated tire wear if the vehicle is driven often. In addition, road surfaces and vehicle loads can affect tire wear.

Mr. Lee also stated that the guide pins on the seat were operating as designed. There does not appear to be any defect with the seat. The plastic sheathing has worn away which is not unusual for the pin.

#### **D. Test Drive and Inspection at Hearing**

No test drive of the vehicle was performed at the hearing. Mr. Lee inspected the tires and saw that they were very worn. In addition, the donut spare tire was still on the vehicle. Mr. Lee indicated that he did not feel that the vehicle was safe to drive with the tires installed on it. However, he stated that the wear pattern seemed to indicate that the driver of the vehicle was making a lot of turns in it, indicative of driving often in a parking garage.

Mr. Lee also pointed out the guide peg wear as the plastic sheathing on the peg is being worn away. He said that this is not uncommon and is not a defect in the vehicle.

#### **D. Analysis**

Under the Lemon Law, Complainants bear 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, Complainants 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, Complainants are

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<sup>28</sup> *Id.*

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, Complainants are entitled to have the vehicle repurchased or replaced.

### **1. Seat Guide Pin Issue**

Complainants testified that they feel that the guide pins of the rear #1 center seat assembly are wearing abnormally. The evidence indicates that the plastic sheathing on the guide pins has worn away somewhat. However, this is due to normal wear and tear. There was no evidence produced to indicate that the issue was due to a defect in the manufacturing of the seat assembly. Since the issue is not the result of a defect in the vehicle but is due to normal wear and tear, repurchase or replacement relief for Complainant is not warranted for this issue.

### **2. Tire Wear Issue**

Complainants' second concern was that the vehicle's tires had abnormal wear. The evidence presented in the hearing indicates that the wear on the tires is due to either the driver's driving style or heavy usage of the vehicle. There was no evidence to indicate that the tire wear was due to a manufacturing defect. In addition, even if the tire wear was due to a manufacturing defect, Respondent does not warrant the tires, the tire manufacturer does. Therefore, the tire manufacturer's warranty would cover any defects in the tires. As a result, repurchase or replacement relief for Complainant is not warranted for this issue.

On the date of hearing, the vehicle's mileage was 40,558 and the new vehicle limited warranty provided by Respondent has expired.

Complainants' request for repurchase or replacement relief is denied.

## **III. FINDINGS OF FACT**

1. Madonna Farag and Peter Youssef (Complainants) purchased a new 2020 Toyota Sienna on September 21, 2020, from Toyota of Richardson (ToR) located in Richardson, Texas with mileage of 15 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Gulf States Toyota, Inc. (Respondent), issued a new vehicle limited warranty for the vehicle which provides warranty coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first. In addition,

Respondent provided a powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.

3. The vehicle's mileage on the date of hearing was 40,558.
4. At the time of hearing the vehicle's new limited warranty had expired.
5. Complainants stated that the vehicle's tires wear out prematurely and that a middle seat guide pin sheathing is wearing abnormally.
6. Prior to filing the Lemon Law complaint, Complainants took the vehicle for repair to Respondent's authorized dealer, ToR, in order to address their concerns with abnormal tire wear and the wear on the seat guide pin sheathing on the following dates:
  - a. November 23, 2020, at 9,938 miles;
  - b. February 22, 2021, at 20,138 miles; and
  - c. February 23, 2021, at 20,138 miles.
7. On November 23, 2020, the dealer's service technician rotated and balanced all four (4) of the vehicle's tires. There was no indication that work was performed for the seat guide pin issue.
8. On February 22, 2021, the dealer's service technician suggested that Complainants purchase two (2) new front tires due to excessive wear on the existing tires. Complainants refused to purchase the tires.
9. On February 23, 2021, the dealer's service technician replaced a punctured tire under the tire's road hazard coverage.
10. On April 1, 2021, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On April 16, 2021, Complainants mailed a letter to Respondent advising them of their dissatisfaction with the vehicle.
12. On May 13, 2021, Respondent's field technical specialist, Joel Allen, inspected the vehicle at ToR. The vehicle's mileage on this occasion was 29,795.
13. During the repair visit described in Findings of Fact #12, Mr. Allen determined that although the vehicle's tires were worn, there was no abnormal wear on them. In addition,



- he determined that the worn plastic sheathing on the rear #1 center seat assembly was due to normal wear and not due to defective material or workmanship.
14. During the repair visit described in Findings of Fact #12, a minor alignment was performed to the tires.
  15. On June 14, 2021, Complainants purchased three (3) new tires for the vehicle from Plano Discount Tires. Complainants did not perform a wheel alignment at the time.
  16. Complainants have used the vehicle as a food delivery vehicle which has resulted in high mileage.
  17. On June 16, 2021, 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.
  18. The hearing in this case convened on August 18, 2021, at the Texas Department of Motor Vehicles regional service center located in Carrollton, Texas before Hearings Examiner Edward Sandoval. Madonna Farag and Peter Youssef (Complainants) were represented by Ms. Farag. In addition, Nadir Habib, a friend, appeared and testified for Complainants. Gulf States Toyota, Inc. (Respondent) was represented by Dan Lee, Senior Manager Service Support. Also, present was Jay Hamdan, Arabic interpreter. The hearing record closed on August 18, 2021.

#### 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. Complainants 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. Complainants bear the burden of proof in this matter.
6. Complainants 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. Complainants' 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 Complainants' petition for replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED September 13, 2021.**



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