

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0013979 CAF**

**CARLOS DEL VILLAR AND
MIGUEL BELMONTE,
Complainants**

v.

**BRP US, INC.,
Respondent**

§ **BEFORE THE OFFICE**
§
§
§ **OF**
§
§
§ **ADMINISTRATIVE HEARINGS**
§

DECISION AND ORDER

Carlos Del Villar and Miguel Belmonte (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2020 Can Am Maverick RX. Complainants assert that the subject vehicle has defects which caused the vehicle’s engine belts to break; to activate the “limp” mode causing the vehicle to not accelerate over five (5) mph; to create a loud banging noise when the engine was running; and to cause the vehicle to shift into gear unexpectedly. BRP US, Inc. (Respondent) argued that the vehicle has been repaired, that no defect or nonconformity currently exists in the vehicle, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired and that repurchase, or replacement relief is not warranted.

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 was conducted on January 18, 2022, via Microsoft Teams before Hearings Examiner Edward Sandoval. Carlos Del Villar, co-Complainant, appeared and represented Complainants at the hearing. Respondent, BRP US, Inc., was represented by Evan Patterson, attorney with Naman, Howell, Smith & Lee, PLLC. The hearing record closed on January 25, 2022, after the receipt of requested documents.

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 can be established 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

Finally, a rebuttable presumption can be established 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 that substantially impairs the vehicle’s use or market value, the vehicle has been out of service for repair for a cumulative total of 30 or more days, and the repairs attempts were made before the earlier of: (A) the date the express warranty expires; or (B)

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).

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

⁸ Tex. Occ. Code § 2301.601(4).

24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁹

The 30 day out of service requirement described in Section 2301.605(a)(3) does not include any period during which the manufacturer or distributor lends the vehicle owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.¹⁰

B. Complainants' Evidence and Arguments

Complainants purchased a new 2020 Can Am Maverick RX on July 9, 2020, from Team Mancuso PowerSports North (Mancuso) located in Houston, Texas.¹¹ The vehicle's mileage at the time of delivery was 0.¹² Respondent provided a new vehicle limited warranty for the vehicle which provides coverage for six (6) months from the first retail sale or the date the vehicle was first put in use, whichever comes first. On the date of hearing the vehicle's mileage was 706 and the vehicle's warranty had expired.

Carlos Del Villar (co-Complainant) testified for Complainants in the hearing. He stated that they have experienced several issues with the vehicle. He has had several of the engine belts break, the vehicle has gone into limp mode and the check engine light (CEL) illuminated, there has been a banging noise from the engine compartment, and the transmission has not performed properly.

Mr. Del Villar testified that after purchasing the vehicle, Complainants took it to McAllen, Texas in order to ride it. He noticed that in late July of 2020, the vehicle's CEL illuminated and the vehicle went into limp mode. Limp mode is a safety feature for the vehicle's engine which will limit the vehicle's speed to approximately five (5) miles per hour and is activated when there is an issue with the engine. Mr. Del Villar also stated that he heard a banging noise from the vehicle's engine. Mr. Del Villar testified that they stopped using the vehicle for several months before taking it for repair. He also stated that a belt kept breaking in the vehicle's engine and that he replaced it on three (3) separate occasions between August and October of 2020.

Mr. Del Villar took the vehicle for repair to F & T Valley Motor Sports (F & T) located in Pharr, Texas on November 7, 2020. Mr. Del Villar informed the dealer's technician that the vehicle's transmission would not go into gear and that a belt in the engine kept breaking. The technician determined that the bearing assembly needed to be replaced in order to address the issue with the

⁹ Tex. Occ. Code § 2301.605(a)(3)(A) and (B).

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 2, Buyer's Order dated July 9, 2020.

¹² *Id.*

transmission.¹³ In addition, the technician informed Mr. Del Villar that the belt kept breaking because he was having it installed backwards. The vehicle's mileage on this occasion was 530.¹⁴ The vehicle was picked up by Complainants on February 15, 2021.¹⁵ Complainants were not provided a loaner vehicle while their vehicle was being repaired.

Mr. Del Villar testified that he continued to experience issues with the vehicle going into limp mode and the CEL illuminating. As a result, Complainants took the vehicle to F & T for repair for the issue on or about March 26, 2021. The dealer's service technician performed three (3) software updates to the vehicle's computers in order to address the issue.¹⁶ The vehicle's mileage on this occasion was 635.¹⁷ Complainants picked up the vehicle from F & T on April 6, 2021.¹⁸ Complainants were not provided with a loaner vehicle while their vehicle was being repaired.

Mr. Del Villar stated that he continued to have issues with the vehicle. He took the vehicle to Mancuso for repair on or about April 27, 2021, and informed the technician that the CEL illuminated, the vehicle wouldn't start, the limp mode activated, the transmission was not working properly, and the belts constantly broke.¹⁹ Mancuso's technician determined that three of the vehicle's cylinders were misfiring.²⁰ As a result, the technician removed, cleaned, and reinstalled the spark plugs in the misfiring cylinders in order to resolve the issue.²¹ The technician recharged the vehicle's battery to address the no start issue.²² However, the technician was not able to recreate the issue with the vehicle going into limp mode or the transmission issues.²³ Finally, the technician inspected the vehicle's belts and clutches and determined that they were in good shape.²⁴ The vehicle's mileage on this occasion was 702.²⁵ Complainants picked up the vehicle on June 5, 2021. Complainants were not provided a loaner vehicle during this repair visit.

Mr. Del Villar stated that he rode the vehicle immediately after picking it up from Mancuso. However, the vehicle went into limp mode again and the CEL illuminated. As a result, Mr. Del Villar took the vehicle back to Mancuso for repair in late June of 2021. Mr. Del Villar informed

¹³ Complainant Ex. 4, Repair Order dated February 15, 2021. The dates used for the repair orders are the cashier dates, *i.e.*, the dates that the vehicle was picked up by Complainants from the servicing dealer.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 5, Repair Order dated April 6, 2021.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Complainant Ex. 6, Repair Order dated June 5, 2021.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Mancuso's technician that the vehicle's CEL illuminated, the vehicle lacked power, the limp mode activated, and there was a rattle noise from the rear engine compartment.²⁶ The technician inspected the vehicle's ignition system, spark plugs and coils, the fuel system, and the flywheel.²⁷ When inspecting the flywheel, the technician noticed that there were scratches on the flywheel's teeth and metal shaving stuck to the cps sensor.²⁸ Respondent approved replacing the vehicle's flywheel assembly and spark plugs under warranty.²⁹ No other repairs were performed at the time. Mr. Del Villar testified that he was notified in December of 2021 that the vehicle was ready for pickup, but he refused to pick it up.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on July 7, 2021.³⁰ In addition, Complainants sent a letter to Respondent on an unknown date advising them that they were dissatisfied with the vehicle.³¹

Ms. Del Villar testified that he does not want the vehicle anymore. He is tired of having to take it in for repair and he's not convinced that the vehicle has been repaired. He has not driven the vehicle since June of 2021.

C. Respondent's Evidence and Arguments

Evan Patterson, attorney, testified for Respondent. Mr. Patterson testified that the vehicle has been fully repaired. All of the issues raised by Complainants have been resolved and the vehicle is operating as intended. The vehicle was ready for pickup on December 22, 2021. As of the date of hearing, Complainants have not picked up the vehicle.

Mr. Patterson affirmed that Respondent received Complainants' notice of defect of the vehicle. Mr. Patterson was not sure of the specifics of manufacturer's warranty for 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

²⁶ Respondent Ex. 1, Repair Order dated December 7, 2021.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Complainant Ex. 1, Lemon Law Complaint dated July 7, 2021.

³¹ Complainant Ex. 7, Letter to Can Am, undated.

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.

Complainants purchased the subject vehicle on July 9, 2020 and presented the vehicle to Respondent's authorized dealers for repair on four (4) occasions. The vehicle was picked up by Complainants on February 15, 2021; April 6, 2021, and June 5, 2021 after repairs were completed by Respondent's authorized dealers. In addition, a final repair was completed on December 7, 2021, but Complainants have not picked up the vehicle from Mancuso after this repair.

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.³² In the present case, the first hand, undisputed evidence provided by Respondent indicates 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 Complainants is not warranted.

Respondent's express warranty applicable to Complainants' vehicle provided coverage for six (6) months from the first retail sale or the date the vehicle was first put in use, whichever comes first. On the date of hearing, the vehicle's mileage was 706 and Respondent's warranty has expired.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Carlos Del Villar and Miguel Belmonte (Complainants) purchased a new 2020 Can Am Maverick RX on July 9, 2020, from Team Mancuso PowerSports North (Mancuso) located in Houston, Texas with mileage of 0 at the time of delivery.

³² Tex. Occ. Code § 2301.605.

2. The manufacturer or distributor of the vehicle, BRP US, Inc. (Respondent), provided a new vehicle limited warranty for the vehicle which provides coverage for six (6) months from the first retail sale or the date the vehicle was first put in use, whichever comes first.
3. The vehicle's mileage on the date of hearing was 706.
4. At the time of hearing the vehicle's warranty had expired.
5. Complainants have experienced situations where the subject vehicle's engine belts have broken; the "limp" mode has been activated causing the vehicle to not accelerate over five (5) mph; a loud banging noise when the engine was running has occurred; and the vehicle has shifted into gear unexpectedly.
6. Complainants took the vehicle for repair to Respondent's authorized dealers, F & T Valley Motor Sports (F & T) located in Pharr, Texas, and Mancuso, to address their concerns with the vehicle on or about the following dates³³:
 - a. February 15, 2021, at 530 miles;
 - b. April 6, 2021, at 635 miles;
 - c. June 5, 2021, at 702 miles; and
 - d. December 7, 2021, at 706 miles.
7. During the repair visit ending on February 15, 2021, F & T's service technician replaced the vehicle's bearing assembly in order to address the issue of the transmission not going into gear.
8. During the repair visit ending on April 6, 2021, F & T's service technician updated the vehicle's software to address the issue of the vehicle going into limp mode.
9. During the repair visit ending on June 5, 2021, Mancuso's service technician removed, cleaned, and reinstalled the vehicle's spark plugs in order to address the issue of the vehicle's check engine light (CEL) illuminating. However, the technician was not able to duplicate the issues of the vehicle going into limp mode or the vehicle's transmission not shifting properly.

³³ The dates used for the repair orders are the cashier dates, *i.e.*, the dates that the vehicle was picked up by Complainants from the servicing dealer. The final repair date listed is when the invoice was printed, since Complainants have not picked up the vehicle.

10. During the repair visit ending on December 7, 2021, Mancuso's service technician replaced the vehicle's spark plugs and flywheel in order to address the issue of the vehicle going into limp mode and the CEL illuminating.
11. On July 7, 2021, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On an unknown date, Complainants mailed a letter to Respondent advising them that they were dissatisfied with the vehicle.
13. Respondent has not performed any repairs on the vehicle since December of 2021, as it was fully repaired at that time.
14. Complainants have not picked up the vehicle from Mancuso since the last repair completed in December of 2021.
15. The vehicle's useful life is 10,000 miles.
16. On September 23, 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.
17. The hearing in this case was conducted on January 18, 2022, via Microsoft Teams before Hearings Examiner Edward Sandoval. Carlos Del Villar, co-Complainant, appeared and represented Complainants at the hearing. Respondent, BRP US, Inc., was represented by Evan Patterson, attorney with Naman, Howell, Smith & Lee, PLLC. The hearing record closed on January 25, 2022, after the receipt of requested documents.

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 February 2, 2022.



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