

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 22-0001095 CAF**

GIL SIAPNO,
Complainant

v.

GULF STATES TOYOTA, INC.,
Respondent

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Gil Siapno (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2020 Toyota Supra. Complainant asserts that the vehicle is defective because the vehicle will not always start when the start button is pressed. Gulf States Toyota, Inc. (Respondent) argued that the issue is due to outside influence which is not covered under warranty and that no relief is warranted. The hearings examiner concludes that the defect is due to outside influence and is not covered under warranty and Complainant is not entitled to 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 on the merits in this case convened on March 29, 2022, before Hearings Examiner Edward Sandoval at the Department of Motor Vehicles Headquarters in Austin, Texas. Gil Siapno, Complainant, was not present at the hearing. He was represented by Tyler Hickle, attorney with the Law Office of Tyler Hickle, at the hearing. Present to offer testimony was Mr. Siapno's son-in-law, Adam Stanley. Mae Siapno, Complainant's daughter, was also present. Gulf States Toyota, Inc., Respondent, was represented by Daniel Lee, Senior Manager Service Support. Also present to testify for Respondent was Randy Crawford, Field Technical Specialist. Observing for the Texas Department of Motor Vehicles was Justin Potter, law clerk. The hearing record closed on March 29, 2022.

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 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 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. Complainant's Evidence and Arguments

Complainant purchased a new 2020 Toyota Supra from Stadium Toyota (Stadium) in Tampa, Florida on November 3, 2019, with a mileage of 5 at the time of delivery.^{11,12} On the date of hearing the vehicle's mileage was approximately 7,929 miles. Respondent issued a new vehicle limited warranty for the vehicle providing bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first.¹³

Complainant stated on his Lemon Law complaint that he feels that the vehicle is defective because it will not always start because of an electrical issue.¹⁴ Adam Stanley, Complainant's son-in-law expressed a preference for repurchase of the vehicle as the chosen remedy for the issue.

Mr. Stanley explained that he is the primary driver of the vehicle. He further explained that the vehicle was purchased by Complainant for Mr. Stanley's use. Mr. Stanley testified that he test drove the vehicle before Complainant purchased it and he did not notice any issues with the vehicle.

Mr. Stanley testified that sometime in December 2019, the vehicle did not turn on when he attempted to start it. He stated that the start button had to be pressed six times before the vehicle started on that occasion. He did not take the vehicle to a dealer for repair at the time. Instead, he continued to drive it believing that the failure to start immediately was because of a battery issue. He clarified that this did not happen every time he attempted to start the vehicle, but it seemed to happen more often when the vehicle was parked without being driven for long periods of time.

Mr. Stanley testified that on August 20, 2020, after driving the vehicle he noticed smoke coming from the left side of the vehicle and an electrical burning smell from under the hood. He stated that he disconnected the vehicle's battery and had the vehicle towed to Toyota AutoNation South

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

¹⁰ Tex. Occ. Code § 2301.605(c).

¹¹ Complainant Ex. 1, Buyer's Order, Agreement, and Vehicle Information Form dated November 3, 2019.

¹² Complainant Ex. 2, Odometer Disclosure Statement dated November 3, 2019.

¹³ Complainant Ex. 6, Supra Warranty and Maintenance Guide.

¹⁴ Complainant Ex. 7, Lemon Law Complaint dated September 28, 2021.

Austin (AutoNation) in Austin, Texas. AutoNation's service technician tested the battery and it failed.¹⁵ The technician replaced the battery at the time.¹⁶ The vehicle's mileage on this occasion was 6,902.¹⁷ The vehicle was in AutoNation's possession for about a week during this repair visit. Mr. Stanley was not provided a loaner vehicle while the vehicle was being repaired. Mr. Stanley stated that the vehicle started properly after the repair.

Mr. Stanley testified that the vehicle continued to operate normally for about a month or two and then it failed to start again. He had driven the vehicle to a store and when he attempted to return home the vehicle did not start. He noted that there were no warning lights or messages on the vehicle's dashboard, but the vehicle's lights would turn on. Mr. Stanley had the vehicle towed to Charles Maund Toyota (Maund) in Austin, Texas, on October 27, 2020. On inspecting the vehicle, Maund's service technician found an aftermarket speaker wire running through the vehicle's wiring harness.¹⁸ Mr. Stanley stated he was told that the aftermarket wire caused damage to the vehicle which prevented it from starting and, as a result, voided his warranty and he would have to pay for the repair to the vehicle which was estimated at approximately \$2200. Mr. Stanley testified the he had installed the speaker wire himself, but he had not connected the wire to anything in the vehicle. The vehicle was in Charles Mond's possession for around 45 days during this repair visit.¹⁹ The vehicles mileage at this time was 7,928.²⁰ Mr. Stanley was not provided a loaner vehicle on this occasion. Mr. Stanley stated that he did not agree to pay for the repair. As a result, the vehicle was not repaired during this visit. Mr. Stanley testified that the vehicle was towed to his garage and has not been looked at since. The vehicle is not currently drivable.

Mr. Stanley testified that he installed the speaker wires in the vehicle around February or March of 2020. He stated that he did not install the actual speakers in the vehicle because he did not have them at the time. Mr. Stanley stated that he did the wiring for the speakers himself. He noted that he did have some experience in electrical wiring, but it has been since 2003 since he has worked in the field.

On January 7, 2021, Complainant's attorney mailed written notice of Complainant's dissatisfaction with the vehicle to Respondent.²¹ Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles on September 28, 2021.²²

¹⁵ Complainant Ex. 3, Repair Order dated August 20, 2020.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Respondent Ex. 1, Repair Order dated October 27, 2020.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Complainant Ex. 5, Letter to Toyota Motor sales dated January 7, 2021.

²² Complainant Ex. 7, Lemon Law Complaint dated September 28, 2021.

After Complainant filed the Lemon Law complaint, Respondent did not ask for a final opportunity to inspect and repair the vehicle. Mr. Stanley mentioned that the majority of the car's interior had been removed by the dealership and not been reinstalled.

Mr. Stanley stated that the speaker wires he installed were routed along the wire harness to the battery and the speaker area. He explained he had to remove side panels in the car to attach the speaker wires to the wire harness. He stated that he had automotive training through Austin Community College, and he had worked on cars throughout his youth. Mr. Stanley stated that he did not have any training on BMW wiring harnesses (the manufacturer of this vehicle's wiring harness). He also stated that he did not test the wires after they were installed.

C. Respondent's Evidence and Arguments

1. Daniel Lee's Testimony

Daniel Lee, Senior Manager Service Support, testified for Respondent. He has worked in the automotive industry since 1975. He taught advanced drivability for ten (10) years at Texas State Technical College (TSTC) in Waco, Texas. He then worked for Mitsubishi for three (3) years before moving to Gulf States Toyota for the last 26 years. Mr. Lee is an Automotive Service Excellence (ASE) Certified Master Technician. He is also is certified as an Advanced Technician for Toyota.

Mr. Lee explained that in order to start the vehicle, the key must be in the vehicle and the brake must be depressed when the start button is pressed for the vehicle to start. He explained that the computer in the vehicle will not start when it detects an issue.

Mr. Lee stated that the speaker wire in the subject vehicle caused a short in the power system that caused the vehicle to not start. He noted that the warranty does not cover issues caused by outside influence on the vehicle. The vehicle's starter had burn marks from electrical arcing because the wires were connected to power in the vehicle when it was taken to Maund for repair.²³ Mr. Lee stated that there was visible damage to the starter which was caused by the wiring installed by Mr. Stanley.²⁴ Mr. Lee also stated that it is not common to install wiring in a vehicle months in advance of installing a speaker.

²³ Respondent Ex. 1, Repair Order dated October 27, 2020.

²⁴ *Id.* See photos attached to the repair order.

2. Randy Crawford's Testimony

Randy Crawford, Field Technical Specialist, also testified for Respondent. He has worked with Toyota for 25 years. He first began work as a service technician at Maund for five (5) years and worked for Lexus of Austin as a technician for seven (7) years. Mr. Crawford has worked as a field technical specialist for Respondent for almost nine (9) years.

Mr. Crawford stated that he has not personally seen the vehicle; however, he has seen photographs of the vehicle and the wiring. He pointed out that the ends of the wiring that Mr. Stanley installed were not taped off. Mr. Crawford explained that in order to turn the vehicle off properly, the radio button must be pushed for 3 seconds, otherwise the vehicle will remain in accessory mode for 30-60 minutes. He further explained that leaving the vehicle in accessory mode will wear the battery down. Mr. Crawford also explained that the vehicle was taken apart to test the ground wires to check if the vehicle was in a warrantable state. Mr. Crawford stated that the photographs showed damage and evidence of electrical arcing to the vehicle's starter.

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.

Complainant's concern with the vehicle was an electrical issue with the vehicle not starting when the start button was pushed. Respondent claims that the issue was caused by an outside influence (speaker wires that were installed by Mr. Stanley which shorted out the vehicle's starter) and therefore is not covered by the vehicle's warranty. Complainant has the burden to show by a preponderance of the evidence that the speaker wires he installed did not cause the electrical issues with the vehicle and that the issue is covered under the vehicle's warranty.

Mr. Stanley stated that he installed speaker wires in the vehicle in February or March of 2020 but did not install a speaker. Mr. Stanley's testimony was that the wires were not connected to anything in the vehicle. Mr. Stanley admitted that he did not tape the loose ends of the speaker

wires that he installed. Respondent's testimony was that the wires were connected and caused a short in the vehicle's starter that caused damage to the starter and prevented the vehicle from starting. Respondent also presented evidence that there burn marks on the starter from electrical arcing coming from the loose wires.

The evidence presented at the hearing indicates that the electrical issues in the vehicle were caused by the loose and untaped speaker wires in the vehicle. A short from the wire touching the power supply (connected or otherwise) would send a code to the vehicles computer system that would not allow the vehicle to start. Complainant was unable to establish by a preponderance of the evidence that the speaker wires were not the cause of the electrical issues with the vehicle starting. Therefore, the issue is not covered under the vehicle's warranty and the hearing examiner must hold that there is no warrantable defect or condition in the vehicle, and as such, repurchase or replacement relief for the Complainant is not warranted.

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

III. FINDINGS OF FACT

1. Gil Siapno (Complainant) purchased a new 2020 Toyota Supra from Stadium Toyota (Stadium) in Tampa, Florida on November 3, 2019, with a mileage of 5 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 bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of the initial hearing was approximately 7,929.
4. The vehicle was purchased by Complainant for Adam Stanley, Complainant's son-in-law, who is the primary driver of the vehicle.
5. In December 2019, Mr. Stanley experienced a situation where the vehicle did not turn on when the start button was pressed. Mr. Stanley had to press the button six (6) times before the vehicle started.
6. Mr. Stanley installed speaker wires in the vehicle around February or March of 2020; however, he did not install speakers at that time.

7. Prior to filing the Lemon Law complaint, Mr. Stanley took the vehicle to Respondent's authorized dealers, Toyota AutoNation South Austin (AutoNation), in Austin, Texas and Charles Maund Toyota (Maund), in Austin, Texas, on the following dates respectively to address his concerns regarding the vehicle not starting:
 - a. August 20, 2020, at 6,902 miles; and
 - b. October 27, 2020, at 7,928 miles.
8. On August 20, 2020, AutoNation's service technician determined that the vehicle's battery had failed and replaced it. The vehicle started normally after the battery replacement.
9. On October 27, 2020, Maund's service technician disassembled the interior of the vehicle to diagnose the problem and found the aftermarket speaker wires that Mr. Stanley had installed and determined that it had caused a short in the vehicle's starter which was why the vehicle would not start.
10. Respondent determined that the issue indicated in Findings of Fact #9 would not be covered under warranty because it was due to an outside influence, *i.e.*, Mr. Stanley's installation of speaker wires to the vehicle's wiring harness.
11. Mr. Stanley refused to pay for the necessary repairs to the vehicle and picked it up from Maund approximately 45 days after the October 27, 2020 repair visit and towed it to his garage. The vehicle has not been looked at since.
12. On January 7, 2021, Complainant's attorney sent a letter to Respondent advising them of Complainant's dissatisfaction with the vehicle.
13. On September 28, 2021, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. Respondent did not ask for an opportunity to inspect or repair the vehicle.
15. On November 15, 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.

16. The hearing on the merits in this case convened on March 29, 2022, before Hearings Examiner Edward Sandoval at the Department of Motor Vehicles Headquarters in Austin, Texas. Gil Siapno, Complainant, was not present at the hearing. He was represented by Tyler Hickle, attorney with the Law Office of Tyler Hickle, at the hearing. Present to offer testimony was Mr. Siapno's son-in-law, Adam Stanley. Mae Siapno, Complainant's daughter, was also present. Gulf States Toyota, Inc., Respondent, was represented by Daniel Lee, Senior Manager Service Support. Also present to testify for Respondent was Randy Crawford, Field Technical Specialist. Observing for the Texas Department of Motor Vehicles was Justin Potter, law clerk. The hearing record closed on March 29, 2022.

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 May 2, 2022.

A handwritten signature in black ink, appearing to read 'Edward Sandoval', is written over a horizontal line.

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