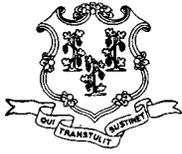


In the matter of arbitration entitled:
Serenson v. General Motors, L.L.C.

2017-1976



STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrators, having been duly sworn and having given due consideration to allegations and proofs of the parties, hereby decide the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Cynthia H. Serenson (the “Consumer”) purchased a 2016 GMC Terrain (the “vehicle”) from Bob’s Buick GMC of Milford located at 750 Bridgeport Ave. in Milford, Connecticut, 06460 (the “Dealer”). The Consumer took delivery of this vehicle on June 06, 2016. The registration is “passenger,” “combination,” or “motorcycle,” as defined in Section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, we deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b (the “lemon law”). The manufacturer of the subject vehicle, General Motors L.L.C. (the “Manufacturer”) did not contest the initial eligibility of the vehicle in this case. This hearing was held on Thursday, October 19, 2017, during which Mr. Tim Clark served as the State’s Technical Expert. The Consumer represented herself, and the Manufacturer was represented by Ms. Cassandra Gipe. Mr. Mirwais Hotak presented testimony on behalf of the Manufacturer.

II. VEHICLE COMPLAINT & ELIGIBILITY

The Consumer’s Request for Arbitration set forth the following complaint with the subject vehicle: the vehicle pulled to the left while driving at highway speeds. The Consumer claimed that the alleged defects persisted as of the date of the hearing. These conditions affected the vehicle when driving at highway speeds and caused the consumer to fear for her own safety and that of her passengers. Due to these reasonable concerns, she limited the use of her vehicle.

As a result of the complaint, the Consumer made multiple visits to the Dealer for diagnosis, testing, and repair. The vehicle concern met the statutory presumption for eligibility for a loss of use, value, and safety, as it was subject to four repair attempts during the first year of ownership. The following is the list of visits to the Dealer for these complaints:

Repair Date	Miles	Defects
06-07-2016	42	Vehicle severely pulling to the left
07-12-2016	925	Still pulling to the left
7-28-2016	1,283	Still pulling to the left

6-26-2016	7,563	Still pulling to the left
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On each of these dates, the Consumer provided the Dealer an opportunity to make repairs. Given the facts presented, the Consumer's concern that a defect existed was reasonable, and the Manufacturer did not contest the initial eligibility of the vehicle. Thus, the Consumer met the eligibility requirements for initiating an arbitration hearing on the alleged defects' impairment to safety, use, and value in accordance with Chapter 743b of the Connecticut General Statutes.

III. DECISION

The arbitrators **rule for the Consumer**. The Manufacturer is ordered to repurchase the vehicle from the Consumer. The repurchase price should include a reasonable allowance for use.

IV. REASONING

Nonconformity

The Consumer complained of the following nonconformity with the subject vehicle: the vehicle pulled to the left at highway speeds. The problem was first reported on June 07, 2016, one day after the Consumer took delivery of the vehicle. Despite repeated repair efforts by the Dealer, the vehicle's defects were said to persist as of the date of the hearing.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the nonconformities described above required multiple visits to an authorized dealership for diagnosis, testing, and repair. Said defects met the statutory presumption for eligibility, as they were subject to four repair attempts during the first two years or 24,000 miles of ownership. Given the documented repairs during the statutory period, the Consumer met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

Applicable Standard

The Supreme Court of Connecticut has interpreted the lemon law statute to require a subjective and objective analysis of impairments to the use, safety, or value of a vehicle:

[U]nder the lemon law, the standard for determining whether a defect substantially impairs the use, safety or value of a motor vehicle to the consumer is both subjective and objective. The standard is subjective in that the fact finder first must examine the subjective desires, needs and circumstances of the particular consumer. In light of those desires, needs and circumstances, the fact finder then must make an objective determination as to whether the value of the motor vehicle to the consumer has, in fact, been substantially impaired.

Gen. Motors Corp. v. Dohmann, 722 A.2d 1205, 1214 (Conn. 1998).

Impairment to Use

When applying the subjective component of the Dohmann standard, we understand that the Consumer's expressed needs involved standard travel and transport of passengers, particularly her friends and grandchildren. We find these to be reasonable concerns. We then apply the objective standard to determine whether the use of the vehicle to meet these needs has been substantially impaired.

The Consumer testified that the severe pulling of the vehicle causes her to avoid driving the vehicle on a regular basis. In her experience, driving on highways, even in the middle lane where there is no slope, involved “fighting” against the vehicle’s natural inclination to drift to the left. As a result, she minimizes and even avoids driving on highways when possible. The Consumer schedules appointments and errands at the same time to decrease her use of the vehicle. She sometimes refrains from driving for days at a time, “unless it’s a necessity.” Finally, the Consumer testified that she would not allow her grandchildren ride in the vehicle due to the vehicle’s impairment. Thus, the record reflects an impairment to the “subjective desires, needs and circumstances of [this] particular consumer.” *Id.*

The Consumer had driven the vehicle approximately 9,300 miles on the date of the arbitration, only 58% of the 16,000 that the lemon law’s applicable period suggests constitutes normal use. While departure from the statutory standard is not conclusive, the large gap between the Consumer’s use and normal use supports the Consumer’s testimony that her use was impaired by the defect.

The record reflects that due to a defect, the vehicle does not meet the Consumer’s standard desires to travel and transport passengers. Thus, we find a substantial impairment of use under the lemon law.

Impairment to Safety

We conclude that the defect also constitutes a substantial impairment to the safety of the vehicle. From an objective standpoint, the defect directly affects safe operation of the vehicle, especially at high speeds when there is greater risk. The Manufacturer did replicate the pulling but argued it did not constitute substantial impairment. However, the Technical Expert described the persistent problem as “a concern” that “should’ve been caught in the PDI [pre-delivery inspection].” While the Manufacturer argues that the Consumer reported no collisions due to the defect, this testimony is weakly probative: the defect deterred heavy usage and mandated heightened levels of caution and vigilance from the Consumer, which does not alleviate the safety concerns.

From a subjective standpoint, the defect substantially impacts safety as the Consumer believes any passengers in the vehicle would be put in danger. She further stated that she would not consider reselling the vehicle as a matter of “conscience.” We find these concerns to be reasonable and as such, they satisfy the objective and subjective requirements for proving substantial impairment to safety.

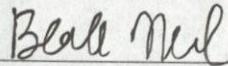
Impairment to Value

Although the Consumer noted that she would not resell the vehicle in its current state, she did not present evidence on the issue of value as represented by the price that could be realized upon resale of the vehicle. For that reason, we do not find impairment to value beyond that which is implied by the loss of use and safety discussed above.

V. CONCLUSION

Given that the Consumer presented substantial evidence that the vehicle did not function as she had intended upon purchase after four opportunities for repair, we hold for the Consumer in this case. A refund and exchange, as noted in Part VI of this decision, is appropriate given the facts presented.

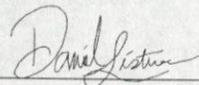
The decision of these arbitrators does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 USC 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to the Superior Court within 30 days receiving this decision to have the decision vacated, modified, or corrected or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, and 52-420 of the Connecticut General Statutes.



Blake A. Neal, Arbitrator

10/29/17

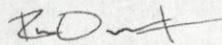
Date



Daniel B. Listwa, Arbitrator

10/29/17

Date



Robert M. Overing, Arbitrator

10/29/17

Date

(See Section VI of this decision, entitled "Refund Award," on the following page.)

VI. REFUND AWARD

We find in favor of the Consumer and hold that the Consumer is entitled to a refund of the contract price (equal to the cash price of \$38,973.98, less the rebate of \$5,640.00), and reduced by a reasonable allowance for use.

Allowance for use:

- The contract price shall not be reduced by taking into account the mileage on the vehicle.
- The contract price **shall be** reduced by an allowance for the Consumer's use of the vehicle. It shall be calculated using the total mileage driven **at the time of the fourth repair** (at 7,563 miles), minus the mileage at the time of delivery (3 miles), yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$33,333.98 \quad \times \quad 7,560 \text{ miles } (7,563 - 3 \text{ miles})}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be:
\$2,100.04

Finance Charges to be Reimbursed by Manufacturer:

- The Consumer shall be reimbursed for finance charges incurred on the following dates:

-
- _____.
- The Consumer shall be reimbursed for finance charges incurred from: __ to ____.
 - The Consumer shall be reimbursed for all finance charges incurred.
 - The Consumer **shall not be** reimbursed for finance charges.

Expenses to be Reimbursed by Manufacturer:

Contract Price: \$33,333.98

Lemon Law Application Fee: \$50

Total = \$33,383.98

Total Refund Award and Conditions:

The total refund amount is **\$33,383.98** (total expenses) - **\$2,100.04** (reasonable use allowance in favor of Manufacturer) = **\$31,283.94** (thirty one thousand, two hundred and eighty three dollars and ninety four cents).

Furthermore, at the time of arbitration, Consumer stated that the mileage was at nearly 9,300 miles. To allow for the time between the arbitration and repurchase of the car (10 days for rendering of the decision + up to 30 days for Manufacturer to provide the refund), the Consumer may drive up to 1,500 additional miles without any reduction of the reward from Manufacturer to Consumer. However, so that the vehicle

is delivered to the Manufacturer without an excessive amount of additional miles, the Manufacturer may reduce the damages owed consumer by 25 cents per mile for every mile over 12,300 miles.

The Consumer may surrender the vehicle to Manufacturer at any time to avoid any excess mileage charges, though Consumer shall not surrender the vehicle title to Manufacturer until the refund is provided. The Manufacturer shall provide the total refund to the Consumer within 15 days of receiving the vehicle from Consumer, or within 30 days of the Manufacturer's receipt of this arbitration decision. If Consumer has not already done so, the Consumer shall surrender the vehicle to the manufacturer upon receipt of the refund, or if the vehicle is in the possession of the Manufacturer or their agent, the vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at: **Bob's Buick GMC of Milford, 750 Bridgeport Ave., Milford, Connecticut, 06460, OR at a local manufacturer-authorized dealership or other location agreed upon by both Manufacturer and Consumer.**