

**State of Connecticut
Department of Consumer Protection
Automobile Dispute Settlement Program**

HOFFMAN v. FCA US LLC

Case Number: 2016-50

Pursuant to Connecticut General Statutes, Chapter 743b, the undersigned arbitrators, having been appointed by the Commissioner, and having duly considered the proofs and allegations of the parties, decide the following:

SUMMARY

- I. The Consumer does not meet the requirements for relief under the Lemon Law.
 - a. The Consumer, as purchaser, is entitled to enforce the warranty obligations during the express warranty period.
 - b. The Consumer purchased the vehicle in Connecticut.
 - c. The Vehicle is registered in Connecticut as a passenger vehicle.
 - d. The Consumer notified Manufacturer in writing of the Lemon Law claim.
 - e. The original defects in the materials are covered by Manufacturer's warranty.
 - f. The Consumer has not demonstrated a reasonable number of repair attempts within the applicable period of two years from the date of original delivery or 24,000 miles, whichever occurs first.
 - g. Defects that arose more than two years after the date of original delivery of the Vehicle are outside the scope of the statute.
 - h. The arbitral panel makes no finding at this time respecting substantial impairment to use, safety, or value of the Vehicle.

- II. The arbitrators find against the Consumer. The Manufacturer is not required to take any further action.

FINDINGS OF FACT

1. Aline Hoffman and William G. Hoffman ("Consumer") purchased a 2014 Jeep Cherokee ("Vehicle") from Capitol Garage ("Dealer") in Willimantic, CT. Consumer took delivery of the Vehicle on November 16, 2013.
2. Consumer purchased the Vehicle for daily use. Vehicle is registered as a passenger vehicle.
3. Consumer filed a Request for Arbitration pursuant to CT Lemon Law against FCA US LLC ("Manufacturer") on January 5, 2016. The Vehicle's mileage on the date the Request was filed was 13,882 miles.

4. Consumer sent notice of her intent to file a Lemon Law claim to FCA US LLC (“Manufacturer”) on December 8, 2015.
5. An arbitration hearing was held on March 1, 2016. At the hearing, Consumer represented herself. Michael Gregg, Esq., (“Manufacturer’s Representative”) represented Manufacturer and called a witness: Steve Hartley, service manager at the Dealership. Mr. Hartley testified that his job is to oversee the general operations of the Dealership, including consulting for customers and writing repair orders. Tim Clark served as the State Technical Expert.
6. Consumer alleged that the Vehicle suffered from multiple defects, causing Consumer to bring the Vehicle in for repairs numerous times. The Vehicle was out of service by reason of repair for 18 calendar days within the first two years following the date of original delivery.
7. On December 26, 2013, Consumer brought the Vehicle in for repair to Dealership for the first time. Consumer complained about a metal scraping noise from the right front area while driving. Dealer performed test drives under different conditions and found no abnormal sound. Dealer also put Vehicle on a lift to inspect it, and found it to be operating normally. Consumer stated that the problem was resolved. The Vehicle was out of service for 1 calendar day.
8. On the same date Consumer also complained about a noise from the windshield while driving over humps. Dealer performed a test drive and heard a slight “tap” from the front inner windshield cowl area. Dealer removed the panels to adjust, re-secure, and soften the stiffness of the retaining clips. Dealer performed a subsequent test drive and the noise disappeared.
9. On February 6, 2014, Consumer brought the Vehicle in for repair for the second time. Consumer complained that the driver lumbar support was losing air overnight and on trips, and had no upward movement. Consumer testified that the lumbar support is very important to her because she suffers from lumbar arthritis. Dealer found the lower lumbar support losing air, and ordered a new one. The Vehicle was out of service for 2 calendar days.
10. On March 6, 2014, Consumer brought the Vehicle in for repair for the third time, complaining about a whining sound from the steering. Dealer examined the internal steering operation and located the noise coming from the rubber boot where the steering connects to the firewall. Dealer checked other new Jeep Cherokees and confirmed that the noise was not abnormal. The Vehicle was out of service for 1 calendar day.
11. On May 15, 2014, Consumer returned to Dealership to install the new lumbar support ordered on February 6, 2014. After installation Dealer performed a test drive overnight and

confirmed its proper operation, resolving the problem. The Vehicle was out of service for 2 calendar days.

12. On June 25, 2014, Consumer brought the Vehicle in for repair for the fourth time, complaining that the Sirius radio was malfunctioning. Dealer updated the radio software to improve its reception, and the issue was resolved. The Vehicle was out of service for 2 calendar days.
13. On October 17, 2014, Consumer brought the Vehicle in for repair for the fifth time, complaining about a noise from the brake pedal. Dealer determined that the brake pedal was not making the noise, and that the noise seemed to be coming from a caliper. However, Dealer needed more time to diagnose the condition, and instructed Consumer to reschedule if necessary. Consumer did not reschedule. The Vehicle was out of service for 1 calendar day.
14. On December 2, 2014, Consumer brought the Vehicle in for repair for the sixth time, complaining about a noise in the steering, especially when turning the Vehicle on. Dealer lubricated the front suspension strut bushings. The Vehicle was out of service for 2 calendar days.
15. On February 17, 2015, Consumer brought the Vehicle in for repair for the seventh time, complaining that on cold mornings the Vehicle's remote start did not work. Dealer updated the BCM software to address the remote start concern. While the problem was solved at that moment, at the arbitration Consumer complained that the remote intermittently malfunctioned on cold days. Consumer, however, did not bring the Vehicle in for repair for the allegedly intermittent problem. The Vehicle was out of service for 1 calendar day.
16. On June 30, 2015, Consumer brought the Vehicle in for repair for the eighth time, complaining that the navigation map, clock, and temperature gauge were intermittently incorrect. Dealer updated the software for the navigation. They also found an internal failure in the ambient temperature software and replaced it. The Vehicle was out of service for 1 calendar day.
17. On July 13, 2015, Consumer brought the Vehicle in for repair for the ninth time, complaining for the second time about the navigation and clock. Dealer found an internal satellite fault in the radio, and ordered a new one.
18. There was some dispute as to the length of this repair attempt. Consumer initially alleged that the Vehicle was out of service for 15 days during this repair attempt, from July 13, 2015 to July 27, 2015. The Manufacturer presented testimony from Mr. Hartley that the Dealer's

usual practice for a problem like this would be to release the Vehicle to the Consumer while waiting for a new radio. Manufacturer also presented evidence from the repair statements that the Vehicle was driven 181 miles during the period between July 13 and July 27, 2015. Following this presentation of evidence, Consumer conceded that she might have misremembered the length of time the Vehicle was out of service for repair and that it is more likely that the Vehicle was out of service for diagnosis for July 13 and July 14 and then returned to the Consumer. The Consumer then brought the Vehicle back to the Dealership on July 27, 2015 to install the new radio. Based on this testimony we conclude that the Vehicle was out of service for 3 calendar days.

19. On July 28, 2015, Consumer brought the Vehicle in for repair for the tenth time, complaining that the key fobs were inoperable. Dealer inspected the fobs and found them operating as designed. The Vehicle was out of service for 1 calendar day.
20. On August 3, 2015, Consumer brought the Vehicle in for the eleventh time, complaining that the power lock switches were intermittently inoperative from the inside switch, and that the rear hatch would not open using the key fobs. When Dealer inspected the power lock switches, they were operating normally. With regards to the rear hatch, Dealer was also unable to duplicate the problem. However, Dealer updated the BCM. The Vehicle was out of service for 1 calendar day.
21. The Vehicle was also taken in for repairs several times after the expiration of two years following the date of original delivery (November 16, 2015), as detailed below.
22. On November 27, 2015, Consumer found that the Vehicle's engine would not work, with warning signs flashing on the dashboard. Consumer's husband tried and failed to start the engine. Consumer called AAA, and the AAA mechanic was unable to start the Vehicle either. Consumer called to have the Vehicle towed to her home. Consumer then had the Vehicle towed to the Dealer on November 28, 2015. Dealer tested the battery and checked electric components, and Vehicle began to start normally. Vehicle stayed at the Dealership until December 10, 2015.
23. Consumer described additional problems with the Vehicle that arose after the Request for Arbitration was filed on January 7, 2016.
24. On January 21, 2016, Consumer brought the Vehicle in for repair, complaining that the Vehicle's engine once again would not start. In addition, the lumbar support was not holding air, the idle was fluctuating steeply around 1000 RPMs, the odometer was flashing, the rear wiper turned on by itself and moved at half speed, and there were messages stating that bulbs were burned out and the brake was on. Dealer replaced the lumbar bladder/motor

assembly. With regards to the other issues, Dealer confirmed the problem with the electronic parking brake module and replaced it.

25. On February 4, 2016, Consumer brought the Vehicle in for repair, complaining that the lumbar bladder was losing air overnight, and the brake pedal let a squeaking noise when Vehicle is parked. Dealer found the bladder at fault, and replaced it. With regards to the brake pedal, Dealer was unable to duplicate the concern. Instead he lubricated moving parts on the pedal.
26. At the arbitration on March 1, 2016, Consumer also alleged that on February 14, 2016, the remote did not work on Vehicle and there was an abnormal smell coming from Vehicle. Next morning on February 15, 2016, Consumer testified that the remote still did not work, and that she had to use the key to start Vehicle.

FINDINGS OF LAW

In order to recover under the Lemon Law, the Consumer has the burden of showing eligibility. The Consumer must prove that (1) the defect was covered by the warranty; (2) the vehicle was subject to a reasonable number of repair attempts; and (3) the defect substantially impaired the use, safety, or value of the vehicle. C.G.S. § 42-179(d).

As discussed below, we find that the Consumer has not met the second prong of the Lemon Law. Accordingly, we do not reach the question of whether any of the defects substantially impaired the use, value, or safety of the Vehicle.

We also note that at the arbitration the Consumer described a problem with the Vehicle refusing to start that occurred after the expiration of the two-year period following the original delivery of the Vehicle. Because this defect occurred outside the applicable statutory period, we do not consider it as part of Consumer's case.

1. The original defects were covered by the warranty.

Neither Consumer nor Manufacturer dispute that all the defects included in Consumer's Request for Arbitration are covered under the warranty. Those defects include: metal scraping noise from the right front area of Vehicle, noise from windshield, noise from brake pedal, whining noise from steering, defective lumbar support, malfunctioning radio, malfunctioning remote start, malfunctioning navigation, clock and temperature gauge, problems with the key fobs and power lock switches, and the failure of the engine to start. Thus, we hold that all defects are eligible defects.

2. Consumer has not demonstrated that the Vehicle was subject to a reasonable number of repair attempts during the applicable statutory time period.

The Lemon Law provides two statutory presumptions to determine whether a reasonable number of repair attempts have been performed. Consumer satisfies neither of these presumptions.

a. Vehicle has not undergone four unsuccessful repair attempts for the same defect.

The requirement for a reasonable number of repair attempts is presumptively satisfied if “the same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers during the period of two years following the date of original delivery of the motor vehicle to a consumer or during the period of the first twenty-four thousand miles of operation, whichever period ends first, but such nonconformity continues to exist.” C.G.S. § 42-179(e)(1).

Although the Vehicle was taken to the Manufacturer’s Dealer more than four times, the problems varied. The Vehicle was not subject to four repair attempts for any single defect within the applicable statutory period.

b. Vehicle was not out of service by reason of repair for 30 days within the applicable period.

The Consumer can also presumptively satisfy the requirement for a reasonable number of repair attempts if “the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during the applicable period,” which is also the period of two years following original delivery of the vehicle or the first twenty-four thousand miles of operation, whichever period ends first. C.G.S. § 42-179(e)(2).

The Vehicle was out of service for a cumulative total of 18 calendar days during the first two years following original delivery. While Consumer initially claimed that the Vehicle was out of service for over 30 days, this figure included the November 2015 repair attempt, which occurred after the expiration of the two year statutory period.

c. Consumer has not established a reasonable number of repair attempts.

While it is possible that a Consumer who does not meet either of the statutory presumptions for a reasonable number of repair attempts may in certain cases still be able to demonstrate a reasonable number of attempts under the circumstances, the Consumer has not met that burden here. Consumer does not allege that the Dealer ever refused to provide service or that the Dealer ever concluded that any defect that arose during the applicable period was beyond remedy.

Having concluded that the Vehicle was not subject to a reasonable number of repair attempts during the applicable period, we do not consider whether any of the defects reported during this period constituted a substantial impairment to the use, safety, or value of the Vehicle.

3. Defects arising more than two years after the original delivery of the Vehicle to the Consumer are outside the scope of the Lemon Law.

The Lemon Law covers cases in which “a new motor vehicle does not conform to all applicable express warranties, and **the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the period of two years following the date of original delivery of the motor vehicle to a consumer** or during the period of the first twenty-four thousand miles of operation, whichever period ends first.” C.G.S. §42-179(b) (emphasis added).

Consumer alleges that the Vehicle suffers from a serious defect because it has failed to start on multiple occasions since November 27, 2015. We fully credit the Consumer’s testimony that this defect makes her feel unsafe in her Vehicle. However, since this defect occurred more than two years after the November 13, 2013 date of delivery of the Vehicle, it falls outside the scope of the statute and cannot be considered. We thus do not consider whether this defect substantially impairs the use, value, or safety of the Vehicle.

4. Summary

For the foregoing reasons, we find that the Consumer has not met the relief requirements of the Lemon Law.

AWARD

The arbitrators find against the Consumer. The Manufacturer does not have to take any further action.

The decision of the arbitrators does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warrantee Federal Trade Commission Improvement Act, 88 Stat. 2183 (1975), 15 U.S.C § 2301 *et seq.*, as in effect on October 1, 1982.

Either Party may apply to the Superior Court within 30 days of 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, 52-4178, and 52-420 of the Connecticut General Statutes.

Nothing in this order shall prevent the parties from reaching an alternative, mutually satisfactory, agreement.

Signed March 9, 2016



Diane de Gramont
Presiding Arbitrator

A handwritten signature in black ink, consisting of three stylized characters that appear to be 'H', 'W', and 'L'.

Hyungwoo Lee
Arbitrator