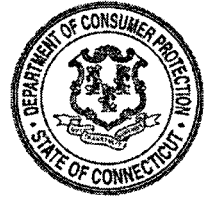


**STATE OF CONNECTICUT  
DEPARTMENT OF CONSUMER PROTECTION  
Automobile Dispute Settlement Program**



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

**I. FINDINGS OF FACT**

**George Castro** (the “Consumer”) purchased a **2014 Chevrolet Corvette** (the “vehicle”) from **Loehmann Blasius Chevrolet Inc.** located at **90 Scott Rd. in Waterbury, Connecticut, 06723** (the “Dealer”). The Consumer took delivery of this vehicle on **April 15, 2014**. The registration is “passenger,” “combination,” or “motorcycle,” as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegation, these arbitrators deem this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The manufacturer of the subject vehicle, **General Motors LLC** (the “Manufacturer”) did not contest the initial eligibility of the vehicle in this case. Said hearing was held on **Monday, October 17, 2016**, during which Mr. Tim Clark served as the State’s Technical Expert.

**II. VEHICLE COMPLAINT & ELIGIBILITY**

The Consumer’s Request for Arbitration set forth the following complaints with the subject vehicle: intermittent malfunctioning of the rear-view camera, a bubble in the rear passenger tire, and chatter in the clutch. The Consumer did not claim that the alleged defects continued to exist as of the date of the hearing, but he did note that repairs to the final defect had left the engine with possible debris contamination and little tolerance for future repairs. This condition caused the Consumer to become apprehensive of a reduced value if he resold the vehicle in the future. Consumer also presented a good-faith estimate that the car had been out of service for repair for more than thirty days within the first two years and therefore met the Lemon Law’s thirty-day presumption.

The Consumer made four visits to the Dealer for diagnosis, testing, and repair:

<b>Repair Date</b>	<b>Days out of service</b>	<b>Miles</b>	<b>Complaint</b>
<u>07/30/2015</u>	<u>2</u>	<u>8,044</u>	<u>Backup camera not working consistently</u>
<u>08/10/2015</u>	<u>2</u>	<u>8,456</u>	<u>Backup camera not working consistently</u>
<u>11/18/2015</u>	<u>7</u>	<u>11,131</u>	<u>Backup camera not working consistently</u>
<u>03/30/2016</u>	<u>16 (to 04/14)</u>	<u>12,073</u>	<u>Chatter in the clutch</u>

Given the facts presented, the Consumer's concern that a defect existed was reasonable. We note that the Manufacturer did not contest the initial eligibility of the Vehicle in this case and did not suggest that the Consumer's concerns about future engine problems were unfounded. The Consumer was therefore found to have met the eligibility requirements of the statute in order to initiate an arbitration hearing in accordance with Chapter 743b of the Connecticut General Statutes for loss of use and value.

### **III. DECISION**

The arbitrators **rule adversely to the Consumer. No action** shall be taken by the Manufacturer.

### **IV. REASONING**

The documents in the record and the testimony presented at the arbitration hearing do not indicate a violation of Connecticut General Statutes Chapter 743b. In analyzing the facts in this matter, these arbitrators carefully reviewed and considered the Consumer's Request for Arbitration, the Manufacturer's Statement, the written repair records, the Technical Expert's comments, and the oral testimony and closing statements that the parties provided at the hearing. The Consumer represented himself at the hearing and had no other witnesses. Attorney Michael Gregg served as third party representative of the Manufacturer. Mr. Mark Volovski, the Service Manager from the Dealer, attended as a witness for the Manufacturer.

After careful scrutiny of the written submissions, presentations at the hearing, and the comments by Mr. Clark, we conclude that the Consumer has not met his burden of proof under the Lemon Law.

#### **A. Substantial Impairment of Use**

##### **(i) Backup Camera Display**

The Consumer complained that the vehicle's backup camera display blinked on and off and did not function properly. The first three repair attempts addressed this nonconformity. While there is no question that an inoperable backup camera display inconvenienced the Consumer on multiple occasions, we conclude that this defect did not amount to a substantial impairment.

The Consumer did not deny that he could still back up his car safely by checking his surroundings himself. He likewise did not identify any other ways in which the non-functionality of the backup camera screen affected his ability to use the car in a safe and reliable manner. While the Consumer hypothesized during the hearing that the malfunctioning backup screen could have implicated other unspecified electronic problems in the vehicle, he offered no evidence to substantiate this claim or to show that such problems persist.

While the Lemon Law is a remedial statute construed in favor of consumers, the requirement of a substantial impairment sets a threshold level of defect severity the Consumer must demonstrate. Based on the repair orders, the Consumer's testimony, and the views expressed by the State's Technical Expert and

Manufacturer's witness during the hearing, we conclude that the loss of functionality in the backup camera was an irritant and inconvenience. But it did not rise to the level of a substantial impairment cognizable under the Lemon Law. In any case, the nonconformity was corrected within a reasonable number of repair attempts.

The bubble in the rear passenger tire similarly did not interfere with the normal use of the vehicle, and was replaced free of charge in a reasonable number of attempts.

(ii) Transmission

The transmission-related problems pose a more complex set of issues. The Consumer described what felt like vibration in the vehicle, lack of full engagement of the drivetrain, and chatter in the clutch. These problems occurred for several days before the Consumer took the vehicle for repair on March 30, 2016.

Based on the Consumer's description, repair orders, and statements of the Manufacturer's lawyer Mr. Gregg, we find that the transmission-related nonconformity substantially impaired the use of the vehicle when the nonconformity occurred. At the same time, we find that the Manufacturer successfully discharged its statutory obligation in subsection (d) to "repair[] or correct[] any defect or condition which substantially impairs the use, safety or value of the motor vehicle to the consumer after a reasonable number of attempts."

The transmission-related problem underwent only one repair attempt, beginning on March 30, 2016. We heard no evidence that the defect continued to exist in any meaningful sense after the repair was completed. When asked whether he has noticed subsequent chatter in the transmission, the Consumer replied that there might be some minor intermittent noise when the vehicle is in first gear. But he acknowledged that, because he has heightened sensitivity about the vehicle now, it may well be operating normally. The Consumer further testified that he has driven approximately 2,400 miles since the transmission was repaired in April 2016, and has not brought the vehicle in for further repairs for the same defect. Thus, we conclude that the Manufacturer has cured the defect within a reasonable number of repair attempts.

(iii) Evidence of Oil Leak

At the hearing, the Consumer wished to introduce new evidence consisting of printed images of what he described as a recent oil leak from the vehicle parked at his home. Noting the Manufacturer's objections, we admitted the evidence into the record for whatever weight it may be accorded. Given that the Manufacturer has had no opportunity to inspect, diagnose, or repair the oil leak, we determine that this evidence cannot bear on the outcome of the instant arbitration. (In any event, no compelling evidence was offered to show that the leak was a result of repairs made during the fourth repair attempt, as the Consumer seemed to suggest.)

## B. Substantial Loss of Value

The Consumer argued that his vehicle—which he describes as a future collectible— has suffered a substantial loss of value as a result of the transmission-related repair. Specifically, he argued that one of the *consequences* of the repair was that the engine block had been machined to a wall thickness approaching the minimum considered adequate under Manufacturer’s specifications. Any future repairs would require the entire engine to be replaced. He was also concerned that debris left after the repair might lead to future problems. Given the car’s status as a potential future collectible, Consumer suggests that the diminution in value caused by the machining of the engine block amounts to a substantial impairment to the car’s value.

We do not find this argument compelling. First, the Consumer did not offer any evidence or documentation that would substantiate (1) the claim that the vehicle is likely to be a collectible, (2) the alleged technical consequences of the transmission repair, or (3) potential changes in future car value due to the thinning of the cylinder walls.

Second, the thinning is a consequence of repairing a defect covered by the Manufacturer’s warranty. The thinning the Consumer alleges, even if real, is most likely not a warranty-eligible defect itself, assuming the current width of the wall is consistent with the Manufacturer’s minimal specifications. In any event, the consumer has never suggested that the repairs were not the appropriate way to correct the original defect, nor has he complained explicitly about this problem or sought to have it repaired. If the debris is in fact responsible for his current oil leak, any necessary repairs appear to be covered by the manufacturer’s warranty. Further, the consumer did not provide evidence that the thinned-down wall substantially impacts the vehicle’s safety or use. Thus, the thinning cannot figure into our analysis.

Third, rather than alleging a present-day substantial diminution in value, the Consumer’s argument relies principally on a potential future appraisal of the vehicle once it acquires the status of a collectible. The Lemon Law does not countenance such speculative, future-oriented claims.

## C. Statutory Presumption

While there was disagreement during the hearing about the number of days the vehicle was out of service by reason of repair, we conclude that the Consumer is not eligible for the Lemon Law’s thirty-day presumption set out in subsection (e).

The consumer’s initial complaint reported inaccurate numbers for days out of service due to a misunderstanding of the dates reported on the dealer’s repair invoices. (Confusingly, the “Ready” date indicates the date on which the invoice was closed rather than the date on which the vehicle was ready for the consumer to pick up.) After extended discussion during the hearing, we determined that the most likely dates for pick-up from each of the repair attempts were July 31, August 11, November 24, and April 19, respectively. These dates are reflected in the table’s values for the number of calendar days the vehicle was out of service by reason of repair.

The Lemon Law's thirty-day presumption only applies "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." At the time of the fourth repair attempt, the vehicle had 12,073 miles, and so was well within the Lemon Law's mileage limit of 24,000 miles. Based on the vehicle Invoice, we determined that the vehicle was delivered on April 15, 2016. Setting aside days out of service for the backup camera (since this defect was not a substantial impairment), the vehicle was out of service for at most 16 calendar days within the two-year time frame, from March 30, 2016 until April 14, 2016. Thus, the Consumer is not eligible to invoke the thirty-day presumption.

The Consumer argued that, because he purchased the vehicle for seasonal use (rendering the vehicle unavailable from late October through March each year), the car was out of service a disproportionate amount of time in comparison to consumers to who use their vehicles year-round. While this may be true, we are not at liberty to deviate from the clearly specified statutory timeframe. We note further that the third repair attempt began on November 18, 2015, well outside the Consumer's seasonal window.

## **V. CONCLUSION**

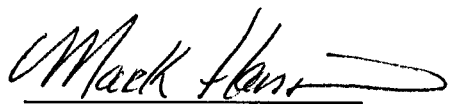
While we appreciate the Consumer's subjective sense of disappointment and frustration with his vehicle, which he has had to repair on four occasions, not every instance of subjective dissatisfaction rises to the level of a Lemon Law violation. Given the above facts, we find that the Consumer did not present substantial evidence that the claimed defect or defects caused a substantial impairment to the vehicle's use, value, or safety and had not been remedied within a reasonable number of repair attempts.

That is so for four reasons. First, the backup camera defect did not constitute a substantial impairment. Second, the transmission-related defect was remedied after a reasonable number of repair attempts. Third, the allegation about substantial loss of value is overly speculative to be credited at present and does not appear to result from a warranty-eligible defect. Finally, the Consumer is not eligible for the Lemon Law's thirty-day presumption. Based upon the evidence, we do not find a violation of Chapter 743b. Accordingly, no action is being ordered on this application.

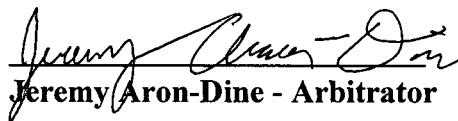
The decision of these arbitrators does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat.2183 (1975), U.S.C. 2301 et seq., as in effect on October 1, 1982.

Either party to the dispute may apply to Connecticut 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, 52-417, 52-418, 52-419, and 52-420 of the Connecticut General Statutes.

**Date: 10-24-2016**



**Mark Hanin - Arbitrator**



**Jeremy Aron-Dine - Arbitrator**