

LAW REVIEW

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CALIFORNIA'S LEMON LAW – GOOD FOR CAR BUYERS

California's Song-Beverly Consumer Warranty Act, in the Civil Code, also known as the "Lemon Law", is one of the strongest in the country. Today's column discusses the essence of the Lemon Law should you have a problem following purchase or lease of a new vehicle. "Oh, I love that new car smell, the essence of lemon."

Cadillac

Paul Lukather leased a new Cadillac from a dealer in Whittier with financing provided by GMAC. At only 854 miles the Cadillac exhibited intermittent but recurring malfunctioning in the electronic stability system. Lukather took the car back to the dealer for service for the same problem on more than four occasions. (Four or more seems to be the magic number for Lemon Law cases.)

Finally when the brakes came on yet again while driving due to the malfunction, Lukather took the Cadillac back to the dealer and left it there. He stopped making lease payments.

At that point the trial testimony varies. Lukather testified that he expressed his desire to get his money back under the Lemon Law. Cadillac's people testified he was unclear and processing Lemon Law claims takes time and

Lukather was impatient. The trial court believed Lukather and ruled that GM *willfully* violated the Lemon Law. GM appealed.

Lemon Law

At the risk of boring you to death (it would not be the first time), given how many people contact our office about Lemon Law cases, I thought it might be helpful to recite the law.

“If the (car) manufacturer or its representative in this state is unable to service or repair a new motor vehicle ... to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle...or promptly make restitution (a refund) to the buyer.... However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.”

“In the case of restitution, the manufacturer shall make restitution in an amount equal to or the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges, such as sales tax, license fees, registration fees and other official fees, plus any incidental damages...included but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.”

That is the basic law. As noted, the cases seem to say that four or more returns to the dealer with a recurring problem that remains unfixed constitutes “a reasonable number of attempts”, although more is better if you are trying to perfect a Lemon Law claim. If the defect is one that is likely to cause death or serious bodily injury, two unsuccessful repairs is generally sufficient, and if the vehicle is out of service for a cumulative total of 30 or more calendar days, that also is considered a reasonable number of attempts. I.e. a lemon car.

Willful Violation

The disputed facts in the Lukather case involved phone exchanges with the GM dealership and the manufacturer’s representatives. GM early on conceded that the Cadillac was a “lemon”, but rather than quickly offer to return Lukather’s money, it became bureaucratic and stalled for over two months making excuses for why it could not refund Lukather’s money.

The trial court and the Court of Appeal found GM should have understood that Lukather had selected the restitution option and yet they did not return his money for over two months, and instead tried to get him to select another new car at the dealer.

That violation was willful causing a civil penalty of double damages.

For more on California’s Lemon Law see

www.lemonlawca.com/songbeverly.html.

Car Buyer's Bill of Rights

As long as we are talking about cars, don't forget California's strong pro-consumer law Car Buyer's Bill of Rights, effective July 1, 2006.

The law requires dozens of disclosures to new car buyers including the advisory "There is No Cooling-Off Period in California", and includes all sorts of requirements for car purchase contracts.

Even used cars fall under the Car Buyer's Bill of Rights law. See www.dmv.ca.gov/pubs/billrights_top.htm.

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