**CAPTION:** **FAGEN V. JAGUAR LAND ROVER, LLC**

**12-01-23**

APPEAL NOS.: C-220640

C-220656

TRIAL NO.: A-2001080

KEY WORDS: SUMMARY JUDGMENT – CIV.R. 56 – LEMON LAW – R.C. 1345.72 – NONCONFORMITY – R.C. 1345.73 – REASONABLE REPAIR ATTEMPTS

SUMMARY:

The trial court appropriately found no genuine issue of material fact regarding the existence of a defect in a vehicle leased by plaintiff from defendant, where the evidence objectively demonstrated that the vehicle’s dashboard repeatedly warned of issues with the vehicle’s brakes and those warnings were caused by a software issue.

The trial court properly found that the vehicle was out of service by reason of repair for a cumulative total of 30 or more calendar days, triggering R.C. 1345.73(A)(2)’s presumption of reasonable repair attempts, where repair invoices and deposition testimony established that the vehicle was in defendant’s service department for repairs for more than 30 days before the service technician’s COVID-19 related quarantine triggered R.C. 1345.73(B)(1)’s tolling provision.

The trial court erred when it granted summary judgment and found that the indicator light and software issue substantially impaired the use, value, or safety of the vehicle to plaintiff, because plaintiff’s statements in an affidavit that the issue undermined her confidence in the vehicle’s safety, caused her to use the vehicle less, and diminished the value of the vehicle created a genuine issue of material fact as to the existence of a substantial impairment.

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED IN C-220656; APPEAL DISMISSED IN C-220640

JUDGES: OPINION by BOCK, J.; CROUSE, P.J., and ZAYAS, J., CONCUR.