

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0049 CAF**

GRIFFITH FORD SAN MARCOS, Complainant	§ § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
HYUNDAI MOTOR AMERICA, Respondent		

DECISION AND ORDER

Griffith Ford San Marcos (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in a 2013 Hyundai Velostar. Complainant asserts that the vehicle has corroded wiring harness connectors at the Power Control Module (PCM) assembly which should be covered under warranty. Hyundai Motor America (Respondent) argued that the corrosion resulted from an outside influence, was not a defect, and was not covered by the vehicle's warranty. The hearings examiner concludes that the vehicle does not have an existing warrantable defect, and Complainant is not eligible for relief.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

Matters of notice and jurisdiction were not contested and are discussed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on January 27, 2015, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Mark Liscano, Sales Manager. Also testifying for Complainant were Rick Benavides, General Manager, and Wes Kerlick, Shop Foreman. Respondent was represented telephonically by David Whittington, Arbitration Advocate. The hearing was reopened telephonically on February 20, 2015. Present at this setting for Complainant were Rick Benavides, General Manager, and Sandra Hotchkiss, office manager. David Whittington, Arbitration Advocate, represented Respondent. The hearing record was closed on February 20, 2015.

II. DISCUSSION

A. Applicable Law

Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.” Occupations Code § 2301.603(a) provides that “[a] manufacturer, converter, or distributor shall make repairs necessary to conform a **new motor vehicle** to an applicable manufacturer’s, converter’s, or distributor’s express warranty.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the

Code. However, relief is available for purchasers of used vehicles under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

Complainant, a Ford dealership, purchased a 2013 Hyundai Velostar from an individual who traded in the vehicle in exchange for a different vehicle on March 26, 2014. On the date of hearing the vehicle’s mileage was officially 33,191.¹ At this time, Respondent’s warranty coverage for the vehicle remains in place, with coverage for five (5) years or 60,000 miles, whichever comes first.²

1. Rick Benavidez’ Testimony

Rick Benavidez, General Manager, testified that Complainant wants the vehicle in question repaired. The dealership took the vehicle as a trade in for a vehicle owned by Complainant on March 26, 2014. When Complainant first received the vehicle it started and ran great. When they showed the vehicle to a potential purchaser, it failed to start. Complainant determined that the vehicle did not have any fuel pressure. So, Complainant took the vehicle to Respondent’s authorized dealer for repairs since it was still covered under warranty. The dealer’s service technician replaced the vehicle’s fuel pump. However, Mr. Benavidez feels that the problem was misdiagnosed. The real issue with the vehicle was a corroded main engine harness. Complainant took the vehicle to another of Respondent’s authorized dealers in Austin, Texas for a second opinion. The Austin dealer’s service technician also determined that the harness was corroded. The harness connects to the vehicle’s power control module (PCM).

During cross examination, Mr. Benavidez testified that when the vehicle was initially accepted as a trade in, Complainant’s employees test drove the vehicle and inspected it to ensure that it was operating properly. They performed a used vehicle inspection (UVI) on the vehicle and it was running fine. Complainant’s employees prepared the vehicle for resale after taking possession of the vehicle. Mr. Benavidez also testified that they (Griffith Ford) do not power wash engines when preparing a vehicle for resale. However, Mr. Benavidez doesn’t know whether the original owner of the vehicle may have power washed the vehicle’s engine prior to Complainant’s

¹ File Ex. 13, Texas Certificate of Title dated May 27, 2014. The actual mileage of the vehicle at the time of hearing was unclear. Five different documents entered as exhibits in the hearing had different mileage for the vehicle. The hearings examiner relied on the Certificate of Title for the correct mileage as this is an official state document.

² File Ex. 11, 2013 Owner’s Handbook and Warranty Information, undated.

obtaining possession of the vehicle. Complainant does not power wash their vehicles, since their power washer is broken. When they wash vehicles, they use a water hose.

During the continuance held on February 20, 2015, Mr. Benavidez testified that the vehicle was sold to Sean Foster in April of 2014. When the vehicle would not start and it became apparent that there was going to be a problem repairing the vehicle, Mr. Foster traded the vehicle back to Complainant and took another vehicle in its stead. The title was then reassigned to Complainant who is considered to be the owner.³

2. Mark Liscano's Testimony

Mark Liscano, Sales Manager, testified that the original owner of the vehicle (Gilbert Hernandez) traded it in for a 2013 Ford F-150 on March 26, 2014. Complainant's representative test drove the vehicle and it worked well at that time. There was no indication of any problem with the vehicle. Mr. Hernandez did not think he'd be able to trade in the vehicle because of the negative equity he had at the time. It was only after Complainant's sales person was able to find a vehicle to get Mr. Hernandez out of the negative equity situation, did he agree to trade in the vehicle. Whenever he accepts a trade in, Mr. Liscano looks to see why the seller wants to dispose of the vehicle. Mr. Liscano determined that there was nothing untoward with the vehicle when Complainant accepted it. With the mileage on the vehicle being low at the time (33,191), Mr. Liscano did not think that there would be a problem with getting the vehicle repaired if it became necessary to do so, since it was still under warranty.

When Complainant receives a vehicle as a trade in, they pay off any amount owed on the vehicle. The vehicle then goes into Complainant's inventory and goes through a UVI. The vehicle is inspected by Complainant's certified technician to see if they can find anything wrong with the vehicle so that there won't be any issues when Complainant tries to resell it. In addition, Complainant sells Ford warranties for the vehicles. In order to be able to sell the warranty, Complainant has to verify that a certified technician has inspected the vehicle. It usually takes a few hours to conduct the inspection. After the inspection is completed, the inspecting technician closes out the service ticket on the vehicle so that any necessary repairs can be done to the vehicle. The cost of any repairs is added to the sales price of the vehicle. The vehicle is then washed and detailed prior to being placed on Complainant's lot as being for sale.

The vehicle was on Complainant's lot for sale for one month and three days. Sean Foster attempted to purchase the vehicle when trading in his Ford F-150 to Complainant. The sales person dealing with Mr. Foster attempted to start the vehicle at issue to show it to Mr. Foster. However, he was unable to start the vehicle. Mr. Foster liked the vehicle and wanted to purchase

³ File Ex. 13, Texas Certificate of Title dated May 27, 2014; and File Ex. 15, Power of Attorney for Transfer of Ownership of a Motor Vehicle dated May 8, 2014.

it. He was informed by the sales person that the vehicle was still under factory warranty and that the repairs would be handled without cost to him. The vehicle would crank but wouldn't start. Mr. Foster went ahead and purchased the vehicle on April 29, 2014, although he couldn't drive it at the time. Mr. Foster was provided with another stock vehicle overnight while the problem with the original vehicle was being diagnosed. Complainant had the vehicle towed to Roger Beasley Hyundai (Roger Beasley) in Kyle, Texas on April 30, 2014. The technician with Roger Beasley suspected that the problem with the vehicle was a bad fuel pump. So, the technician replaced the fuel pump. This repair was covered by Respondent's warranty.

On May 9, 2014, while the vehicle was still at Roger Beasley, it would not start. The Roger Beasley technician had not driven the vehicle after replacing the fuel pump. The technicians for Roger Beasley then determined that the vehicle would not start due to the corrosion on the harness. The Roger Beasley representative informed Complainant that the damage was not going to be covered under warranty because it was assumed that someone had used a power washer in the engine which caused the damage to the harness. Complainant wanted a second opinion, so they picked up the vehicle and towed it to South Point Hyundai in Austin, Texas. The vehicle is still there and has not started or been driven since before it was sold to Mr. Foster. Mr. Foster never took delivery of the vehicle, although it was registered by Complainant in his name. The vehicle has never left Complainant's inventory. The deal with Mr. Foster could have been reversed, but Complainant had already paid taxes on the vehicle (collected from Mr. Foster) and it was too late to reverse the deal. So, Complainant traded Mr. Foster out of the vehicle and got him into a different vehicle. If a deal is unwound after taxes have been paid and the vehicle has been titled and registered, there is a financial penalty to the buyer. By the time Complainant determined that the repair, which was very expensive, could not be covered under warranty, Complainant just decided to trade Mr. Foster out of the vehicle. There was no sense in having Mr. Foster waiting a month or two for the vehicle, having to make a car payment, and never having possession of the vehicle. The vehicle had to be similar in price in order to cancel out the original sale.

During cross examination, Mr. Liscano testified that a discrepancy in the vehicle's mileage (33,377⁴ at time of purchase vs. 35,213⁵) was due to the fact that sometimes inventory vehicles are used for dealer purposes, i.e., to run errands for the dealership or to take trips to pick up other vehicles. During this period of time, there were no problems reported with the vehicle until Complainant attempted to sell it to Mr. Foster.

During re-direct examination, Mr. Liscano testified that Complainant does not know whether anyone used a power washer on the vehicle's engine. There's obviously damage to the vehicle. Complainant has been in business for over 30 years in three different cities and has a great

⁴ File Ex. 1, Vehicle Car Fax Report, undated.

⁵ File Ex. 10, Repair Orders dated April 20, 2014, May 9, 2014, May 21, 2014, and May 23, 2014, p. 5.

reputation with Ford Motor Company and anyone Complainant does business with. They have over 168 cars in stock and they do not have this kind of problem with any of the vehicles on their lot. They sell and take vehicles in trade all the time. Complainant has competent technicians. They have no power washer on the premises. He felt that Complainant was being blamed for the last 200 miles and one month of possession that they caused the damage by their negligence. Complainant has accepted at least one other Hyundai Velostar as a trade in the past and did not have any problems with that vehicle. The original owner did take meticulous care of the vehicle and the engine was very clean when he traded it in to Complainant.

3. Wes Kurlick's Testimony

Wes Kerlick is Complainant's shop foreman. He's worked for Ford Motor Company approximately 16 years. He's certified in electrical, gas engine driveability, air conditioning, and brakes. He has a Ford certification for used vehicle inspections. He started as a lube tech for Ford and moved up to shop foreman.

Mr. Kerlick testified that the first time he became involved with the vehicle was when it wouldn't start after being sold to Mr. Foster. Mr. Kerlick inspected the vehicle to ascertain whether the problem with it was something that could be dealt with in house. There was no communication between the powertrain control module (PCM) or engine control module (ECM) and his scan tool. Mr. Kerlick determined that the issue could be covered under warranty and Complainant decided to take the vehicle to Roger Beasley. Mr. Kerlick testified that Complainant does not power wash engines when they're preparing vehicles for sale. They do not have a power wash machine, since it broke a couple of years previously. Mr. Kerlick feels that the harness corrosion was caused by a defect. There are two connectors within a cavity and only one of the connectors shows corrosion.⁶ He feels that if it were not a flaw then both connectors would have damage. The connectors are identical and he feels that if a pressure washer was pointed in the area of the engine where they are housed, then both connectors would be corroded since you can't pinpoint a pressure washer to such a small area. Mr. Kerlick feels that there was a flaw in the connector sealing which led to the damage. However, he doesn't know how water got into the connector. He's dealt with corrosion damage to Ford vehicles in the past and he usually has to determine where the water causing the damage is entering the system in order to make repairs to any damaged components. The corrosion damage to this vehicle would not have been discovered during any inspection of the vehicle. The corrosion to the connector has been there awhile. It may have taken six months to a year for the corrosion to build up to the point where it was discovered. Mr. Kerlick thought that maybe when checking the fuel pump, the connector was moved which misaligned which, in turn, broke the pin connectors in the component.

⁶ File Ex. 7, Complainant's Photos of the Engine Harness and Connectors, p. 3.

C. Respondent's Evidence and Arguments

David Whittington, Arbitration Advocate, testified that the vehicle in question was driven for over 33,000 miles at a rate of over 22,000 miles per year with no warranty problems of any kind for the original owner. The only concerns with the vehicle have been with regular maintenance service and some tire and alignment issues. There were no concerns related to corrosion in the vehicle. Complainant took the vehicle in on a trade and it was running properly at the time. They inspected the vehicle and certified that it was running properly. They drove it for a few hundred miles with no problem and then, all of a sudden, this issue came to life that they believe is a warranty defect or manufacturer's non-conformity that never occurred in the first year and a half and 33,000 miles of use. Respondent has a hard time accepting that. This is also based on an inspection by two dealers and Respondent's field service engineer that they found corrosion in this one connector. Someone has forced a corrosive cleaning material, which is Respondent's best educated guess based on the dealer's and field service engineer's inspections, into one of the connectors. Complainant's pictures show that one of the connectors has some damage to it. Respondent doesn't know when that occurred, i.e., if that occurred when it was taken off for the photo, or if it occurred when the vehicle was being diagnosed with the fuel pump issue, they don't know if someone else may have worked on the vehicle. However, that was not the way the vehicle was sealed or the condition of the seal when it left the assembly line and there were no problems with it for the first year and a half and 30 plus thousand miles. Respondent doesn't understand why, if the vehicle ran so well for so long, they certified that it operated as designed, and now there's a leak in a seal and a corrosive material on one side of two completely separate connectors that caused this damage, how this is a manufacturing defect. That's why Respondent voided the warranty.

Regarding the photos submitted by Complainant, the seal that is damaged has a triple ridge on it to protect it from moisture getting inside of it. The damaged area and the corrosion are on the outside connector which is indicative of someone running a power washer down the side of the vehicle with the hood up and moisture getting in on one side of the connector because the other side is not damaged as testified by Complainant's shop foreman. In addition, the pictures show that the engine compartment is extremely clean for a vehicle that's been driven for 33,000 miles. The photos also show the location of the damaged connector which is well back from the front of the vehicle where it's not subject to road splash or moisture or any corrosion which would come off the road. In fact, if it was an issue like that, it should have affected the connectors in front of that area along the front of the vehicle.

In addition, Mr. Whittington testified that Respondent's warranty provides that warranty coverage is not provided for damage to a vehicle resulting from "misuse [or] abuse"⁷ which is Respondent's interpretation of contamination from an outside source. Warranty coverage is

⁷ File Ex. 11, 2013 Owner's Handbook and Warranty Information, undated.

provided for the vehicle for five years, 60,000 miles and a powertrain warranty for the engine and transmission and related components for ten years, 100,000 miles, but for a second owner of a vehicle is five years, 60,000 miles. The vehicle is still under warranty.

During cross examination, Mr. Whittington testified that only one side of the damaged component became corroded because they are two separate connectors which are sealed separately. They are separated by the seals. The photos showed that there is damage to the seal of the connector that failed, which didn't come from the factory that way. In addition, the connector is on the outside edge of the vehicle nearest the fender and the crack where the hood would be. If you used a pressure washer this is the most likely point of entry for the hot water and/or caustic soap solution being forced into that side. The other side would be protected by the first connector. Mr. Whittington doesn't know what the original owner may have done with the vehicle, but based on the service orders there were no concerns for this issue until Complainant had the vehicle in their possession for a month.

During redirect testimony, Mr. Whittington stated that Respondent was not saying that Complainant did anything wrong that they can pinpoint. However, they know that the damage to the connector was from an outside source and not due to a manufacturer defect. Respondent has over 50,000 vehicles of this particular model on the road and they do not have any recall campaigns, or service bulletins for this type of issue. Respondent does know that their dealerships and other dealerships do have a problem with power washing and that it can cause problems. That's why the warning to be careful when using a power washer was included in Respondent's Owner's Manual.⁸

D. Analysis

The first issue to be addressed is whether Complainant has standing in order to bring this Warranty Performance complaint. The evidence presented at the hearing establishes that Complainant purchased the vehicle from a third party (as a trade in) and placed it on their car lot for resale. Complainant then reached an agreement with Sean Foster where he agreed to purchase the vehicle. All of the paperwork was completed and financing arranged for Mr. Foster's purchase. However, the vehicle would not start and Mr. Foster never took possession of the vehicle. When it became apparent that Mr. Foster would not be able to drive the vehicle due to the warranty repair issues, Mr. Foster accepted a different vehicle in its stead. Mr. Foster then assigned the title to Complainant. Since, Mr. Foster never took possession of the vehicle and assigned the title back to Complainant, the hearing examiner must conclude that Complainant is still the owner of the vehicle and has standing to pursue the complaint.

⁸ File Exhibit 12, Hyundai Owner's Manual, Operation Maintenance Specifications, p. 80, which provides that "water washing in the engine compartment including high pressure water washing may cause the failure of electrical circuits or engine and related components located in the engine compartment."

In order to determine whether Complainant has a remedy under Section 2301.204 of the Occupations Code, there first has to be evidence of a defect or condition in the vehicle that has not been repaired by Respondent. The evidence provided by the parties establishes that the vehicle will not start due to corrosion on the main engine harness.

Respondent's authorized dealers' technicians and field service engineer have determined that the corrosion was caused by an outside influence and, as a result, the warranty does not cover the damage. Complainant argues that the corrosion was due to a defect in the vehicle and the repairs should be covered under Respondent's warranty.

Complainant's argument is that they did not do anything to cause the vehicle not to start. They took possession of the vehicle and it worked as designed and passed a used vehicle inspection and was prepared for resale without any issues arising. Complainant feels that the damage was caused by a defect in the seal for the connector to the PCM which allowed water to get in to the component, thereby damaging the component.

However, Respondent feels that the corrosion and subsequent damage to the connector was due to the fact that someone power washed the engine at some point in the past. Respondent provides in its owner's manual that an owner should not power wash a vehicle's engine compartment and that doing so could damage electrical circuits or components. They point to the fact that only the half of the component that faces the side of the vehicle where the hood lifts was damaged, as well as the fact that the engine itself was immaculate for a vehicle with 30,000 plus miles on it, as proof that the engine compartment was power washed at some time in the past.

Neither party can definitively establish how the connector became corroded. The parties can only speculate as to how a liquid got into the connector, thereby causing corrosion in the part. Complainant has the burden of proof to establish that the concern complained of is due to a defect that has not been repaired by Respondent. The hearings examiner must hold that Complainant has not met this burden. Complainant does not know whether the prior owner of the vehicle power washed the engine prior to trading it in to them. In addition, Complainant's own witness testified that in his opinion the corrosion had been building up for six months to a year prior to it being discovered. As such, the hearings examiner must hold that the problem with the vehicle is not due to a manufacturer defect and that Respondent is not liable for repairs to this component.

Respondent's warranty applicable to Complainant's use vehicle provides coverage for five (5) years or 60,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 35,213 and it remains under this warranty. As such, the Respondent is still under an obligation to repair the vehicle whenever there is any other problem covered by the warranty.

Complainant's request for repair relief is denied.

III. FINDINGS OF FACT

1. Griffith Ford San Marcos (Complainant) purchased a used Hyundai Velostar on March 26, 2014, from an individual (Gilbert Hernandez) with mileage of 33,191 at the time of purchase.
2. The manufacturer of the vehicle, Hyundai Motor America (Respondent) issued a warranty for the vehicle for five years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 33,191.
4. At the time of hearing the vehicle was still under warranty.
5. Complainant received the vehicle as part of a trade-in/purchase from the original owner.
6. Complainant inspected the vehicle prior to taking possession of it and it ran fine.
7. Complainant sold the vehicle on April 29, 2014, to Sean Foster, but it would not start.
8. The vehicle's title was transferred to Mr. Foster at the time of sale.
9. Mr. Foster never took delivery of the vehicle, as the vehicle was never repaired.
10. Complainant arranged for Mr. Foster to take another vehicle in lieu of this vehicle in order to consummate their deal with him.
11. Mr. Foster reassigned the vehicle's title back to Complainant, Griffith Ford.
12. Complainant is the owner of the vehicle.
13. The vehicle was taken to Respondent's authorized dealer, Roger Beasley Hyundai (Roger Beasley), in Kyle, Texas on April 30, 2014, in order to repair it.
14. Roger Beasley's service technician replaced the vehicle's fuel pump. However, the vehicle would still not start.

15. On May 9, 2014, Roger Beasley's service technician determined that the problem with the vehicle was that there was corrosion on the vehicle's engine harness, that the corrosion was due to an outside source, and that any repair for the issue was not covered by the vehicle's warranty.
16. Complainant took the vehicle to another of Respondent's authorized dealers, South Point Hyundai (South Point), in Austin, Texas, in order to obtain a second opinion regarding the vehicle.
17. South Point's service technician verified the Roger Beasley's technician's conclusions listed in Findings of Fact 13.
18. On October 27, 2014, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
19. On November 24, 2014, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainant and Respondent, giving all parties not less than 10 days' notice of hearing and their rights under the applicable rules and statutes. The notice stated the time, place and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and the matters asserted.
20. The hearing convened on January 27, 2015, in Austin, Texas before Hearings Examiner Edward Sandoval. Complainant was represented by Mark Liscano, Sales Manager. Also testifying for Complainant were Rick Benavides, General Manager, and Wes Kerlick, Shop Foreman. Respondent was represented telephonically by David Whittington, Arbitration Advocate. The hearing was reopened telephonically on February 20, 2015. Present at this setting for Complainant were Rick Benavides, General Manager, and Sandra Hotchkiss, office manager. David Whittington, Arbitration Advocate, represented Respondent. The hearing record was closed on February 20, 2015.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance).

2. A hearings examiner of the Department's Office of Administrative Hearings has jurisdiction over all matters related to conducting a hearing in this proceeding, including the preparation of a decision with findings of fact and conclusions of law, and the issuance of a final order. Tex. Occ. Code § 2301.704.
3. Complainant timely filed a complaint with the Department. Tex. Occ. Code § 2301.204; 43 Tex. Admin. Code § 215.202.
4. The parties received proper notice of the hearing. Tex. Gov't Code §§ 2001.051, 2001.052; 43 Tex. Admin. Code § 215.206(2).
5. Complainant bears the burden of proof in this matter.
6. Complainant failed to prove by a preponderance of the evidence that the vehicle has a verifiable defect or condition that is covered by Respondent's warranty. Tex. Occ. Code § 2301.204.
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repurchase relief pursuant to Texas Occupations Code § 2301.204 is hereby **DISMISSED**.

SIGNED February 23, 2015



**EDWARD SANDOVAL
CHIEF HEARINGS EXAMINER
OFFICE OF ADMINISTRATIVE HEARINGS
TEXAS DEPARTMENT OF MOTOR VEHICLES**