

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 15-0057 CAF**

**JILL BUTLER AND DAVID BUTLER,  
Complainants**

v.

**FORD MOTOR COMPANY,  
Respondent**

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Jill Butler and David Butler (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) alleged defects in their 2013 Ford Escape. The Complainants claimed that the vehicle emitted a mildew smell from the vents causing allergy symptoms. Ford Motor Company (Respondent) argued that the issue described by the Complainants is not a defect. The Respondent also argued that the Complainants did not undertake a reasonable number of repair attempts within the first 12,000 miles. The hearings examiner concludes that the Complainants have not shown that a reasonable number of repair attempts have been undertaken as required by Texas Occupations Code § 2301.604(a). Accordingly, the Complainants' vehicle does not qualify for repurchase/replacement relief.

**I. Procedural History, Notice and Jurisdiction**

Matters of notice and jurisdiction were not contested and are addressed only in the Findings of Fact and Conclusions of Law. The hearing in this case convened on May 19, 2015, in Bryan, Texas, before Hearings Examiner Andrew Kang. Complainants, Jill Butler and David Butler, represented themselves. Maria Diaz, Consumer Affairs Legal Analyst, represented Respondent. The hearing record was closed on May 19, 2015, at the conclusion of the hearing on the merits.

## II. Discussion

### A. Applicable Law

The Lemon Law, in part, requires a manufacturer of a motor vehicle to repurchase or replace a vehicle when the manufacturer is “unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts.”<sup>1</sup> A rebuttable presumption exists that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty if the same nonconformity continues to exist after being subject to repair four or more times and: (1) two of the repair attempts were made in the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) the other two repair attempts were made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the second repair attempt.<sup>2</sup>

### B. Complainant’s Evidence and Arguments

The Complainants purchased a new 2013 Ford Escape from Varsity Ford Lincoln, Inc. (Dealer) in College Station, Texas, on November 16, 2012.<sup>3</sup> The vehicle’s mileage at the time of sale was 28.<sup>4</sup> The vehicle’s warranty provided bumper to bumper coverage for the first 36 months or 36,000 miles, whichever comes first.<sup>5</sup>

The Complainants noticed a strong mildew odor coming from the air conditioning vents approximately four months after purchasing the vehicle. The Complainants took the vehicle to the Dealer to have this issue addressed on May 24, 2013. No repairs were made on this date.<sup>6</sup>

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<sup>1</sup> TEX. OCC. CODE § 2301.604(a).

<sup>2</sup> TEX. OCC. CODE § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for establishing a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. Section 2301.605(a)(2) only applies to a nonconformity that creates a serious safety hazard, and § 2301.605(a)(3) requires that the vehicle be out of service for repair for a total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner.

<sup>3</sup> Complainant’s Ex. 1, Sales Order dated November 16, 2012.

<sup>4</sup> Complainant’s Ex. 3, Odometer Disclosure Statement.

<sup>5</sup> Complainant’s Ex. 4, 2013 Model Year Ford Warranty Guide 8.

<sup>6</sup> Complainant’s Ex. 5, Letter from Complainants to Respondent dated October 11, 2014.

The Complainants took the vehicle to the Dealer on September 9, 2013, and the air conditioning system was deodorized. The vehicle had 13,467 miles at this service visit.<sup>7</sup> On October 28, 2013, the Dealer deodorized the vehicle after verifying the mildew odor. The vehicle had 15,233 miles at this service visit.<sup>8</sup> On July 23, 2014, the Dealer found pooling water from a leaking grommet in the spare tire area. The Dealer replaced the carpet and insulators, and deodorized the vehicle. The vehicle had 23,972 miles at this service visit.<sup>9</sup>

On October 11, 2014, the Complainants mailed written notice of the mildew odor issue to the Respondent. In this letter, the Complainants requested that the Respondent correct the mildew odor problem within thirty days. The Complainants requested repurchase of the vehicle if the respondent could not correct the problem.<sup>10</sup> The Complainants filed their Lemon Law complaint on October 29, 2014.<sup>11</sup>

### C. Respondent's Evidence and Arguments

A Ford Field Service Engineer (FSE), Brian Jay, inspected the Complainants' vehicle on November 20, 2014.<sup>12</sup> The FSE noticed a plastic odor, but no signs of moisture, mildew, or microorganisms. Additionally, the vehicle was water tested without any water entry. Therefore, the Respondent claimed that no defect existed. Moreover, the Respondent argued that the Complainants' issue was not eligible for relief under the Lemon Law because the first repair attempt occurred after 12,000 miles.

### D. Analysis

The Complainants have not shown a reasonable number of repair attempts under Texas Occupations Code § 2301.605(a), which requires two repair attempts in the 12 months or 12,000 miles, whichever comes first, following the original delivery to the owner. In this case, no repair attempts occurred in the first 12,000 miles after delivery. The first repair attempt, the

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<sup>7</sup> Complainant's Ex. 7, Service Invoice 388761 dated September 10, 2013.

<sup>8</sup> Complainant's Ex. 8, Service Invoice 390402 dated October 28, 2013.

<sup>9</sup> Complainant's Ex. 10, Service Invoice 401210 dated July 23, 2014.

<sup>10</sup> Complainant's Ex. 5, Letter from Complainants to Respondent dated October 11, 2014.

<sup>11</sup> Complainant's Ex. 6, Lemon Law Complaint Form.

<sup>12</sup> Complainant's Ex. 11, Service Invoice 411406 dated November 20, 2014.

deodorization on September 9, 2013, did not occur until 13,467 miles, 13,439 miles after delivery.<sup>13</sup> Consequently, because the Complainants have not shown a reasonable number of repair attempts, the Complainants do not qualify for replacement/repurchase relief.

### III. Findings of Fact

1. Jill Butler and David Butler (Complainants) purchased a 2013 Ford Escape on November 16, 2013, from Varsity Ford Lincoln, Inc. (Dealer), Respondent's authorized dealer, in College Station, Texas, with mileage of 28 at the time of purchase.
2. The vehicle's limited warranty provided bumper to bumper coverage for the first 36 months or 36,000 miles, whichever came first.
3. On May 24, 2013, the Complainants took the vehicle to the Dealer to have a mildew odor issue addressed. No repairs were made.
4. On September 9, 2013, Complainants took the vehicle to the Dealer and the Dealer deodorized the air conditioning system. The vehicle had 13,467 miles at this service visit.
5. On October 28, 2013, the Dealer deodorized the vehicle again after verifying the mildew odor. The vehicle had 15,233 miles at this service visit.
6. On June 24, 2014, the Complainants took their vehicle to the Dealer because of the mildew odor coming from the air conditioning. The Dealer found water pooling in the spare tire area from a leaking grommet. The Dealer deodorized the vehicle and replaced the carpet and insulators. The vehicle had 23,972 miles at this service visit.
7. On October 11, 2014, the Complainants mailed written notice of the mildew odor issue to the Respondent.
8. On October 29, 2014, the Complainants filed their Lemon Law Complaint Form.
9. On November 19, 2014, the Complainants brought their vehicle to the Dealer. A Ford Service Engineer inspected the vehicle but found no problems.

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<sup>13</sup> TEX. OCC. CODE § 2301.605(a)(1).

#### IV. Conclusions of Law

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. TEX. OCC. CODE §§ 2301.601-2301.613 (Lemon Law).
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. Complainants timely filed their Lemon Law complaint. TEX. OCC. CODE § 2301.606(d).
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. Complainants bear the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
6. Complainant failed to prove by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle after a reasonable number of attempts. TEX. OCC. CODE § 2301.604.
7. Complainants failed to show a reasonable number of attempts to conform the vehicle to an express warranty. TEX. OCC. CODE § 2301.605(a).
8. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. TEX. OCC. CODE § 2301.204.
9. Complainants' vehicle does not qualify for replacement or repurchase. TEX. OCC. CODE § 2301.604.

#### V. Order

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

**SIGNED July 1, 2015**



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**ANDREW KANG**  
**HEARINGS EXAMINER**  
**OFFICE OF ADMINISTRATIVE HEARINGS**  
**TEXAS DEPARTMENT OF MOTOR VEHICLES**