

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0152 CAF**

**290 WRECKER SERVICE, INC.,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

290 Wrecker Service, Inc. (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for an alleged defect in its 2013 Ford F750. The Complainant claimed that the vehicle would go into "limp mode" and the air conditioning (A/C) compressor sustained damage from a misaligned belt. The limp mode and A/C issues were resolved prior to the hearing, leaving only the issue of the misaligned belt. Ford Motor Company (Respondent) contended that the Complainant did not meet the statutory requirements for repurchase or replacement relief, that the misaligned belt arose from a defect in the Cummins diesel engine, which the Respondent's warranty did not cover. The hearings examiner concludes that: (1) the Complainant failed to prove that the vehicle had a defect covered by the Respondent's warranty, and (2) the Complainant failed to timely file its Lemon Law complaint. Therefore, the Complainant's vehicle does not qualify for repurchase or replacement or warranty repair 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 and the record closed on June 16, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. Tye Smith, the Complainant's owner, appeared on behalf of the Complainant. Patricia Smith testified for the Complainant. Maria Diaz, Consumer Affairs Legal Analyst, appeared by phone on behalf of the Respondent.

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.”¹ Additionally, warranty repair under § 2301.204 of the Texas Occupations Code requires a “defect in a motor vehicle that is covered by a manufacturer’s . . . warranty agreement applicable to the vehicle.”² Accordingly, the vehicle must have a defect under an applicable warranty to be eligible for relief, whether repurchase/replacement or warranty repair. Additionally, for repurchase or replacement, the vehicle owner must have filed the Lemon Law complaint within six months after the earliest of the dates on which: (1) the warranty expired; (2) 24 months have passed since the date of original delivery; or (2) 24,000 miles have passed since the date of original delivery.³

B. Complainant’s Evidence and Arguments

On June 20, 2013, the Complainant purchased a 2013 Ford F750 from Pritchard Auto Company in Britt, Iowa.⁴ The vehicle was exempt from disclosing an odometer reading on the Texas title application.⁵ The Respondent provided a two year, unlimited miles, basic warranty.⁶ The vehicle had multiple drivers – all employees of the Complainant.

On June 27, 2013, the Complainant had the vehicle taken to Chastang Ford (servicing dealer) of Houston, Texas. The A/C compressor had malfunctioned. The technician found an O-ring leaking at the back of the A/C compressor and replaced the O-ring. The A/C compressor functioned properly during the subsequent test drive.⁷

¹ TEX. OCC. CODE § 2301.604(a).

² TEX. OCC. CODE § 2301.204.

³ TEX. OCC. CODE § 2301.606(d)(2).

⁴ Complainant’s Ex. 1, Loan Schedule 001.

⁵ Complainant’s Ex. 2, Texas Department of Motor Vehicles Title Application Receipt. Note, however, the Complainant represented in its Lemon Law Complaint that the vehicle had 327 miles at delivery.

⁶ Complainant’s Ex. 3, Ford Motor Company Warranty & Policy Manual.

⁷ Complainant’s Ex. 4, Repair Order 168503 dated June 27, 2013.

On May 20, 2014, the Complainant began experiencing issues with the A/C unit alternating between cold and hot. The vehicle was taken back to the servicing dealer. The high side Schrader valve was leaking and the A/C compressor had failed. These parts were replaced.⁸

On June 9, 2014, the Complainant returned the vehicle to the servicing dealer with a new issue. A belt in the engine came off and a pulley was coming apart. The technician discovered that a fan hub support bearing had come apart, cutting the belt and damaging the fan blade. The damaged parts were replaced.⁹

On August 22, 2014, the Complainant notified the servicing dealer that the A/C system was not working and that the fan clutch was sticking. The technician could not duplicate the issues. The A/C system was vacuumed and recharged.¹⁰

On September 18, 2014, the Complainant took the vehicle into the servicing dealer because the vehicle had no power on acceleration (due to "limp mode"). The technician removed and cleaned the Exhaust Gas Recirculation (EGR) valve and elbow ports.¹¹

On October 2, 2014, the Complainant brought the vehicle back to the servicing dealer with two new issues. First, the vehicle would not drive faster than five miles per hour. Second, the Diesel Exhaust Fluid (DEF) gauge was malfunctioning, indicating that the tank was empty, when actually full. The DEF level and temperature sender was replaced. Inactive faults were cleared, as well. The vehicle operated without issue on a test drive.¹²

On November 12, 2014, the Complainant returned the vehicle to the servicing dealer to address a check engine light issue that resulted in the vehicle dying. The technician found an active inlet nitrogen oxide sensor fault and multiple logged boost faults. The turbo assembly was replaced and all the faults were reset. After an 80 mile test drive, the vehicle was operating without fault.¹³

⁸ Complainant's Ex. 7, Repair Order 176944 dated May 27, 2014.

⁹ Complainant's Ex. 6, Repair Order 177475 dated June 12, 2014.

¹⁰ Complainant's Ex. 8, Repair Order 179438 dated August 22, 2014.

¹¹ Complainant's Ex. 9, Repair Order 180148 dated September 25, 2014.

¹² Complainant's Ex. 10, Repair Order 180571 dated October 2, 2014.

¹³ Complainant's Ex. 12, Repair Order 181584 dated November 12, 2014.

The engine blew out on January 22, 2015. A rod bolt failed and a rod cap likely penetrated both sides of the engine block. The vehicle spewed white smoke and oil. The Respondent paid to have the vehicle towed to Rush Truck Centers of Dallas, Texas.

On January 30, 2015, the Complainant mailed written notice of the A/C and engine issues to the Respondent. On February 9, 2015, the Complainant filed a Lemon Law complaint. The vehicle had a final repair on February 28, 2015. The engine repair took 38 days due to the unavailability of parts for the engine. Mr. Smith testified that he believed that an oil pressure problem caused the vehicle to go into limp mode and caused the rod bolt failure.¹⁴ Mr. Smith also testified that the A/C and limp mode issues had been resolved, but that the misaligned belt issue remained.

The inspection at the hearing showed that the belt on the A/C compressor pulley did not align properly. Mr. Smith explained that since the A/C compressor can only be installed one way (i.e., its position cannot be adjusted), and the compressor appeared properly bolted, either the vehicle had the wrong A/C compressor (a Ford component) or some part of the engine (a Cummins component) caused the misalignment. Mr. Smith noted that Ford and Cummins each claimed that the other had responsibility for the misaligned belt.

C. Respondent's Evidence and Arguments

The vehicle's warranty expressly excluded Cummins diesel engines from coverage.¹⁵ The Complainant's vehicle has a Cummins diesel engine. The belt's routing involved engine components not warranted by Ford. The Respondent argued that the Complainant failed to prove that a Ford component more likely than not caused the belt slippage affecting the A/C compressor. The Respondent also argued that the "limp mode" issue had been repaired, leaving no existing defect. Finally, the Respondent asserted that the Complainant did not meet the statutory requirements for repurchase or replacement relief.¹⁶

¹⁴ Complainant's Ex. 14, Repair Order 97053425 dated March 9, 2015.

¹⁵ Complainant's Ex. 3, Ford Motor Company Warranty & Policy Manual.

¹⁶ Respondent's Ex. 1, Manufacturer Response Form.

D. Analysis

1. Warrantable Defect

Repurchase/replacement and warranty repair relief all require the existence of a warrantable defect, i.e., a defect covered by the Respondent's warranty.¹⁷ Whether Ford's warranty covers the misaligned belt depends on whether this defect arose from a problem with the engine, covered by Cummins, or the compressor, covered by Ford. For instance, if Ford had installed the wrong compressor causing the misalignment, then Ford's warranty would apply to the defect. On the other hand, for example, if a pulley on the engine caused the misalignment, then Cummins' warranty would apply to the defect. In this case, the Complainant, who has the burden of proof,¹⁸ failed to show that, more likely than not, a Ford component caused the belt misalignment. Rather, the Complainant could only show that either a Ford or a Cummins component could have caused the misaligned belt. Consequently, because the Complainant could not prove that the Respondent's warranty applied to the defect, the vehicle does not qualify for repurchase/replacement or warranty repair relief.

2. Filing Deadline

Section 2301.606(d)(2) of the Texas Occupations Code requires filing of a Lemon Law complaint no later than the earliest of six months after: (1) expiration of the warranty; (2) 24 months from the date of delivery; or (3) the date 24,000 miles passed from the date of delivery. On May 20, 2014, the Complainant's vehicle had already reached 75,171 miles.¹⁹ The Complainant filed its complaint on February 9, 2015, 265 days (approximately nine months) after the vehicle accumulated 74,844 miles since delivery.²⁰ The vehicle had surpassed 24,000 miles more than six months before the Complainant filed its Lemon Law complaint. Accordingly, the Complainant's vehicle is not eligible for repurchase or replacement relief.

¹⁷ TEX. OCC. CODE §§ 2301.604(a) and 2301.204.

¹⁸ 43 TEX. ADMIN. CODE § 215.206.66(d).

¹⁹ Complainant's Ex. 7, Repair Order 176944 dated May 20, 2014.

²⁰ Note, the Complainant represented in its Lemon Law Complaint that the vehicle had 327 miles at delivery.

III. Findings of Fact

1. 290 Wrecker Service, Inc. (Complainant) purchased a new 2013 Ford F750 on June 20, 2013, from Pritchard Auto Company of Britt, Iowa.
2. The vehicle came with a two (2) year, unlimited miles basic warranty. The warranty did not cover Cummins diesel engines and other non-Ford components.
3. The Complainant took the vehicle to Chastang Ford on the following dates to address the issue of the A/C compressor not functioning properly:
 - a. June 20, 2013, at 4,045 miles;
 - b. May 20, 2014, at 75,171 miles; and
 - c. August 22, 2014, at 94,910 miles.
4. The first repair visit for the "limp mode" issue occurred at 100,424 miles.
5. On February 9, 2015, the Complainant filed its Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
6. On April 16, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to the Complainant and the 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.
7. The hearing in this case convened and the record closed on June 16, 2015, in Houston, Texas, before Hearings Examiner Andrew Kang. Tye Smith, owner of the Complainant, represented and testified for the Complainant. Patricia Smith testified for the Complainant. Maria Diaz, Consumer Affairs Legal Analyst, who appeared by telephone, represented the Respondent.

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. The parties received proper notice of the hearing. TEX. GOV'T CODE §§ 2001.051, 2001.052; 43 TEX. ADMIN. CODE § 215.206(2).
4. The Complainant bears the burden of proof in this matter. 43 TEX. ADMIN. CODE § 215.206.66(d).
5. The Complainant failed to timely file its Lemon Law complaint within six months of the date that 24,000 miles had passed since the date of original delivery of the vehicle to the owner. TEX. OCC. CODE 2301.606(d)(2).
6. The Complainant failed to show that the vehicle has a defect covered by Respondent's warranty. TEX. OCC. CODE § 2301.604(a).
7. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. TEX. OCC. CODE §§ 2301.204, 2301.603.
8. The Complainant's vehicle does not qualify for warranty repair. TEX. OCC. CODE §§ 2301.204, 2301.603.
9. The Complainant's 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 the Complainant's petition for relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is **DISMISSED**.

SIGNED August 14, 2015



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