

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 15-0324 CAF**

**BEATRICE HILL and
GERALD HILL,
Complainants**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Beatrice and Gerald Hill (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2014 Ford F-150. Complainants assert the vehicle makes a loud grinding, humming, and whining noise after being driven for approximately 30 minutes. Ford Motor Company (Respondent) argued that the vehicle is operating as designed. The hearings examiner concludes that although the vehicle does have a currently existing warrantable defect, Complainants are not eligible for repurchase or replacement relief since they did not meet all of the statutory requirements for such relief under the Lemon Law. However, Complainants will be eligible for 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 November 19, 2015, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by Gerald Hill. Respondent was represented via telephone by Sade Oyinloye, Legal Analyst. In addition, Sayyed Bashir, Technical Consultant, appeared in the hearing to offer testimony for Respondent.

II. DISCUSSION

A. Applicable Law

The Lemon Law provides, in part, that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of with a comparable vehicle if the following conditions are met. First, the manufacturer is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect after a reasonable number of attempts.¹ Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

¹ Tex. Occ. Code § 2301.604(a).

value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

In addition to these conditions, 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.⁵

B. Complainant's Evidence and Arguments

Complainants purchased a 2014 Ford F-150 from Joe Myers Ford–Lincoln (Myers) in Houston, Texas on September 25, 2014.⁶ The vehicle had mileage of 1.5 at the time of purchase. At the time of hearing, Respondent's basic express warranty for the vehicle was still in effect. Respondent's basic bumper-to-bumper warranty provides coverage for the vehicle for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent has provided a five (5) year or 60,000 mile powertrain warranty on the vehicle. On the date of hearing the vehicle's mileage was 30,807.

Mr. Hill testified that the vehicle started making loud grinding, humming, and whining noises when the vehicle's mileage was around 18,000. This occurs when he's been driving the vehicle for approximately 30 minutes. However, it is an intermittent issue and does not always occur. He has been unable to determine exactly where the sound is coming from, but it does come from the vehicle's engine compartment.

Mr. Hill testified that on September 25, 2014, after purchasing the vehicle, Complainants were driving it home, when they heard an unusual noise coming from the engine. After hearing the

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) and (a)(3) provide alternative methods for a complainant to establish a rebuttable presumption that a reasonable number of attempts have been undertaken to conform a vehicle to an applicable express warranty. However, § 2301.605(a)(2) applies only 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.

⁶ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated September 25, 2014.

noise, Mr. Hill took his wife home and dropped her off. He then started to return the vehicle to the dealer when the noise stopped. Mr. Hill decided to return home, since he felt that the dealer's service department wouldn't be able to diagnose the issue when it wasn't occurring. Mr. Hill testified that on the following day, September 26, 2015, he took the vehicle to Myers to address his concern with the unusual noise that he and his wife had heard the previous day. Myers' service technician was unable to duplicate the concern and, as a result, performed no repairs on the vehicle at the time.

Sometime in May of 2015, Mr. Hill began to hear a popping noise from the vehicle's engine compartment. Mr. Hill took the vehicle to Myers on June 1, 2015. Mr. Hill indicated to Myers' service advisor that he heard the popping noise and that he also heard a "screaming" noise from the vehicle's engine compartment. Myers' service technician determined that the popping noise heard by Mr. Hill was from the vehicle's intake tubing and was considered normal for the vehicle.⁷ The technician, however, could not duplicate the "screaming" noise complained of by Mr. Hill.⁸ The technician advised Mr. Hill to return the vehicle for repair if the noise recurred. Mr. Hill testified that the vehicle was in Myers' possession about two (2) days.⁹ He was provided a rental vehicle by the dealer while his vehicle was being repaired. The mileage on the vehicle when Mr. Hill took it to Myers was 18,771.¹⁰

Mr. Hill testified that the humming/whining noise returned a few days later. As a result, he took the vehicle to Myers' on June 11, 2015. Myers' service technician was unable to duplicate the problem and suggested to Mr. Hill that the noise was normal. Mr. Hill did not believe it was normal, because of how loud the noise would get. The service advisor did not close out the repair order at the time and advised Mr. Hill to return the vehicle to Myers if the noise recurred. The vehicle was in Myers' possession for one day. Mr. Hill was provided with a rental vehicle while his vehicle was being repaired. The vehicle's mileage on June 11, 2015, was 19,362.¹¹

On June 23, 2015, Mr. Hill returned the vehicle to Myers because he began hearing the humming/whining noise from the engine compartment again. The service technician looked at the vehicle again, but couldn't get the noise to repeat. In addition, Myers' service manager got involved in trying to determine the cause of the noise. The technician contacted Respondent's hotline for technical assistance.¹² The technician was advised that the cooling fans could be creating the noise and could be considered normal if the vehicle's air conditioner was turned on

⁷ Complainant Ex. 2, Repair Order dated June 1, 2015.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complainant Ex. 3, Repair Order dated June 11, 2015.

¹² *Id.*

under certain circumstances.¹³ The vehicle was in Myers' possession for one day during this visit. Mr. Hill was provided with a rental vehicle while his vehicle was being repaired. Mr. Hill was not provided with a repair order for this visit, since the June 11, 2015, repair order had been kept open.

In late June or early July of 2015, Mr. Hill contacted Respondent's customer service department because he was not convinced that the humming/whining noise that he heard from the vehicle was normal. Mr. Hill was told that he should attempt to take the vehicle to a different dealership in order to address the issue. Mr. Hill contacted some other local dealers to see about repairing the vehicle and was told by the dealers' representatives that they had hundreds of cars with the same issue and that they could not help him.

Mr. Hill decided to file a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) with an effective date of July 13, 2015.¹⁴ In addition, Mr. Hill mailed a letter to Joe Myers Ford on July 9, 2015, informing them of his concerns with the vehicle.¹⁵ The letter was forwarded by Myers to Respondent.

On July 17, 2015, Mr. Hill took the vehicle to Myers for an oil change. While at the dealership, Mr. Hill informed the service advisor that the vehicle was still making the humming/whining noise and to indicate so on the repair order.

On August 19, 2015, Respondent performed a final repair attempt on the vehicle. The repair was performed at Myers. Mr. Hill was not informed of the results of the repair, but was provided with a repair order from Myers. Respondent's field service engineer who performed the repair attempt determined that the vehicle was operating as designed.¹⁶ The vehicle's mileage at the time of the final repair attempt was 24,817.¹⁷ Complainant was provided with a rental vehicle while his vehicle was being repaired.

Mr. Hill testified that the vehicle is still intermittently making a loud humming/whining noise from the engine compartment. The last incident occurred approximately two weeks prior to the hearing date of November 19, 2015. Mr. Hill says that the noise occurs without any rhyme or reason. He stated it doesn't matter if it's hot or cold outside, the noise will occur just the same. He has friends who have similar vehicles and they don't have a problem with their vehicles

¹³ *Id.*

¹⁴ Complainant Ex. 4, Lemon Law complaint signed July 9, 2015. Although the complaint was signed by Complainant on July 9, 2015, it was not received by Texas Department of Motor Vehicles until July 13, 2015, which is the effective date of the complaint.

¹⁵ Complainant Ex. 7, Letter to Joe Myers Ford dated July 9, 2015.

¹⁶ Complainant Ex. 6, Repair Order dated August 19, 2015.

¹⁷ *Id.*

making such loud noises. He's been asked what is wrong with his vehicle by some of those friends when they hear the humming/whining noise.

During cross examination, Mr. Hill testified that the first problem that he encountered with noise from the vehicle's engine compartment occurred when the vehicle had attained at least 18,000 miles. He has taken the vehicle to the dealer for repair on three occasions. He was provided with a rental vehicle during each repair attempt.

C. Respondent's Evidence and Arguments

Sayyed Asid Bashir, Technical Consultant, testified for Respondent. He worked for seven (7) years as an independent technician prior to being hired by Respondent. Mr. Bashir has worked for the last eight (8) years for Respondent. He has worked with Respondent's customer service division as a liaison to address customer concerns for their vehicles. He has Ford certifications in all automotive areas. In addition, he has an Automobile Service Excellence (ASE) certification for automatic transmissions.

Mr. Bashir testified that he believes that the humming/whining noise heard by Mr. Hill is a characteristic of this type of vehicle. He does not believe that the noise is indicative of a defect in the vehicle. The vehicle has dual cooling fans. Depending on the information provided by the vehicle's sensors, the powertrain control module (PCM) will turn on the vehicle's high fan at certain times which will increase the noise from the vehicle's engine compartment. The vehicle has a V-6 twin turbo engine and sometimes requires additional cooling than other vehicles. In addition, the vehicle has a trailer tow package which requires the transmission to be cooled at times. Depending on the circumstances as far as ambient temperature and the load on the vehicle's engine, the PCM may determine that additional cooling is necessary and turn on both cooling fans which can create the noise complained of by Mr. Hill.

Mr. Bashir also testified that he has not personally inspected Complainants' vehicle.

D. Analysis

Under the Lemon Law, Complainants bear the burden of proof to establish by a preponderance of evidence that a defect or condition creates a serious safety hazard or substantially impairs the use or market value of the vehicle. In addition, Complainants must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainants are required to serve written notice of the nonconformity on Respondent, who must be allowed an opportunity to cure the defect. If each

of these requirements is met and Respondent is still unable to conform the vehicle to an express warranty by repairing the defect, Complainants are entitled to have the vehicle repurchased or replaced.

Complainants purchased the vehicle on September 25, 2014, and presented the vehicle to Respondent's authorized dealer due to their concerns with the vehicle making a loud humming/whining noise on the following dates: September 26, 2014; June 1, 2015; June 11, 2015; and June 23, 2015. Occupations Code § 2301.604(a) requires a showing that Respondent was unable to conform the vehicle to an applicable express warranty "after a reasonable number of attempts." Section 2301.605(a)(1) specifies that a rebuttable presumption that a reasonable number of attempts to repair have been made if "two or more repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner, and two other repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt." The evidence presented at the hearing establishes that Complainants have not met the requirements of this test since Complainants did not present the vehicle to Respondent's dealer for repairs twice within the first 12,000 miles after delivery. As such, Complainants have not met the presumption that Respondent has been provided with a reasonable number of attempts to repair the vehicle.

From the evidence presented, it is apparent that Complainants have not met the requirements for replacement or repurchase relief under the Occupations Code. However, the evidence from the videos recorded by Mr. Hill reveals that there is an issue with the vehicle making an unusually loud humming/whining noise intermittently. Respondent's express warranty applicable to Complainants' vehicle provides "bumper-to-bumper" coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 30,807 and it remains under this warranty. As such, the Respondent is under an obligation to repair the vehicle under the terms of the express warranty and correct the issue raised by Complainants.

Complainants' request for repurchase or replacement relief is denied. Respondent will be ordered to repair the vehicle so that it conforms to its express warranty.

III. FINDINGS OF FACT

1. Beatrice Hill and Gerald Hill (Complainants) purchased a 2014 Ford F-150 on September 25, 2014, from Joe Myers Ford-Lincoln (Myers) in Houston, Texas with mileage of 1.5 at the time of purchase.

2. The vehicle's mileage on the date of hearing was 30,807.
3. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued an express warranty for the vehicle for three (3) years or 36,000 miles. Respondent has also provided a powertrain warranty for the vehicle for five (5) years or 60,000 miles.
4. At the time of hearing the express warranty for the vehicle was still in effect.
5. On September 25, 2014, Complainants, while driving the vehicle home from the dealer, noticed an unusual noise from the vehicle's engine compartment.
6. On September 26, 2014, Complainant, Gerald Hill, took the vehicle to Myers to address the noise concern that he heard the previous day.
7. No repairs were done to the vehicle on September 26, 2014, because Myers' service technician could not duplicate the concern.
8. Complainants' vehicle was also serviced by Myers on the following dates because of Complainants' concerns with a loud humming/whining noise from the vehicle's engine compartment:
 - a. June 1, 2015, at 18,771 miles;
 - b. June 11, 2015, at 19,362 miles; and
 - c. Jun 23, 2014, at unknown mileage.
9. On June 1, 2015, Myers' service technician could not duplicate the humming/whining noise described by Mr. Hill. No repairs were performed on this occasion
10. On July 11, 2015, Myers' service technician determined that the noise heard by Mr. Hill was normal for the vehicle.
11. The July 11, 2015, repair order was left open by Myers' service advisor. So, Mr. Hill took the vehicle back to Myers on June 24, 2015, because the humming/whining noise had returned.
12. On June 24, 2015, Myers' service technician could not duplicate the concern and indicated to Mr. Hill that the noise was normal for the vehicle.
13. On July 13, 2015, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).

14. Respondent conducted a final repair attempt on the vehicle on August 19, 2015, at which time Respondent's field service engineer determined that the vehicle was operating as designed. No repair was done at the time.
15. On September 14, 2015, the Department's Office of Administrative Hearings issued a notice of hearing directed to Complainants 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.
16. The hearing in this case convened and the record closed on November 19, 2015, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants were represented by Gerald Hill. Respondent was represented via telephone by Sade Oyinloye, Legal Analyst. In addition, Sayyed Bashir, Technical Consultant, appeared to offer testimony for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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 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. Complainants bear the burden of proof in this matter.

6. Complainants proved by a preponderance of the evidence that the vehicle has a verifiable defect or condition that presents a serious safety hazard or substantially impairs the use or market value of the vehicle. Tex. Occ. Code § 2301.604.
7. Complainants did not meet the presumption that a reasonable number of repair attempts were undertaken by Respondent prior to the filing of the Lemon Law complaint. 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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainants' petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**. Respondent is hereby **ORDERED** to repair Complainants' vehicle so that it conforms to Respondent's express warranty. Texas Occupations Code § 2301.204.

SIGNED December 22, 2015



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