

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0037 CAF**

**JEFF WORTHY and
MONICA WORTHY,
Complainants**

v.

**FORD MOTOR COMPANY and
D & M LEASING,
Respondents**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Jeff and Monica Worthy (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their 2014 Ford Fusion. Complainants assert the vehicle's center console control module intermittently stops working which results in the center module control panel going black, the air conditioner not working, the stereo volume cannot be adjusted, and the power windows and power locks will not operate. Ford Motor Company (co-Respondent) argued that Complainants have not provided them with a reasonable number of repair attempts on the vehicle and, as such, Complainants are not entitled to repurchase or replacement relief. 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.

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 February 3, 2016, in Mesquite, Texas before Hearings Examiner Edward Sandoval. Complainants, Jeff and Monica Worthy, were present and represented themselves. Respondent, Ford Motor Company, was represented via telephone by Maria Diaz, Legal Analyst for Consumer Affairs. Respondent, D & M Leasing was represented by Garrett Reece, attorney with Hill Gilstrap, P.C. Also present for D & M Leasing was Joe Graber, President of D & M Leasing.

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 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. Complainants' Evidence and Arguments

Complainants leased a 2014 Ford Focus from D & M Leasing in Plano, Texas on January 17, 2014. The vehicle had mileage of 100 at the time of the lease signing.⁶ Ford Motor Company's (Ford) basic bumper-to-bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first.⁷ At this time, Ford's basic express warranty for the vehicle is still in effect.

Complainant, Monica Worthy, testified that the vehicle's control panel intermittently stops working. When this occurs, the vehicle's air conditioner stops blowing cold air, the radio volume cannot be adjusted, the SYNC screen goes black, and the power locks and power windows will not work.

¹ Tex. Occ. Code § 2301.604(a).

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, Universal Lease Agreement dated January 17, 2014.

⁷ Complainant Ex. 2, Ford Fusion Warranty Manual, p. 8.

Ms. Worthy testified that in August of 2015 she was driving the vehicle out of a garage where she had parked when she first experience a problem with the vehicle's control panel and adjacent controls. Ms. Worthy took the vehicle to North Central Ford (North Central) in Richardson, Texas for repair on August 17, 2015. Although the service manager observed that the vehicle's control panel was not working properly, North Central's service technician could not duplicate the concern.⁸ However, the technician performed a hard reset on the vehicle's modules in an attempt to resolve the issue.⁹ The mileage on the vehicle when Ms. Worthy took it to North Central was 15,004.¹⁰ The vehicle was North Central's possession for two (2) days. Complainant was provided with a loaner vehicle by co-Respondent, D & M Leasing.

In September of 2015, Complainants were in San Antonio, Texas when the vehicle's control panel stopped working again. It stopped working two (2) or three (3) times while they were at their hotel. On each occasion, the situation resolved itself after a few minutes. However, while driving from San Antonio to Waco, the control panel stopped working. In addition, the vehicle's air conditioner stopped working and the power windows would not roll down. Also, the SYNC screen went black and the radio shut off.¹¹

Ms. Worthy testified that she took the vehicle to North Central on September 8, 2015. North Central's service technician determined that there was a communication loss with the vehicle's body control module (BCM).¹² So, the technician replaced and reprogrammed the BCM.¹³ The vehicle's mileage on this occasion was 16,226.¹⁴ The vehicle was in North Central's possession for two days. Complainants were provided a loaner vehicle by the leasing company while their vehicle was being repaired.

After less than two (2) weeks, Ms. Worthy began having the same problem with the vehicle. So, she took the vehicle back to North Central for further repair on September 17, 2015. North Central's service technician was unable to duplicate the concern and contacted Ford's technical hotline for assistance in correcting the issue.¹⁵ No repair was performed at the time. The vehicle's mileage on this occasion was 16,404.¹⁶ The vehicle was in North Central's possession for a week. Complainants were provided with a loaner vehicle for the period of time that the vehicle was in the dealer's possession.

⁸ Complainant Ex. 3, Repair Order dated August 17, 2015.

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complainant Ex. 4, Repair Order dated September 8, 2015.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Complainant Ex. 5, Repair Order dated September 27, 2015.

¹⁶ *Id.*

As a result of the problems with the vehicle, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) with an effective date of October 2, 2015.¹⁷ Complainants did not mail a notice to Ford informing them of the concerns with the vehicle.

On December 3, 2015, Ford performed a final repair attempt on the vehicle. Ford's field service engineer was unable to duplicate Complainants' concerns and so no actual repairs were performed at the time. The final repair attempt took one day to perform. Complainants received a loaner vehicle while the final repair attempt took place.

Ms. Worthy testified that she experienced the same problems with the vehicle over a two (2) day period in January of 2016. Ms. Worthy took the vehicle to North Central for repair on January 13, 2016. The technician observed the problems and verified that the vehicle's SYNC screen froze up; that the touch screen wouldn't respond; the radio volume button, climate control button, window controls, and door lock trim controls were all inoperable; and the trunk latch wouldn't open.¹⁸ The technician indicated that he would contact Ford's hotline for guidance.¹⁹ No repairs were performed at the time. The mileage on the vehicle on this occasion was 19,660.²⁰

During cross-examination, Ms. Worthy testified that she never received a call back from North Central to bring the vehicle in for any repairs. She was never informed that there was a fix for the vehicle. In addition, she testified that although the vehicle's locks would not operate when the issue occurred, she was never locked in the vehicle.

C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst for Consumer Affairs for Ford Motor Co., testified that Ford first became aware of Complainant's concerns with the vehicle was when they received the Lemon Law complaint in October of 2015. Ms. Diaz contacted Complainants on November 10, 2015, in order to discuss the issue. Complainants agreed to a final repair attempt by Ford to be performed on December 3, 2015, at North Central Ford.

Ms. Diaz testified that David Green, Ford's field service engineer, performed the final repair attempt. He determined that the vehicle had an intermittent network concern which was

¹⁷ Complainant Ex. 6, Lemon Law complaint dated October 2, 2015. Although the complaint was signed by Complainants on September 16, 2015, it was not received by Texas Department of Motor Vehicles until October 2, 2015, which is the effective date of the complaint.

¹⁸ Complainant Ex. 7, Repair Order dated January 13, 2016.

¹⁹ *Id.*

²⁰ *Id.*

identified by diagnostic trouble codes (DTC's) stored in the vehicle's computer.²¹ However, he could not perform any repairs on the vehicle, because the concern has to be present when diagnostics are performed in order to determine how to repair the vehicle.²²

Ms. Diaz also testified that Ford has determined the proper repair for the vehicle as a result of Complainants' repair visit to North Central on January 13, 2016. North Central's technician contacted Ford's hotline regarding the issue and Ford's technicians were able to determine the repair to the vehicle. Ms. Diaz was under the impression that Complainants had been contacted by North Central.

During cross-examination, Ms. Diaz testified that a resolution to the concerns raised by Complainants was found on January 20, 2016. She also stated that the appropriate repair was different from the repairs performed earlier on the 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 leased the vehicle on January 17, 2014, and presented the vehicle to Ford's authorized dealer due to their concerns with the center console control module and other components not working properly or becoming inoperable, on the following dates: August 17, 2015; September 8, 2015; and September 17, 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

²¹ Respondent Ex. 1, Vehicle Inspection Report dated December 3, 2015.

²² *Id.*

met the requirements of this test since Complainants have presented the vehicle for repair only three times since the date of purchase. In addition, the first repair attempt for the issues raised by Complainants occurred after the vehicle had been driven 12,000 miles from the date of original delivery. (The vehicle's mileage at the first repair attempt was 15,004.) As such, Complainants have not met the presumption that Ford has been provided with a reasonable number of attempts to repair the vehicle.

In addition, the evidence presented at the hearing indicates that Complainants did not provide written notice to Ford that they were dissatisfied with the vehicle. Occupations Code § 2301.606(c) provides that "an order issued under this subchapter [Subchapter M, Lemon Law] may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless: (1) the owner or a person on behalf of the owner has mailed written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and (2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity." Complainants never **mailed** Ford written notice of their dissatisfaction with 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, since only three repair attempts were made on the vehicle prior to filing the complaint, the first attempt being after the vehicle's mileage exceeded 15,000, and because they did not give written notice of the defect to Ford. However, there is obviously an issue with the vehicle, since the problems complained of by Complainants were verified by North Central's service technician on January 13, 2016, and no repairs were performed at the time.

Ford'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 warranty was still in effect. As such, Ford is under an obligation to repair the vehicle under the terms of the express warranty and correct the issues complained of by Complainants.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Jeff and Monica Worthy (Complainants) leased a 2014 Ford Fusion on January 17, 2014, from D & M Leasing in Plano, Texas with mileage of 100 at the time of the lease signing.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles.

3. At the time of hearing the warranty for the vehicle was still in effect.
4. Complainants first experienced a problem with the vehicle in August of 2015, when the center module control panel went black, the air conditioner stopped working, the stereo volume could not be adjusted, and the power windows and power locks would not operate.
5. Complainants' vehicle was serviced by Ford's authorized dealer, North Central Ford (North Central) in Richardson, Texas on the following dates because of Complainants' concerns with the vehicle:
 - a. August 17, 2015, at 15,004 miles;
 - b. September 8, 2015, at 16,226 miles; and
 - c. September 17, 2015, at 16,404 miles.
6. On August 17, 2015, Complainants took the vehicle to North Central for repair for the issues described in Finding of Fact 4. The service technician was unable to duplicate the problem, but performed a hard reset on the vehicle's modules in an attempt to address the concern.
7. On September 8, 2015, Complainants took the vehicle to North Central for repair for the issues described in Finding of Fact 4. The service technician determined that the vehicle's body control module (BCM) was not communicating and replaced it.
8. On September 17, 2015, Complainants took the vehicle to North Central for repair for the issues described in Finding of Fact 4. The service technician was unable to duplicate the concern, so no repairs were performed at the time.
9. On October 2, 2015, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. Ford performed a final repair attempt on the vehicle December 3, 2015, at North Central. The field service engineer was unable to duplicate the concern, but did discover diagnostic trouble codes indicating an intermittent network concern. However, no repairs were performed because the concern must be present in order to properly diagnose the issue.
11. On January 13, 2016, Complainants took the vehicle to North Central for repair because the vehicle's SYNC screen froze, the touch screen didn't respond to commands, the radio

- volume and climate control buttons wouldn't operate, the window controls and door locks wouldn't work, and the trunk latch wouldn't open.
12. On January 13, 2016, North Central's service technician verified Complainants' concerns, but did not perform any repairs. However, he did report his findings to Ford's hotline.
 13. On November 23, 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.
 14. The hearing in this case convened and the record closed on February 3, 2016, in Mesquite, Texas before Hearings Examiner Edward Sandoval. Complainants, Jeff and Monica Worthy, were present and represented themselves. Respondent, Ford Motor Company, was represented via telephone by Maria Diaz, Legal Analyst for Consumer Affairs. Respondent, D & M Leasing was represented by Garrett Reece, attorney with Hill Gilstrap, P.C. Also present for D & M Leasing was Joe Graber, President of D & M Leasing.

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. Complainants did not mail written notice of the defect to Respondent. Tex. Occ. Code § 2301.606(c)(1).
9. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
10. 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 February 12, 2016



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