

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 16-0060 CAF**

**CYNTHIA Y. LOPEZ,**  
**Complainant**

v.

**FORD MOTOR COMPANY,**  
**Respondent**

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**BEFORE THE OFFICE  
  
OF  
  
ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Cynthia Y. Lopez (Complainant) seeks relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in her 2012 Ford Focus. Complainant asserts that she hears a clicking noise from the vehicle's air conditioner system when it is initially turned on. Ford Motor Company (Respondent) argued that the issue raised by Complainant is not covered under warranty and, therefore, they are not obligated to cover the cost of any repair to the air conditioner. The hearings examiner concludes that the vehicle does not have a currently existing warrantable defect, and Complainant is not 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 March 17, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. In addition, Complainant's mother, Elsa Lopez, testified in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs.

**II. DISCUSSION**

**A. Applicable Law**

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.” In addition, § 2301.603(b)(1) goes on to state that: “[s]ubsection (a) applies after the expiration date of a warranty if during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor.”

If a vehicle does not qualify for repurchase or replacement relief under the Lemon Law, repair relief is available to a Complainant 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." This section applies only if the Complainant raised his concern while the vehicle's warranty was still in effect.

## **B. Complainant's Evidence and Arguments**

### **1. Cynthia Lopez' Testimony**

Complainant purchased a new 2012 Ford Focus from Shamaley Ford (Shamaley) in El Paso, Texas on September 22, 2011.<sup>1</sup> The vehicle's mileage was 25 at the time of purchase.<sup>2</sup> Respondent's original bumper-to-bumper warranty provided coverage for three (3) years or 36,000 miles, whichever comes first.<sup>3</sup> In addition, Respondent also provided a powertrain warranty for five (5) years or 60,000 miles.<sup>4</sup> On the date of hearing the vehicle's mileage was 69,493. At this time, Respondent's bumper-to-bumper and powertrain warranties for the vehicle have both expired.

Complainant testified that she has experienced problems with the vehicle's air conditioning system and defroster. When Complainant filed the Lemon Law complaint, she indicated that the vehicle's windshield wipers were not working properly also. However, Complainant testified at the hearing that the wipers had been fixed and the only issue she was concerned with had to do with the air conditioning system.

Complainant stated that she was the primary driver of the vehicle for the first two (2) years after the purchase of the vehicle. Complainant's mother, Elsa Lopez, then became the primary driver.

Complainant indicated that the first problem with the vehicle's air conditioner occurred about a year after the vehicle was purchased. The vehicle's windows were fogging up and the carpet was wet. Complainant took the vehicle to Shamaley for repair on or about September 21, 2013. Shamaley's service technician determined that the drain for the air conditioning system was clogged.<sup>5</sup> So, the technician unclogged the drain and indicated that the vehicle was repaired.<sup>6</sup> The vehicle's mileage on this occasion was 31,208.<sup>7</sup> Complainant testified that the vehicle was in the dealer's possession for over two (2) days during this repair. Complainant was not provided

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<sup>1</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Contract and Motor Vehicle Purchase Order dated September 22, 2011.

<sup>2</sup> Complainant Ex. 2, Carefree Car Protection Contract dated September 22, 2011.

<sup>3</sup> Respondent Ex. 1, 2011 Ford Focus Warranty Manual, p. 8.

<sup>4</sup> *Id.*

<sup>5</sup> Complainant Ex. 3, Repair Order #63889, undated.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

with a rental or loaner vehicle while her vehicle was being repaired. Complainant testified that the vehicle's air conditioning system worked fine after the repair.

Approximately a year later, on or about August 5, 2014, Complainant took the vehicle to Shamaley for an oil change and informed the service advisor that the air conditioner was not blowing any air out of the dashboard vents. The air was only coming through the floor vents. Complainant testified that no repair was performed on the air conditioning system at the time. The vehicle's mileage on this occasion was 44,731.<sup>8</sup> The vehicle was in the dealer's possession for a few hours that day. Complainant was not provided with a loaner or rental vehicle while her vehicle was being repaired.

In January of 2015, the vehicle began overheating. As a result, Complainant took the vehicle to Shamaley on or about January 16, 2015. Shamaley's service technician determined that the vehicle's water pump was not working properly and needed to be replaced.<sup>9</sup> The technician replaced the water pump and two (2) serpentine belts.<sup>10</sup> The vehicle's mileage on this occasion was 52,137.<sup>11</sup> The vehicle was in the dealer's possession for more than two days on this occasion. Complainant was not provided with a rental or loaner vehicle while her vehicle was being repaired.

Complainant testified that in June of 2015, the air conditioner seemed to take a long time to cool the vehicle. So, on or about June 23, 2015, Complainant took the vehicle to Shamaley to have the air conditioner repaired. Shamaley's service technician determined that the air conditioner was working correctly and was operating within factory specifications.<sup>12</sup> No repairs were done for this issue. The vehicle's mileage on this occasion was 58,772.<sup>13</sup>

In September of 2015, the vehicle's air conditioner began making a clicking noise, was not blowing much air, and was not cooling very well. Complainant took the vehicle to Shamaley for repair on September 15, 2015. Complainant testified that she was informed by Shamaley's representative that the repairs for the air conditioner were not covered under warranty, although she was not informed what the problem was with the air conditioner. No repairs were performed at the time. The vehicle's mileage on this occasion was 62,391.<sup>14</sup> The vehicle was Shamaley's possession for approximately two (2) weeks. Complainant was not provided with a rental or loaner vehicle while her vehicle was in the dealer's possession.

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<sup>8</sup> Complainant Ex. 4, Repair Order #85149, undated.

<sup>9</sup> Complainant Ex. 5, Repair Order #96622, undated.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Complainant Ex. 6, Repair Order #108225, undated.

<sup>13</sup>

<sup>14</sup> Complainant Ex. 7, Repair Order #115275, dated September 15, 2015.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) regarding the vehicle effective October 15, 2015.<sup>15</sup> She also mailed a letter to Respondent on September 19, 2015, informing them of her concerns with the vehicle.<sup>16</sup>

Complainant testified that currently the vehicle's defroster is not working properly and that the air conditioner makes a clicking noise periodically.

During the vehicle inspection performed by the hearings examiner and the parties, the dashboard vents seemed to work properly. However, a clicking noise was heard for a few seconds when the air conditioner recirculation button was turned on. The noise did not occur any other time.

## 2. Elsa Lopez' Testimony

Elsa Lopez is Complainant's mother. Ms. Lopez is currently the primary driver of the vehicle in question. Ms. Lopez drives approximately 30 miles per day in the vehicle. Ms. Lopez testified that when she turns on the vehicle's air conditioner, it makes a clicking noise for about a minute and then the noise will stop. She took the vehicle to Shamaley for repairs and was told by a dealer representative that the clicking noise was coming from a small motor in the air conditioning system. The clicking noise is not affected by whether Ms. Lopez is driving the vehicle.

Ms. Lopez also stated that the vehicle's defrost system doesn't work quickly and that the vehicle's windows get foggy as a result. Ms. Lopez feels that the air conditioner takes too long to cool off the vehicle. She said that it takes about 20 minutes to cool off. Ms. Lopez has never had the Freon in the air conditioner system checked. Finally, Ms. Lopez stated that air from the air conditioner does not come out through the top vents on the dashboard.

Ms. Lopez also testified that when the vehicle's water pump went out and was replaced in January of 2015, the vehicle's air conditioner was not affected.

Ms. Lopez wants the vehicle's air conditioner repaired and wants a rental or loaner vehicle from the dealer or Respondent while the vehicle is being repaired.

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<sup>15</sup> Complainant Ex. 8, Lemon Law complaint dated October 15, 2015. Although the complaint was signed by Complainant on September 20, 2015, it was not received by Texas Department of Motor Vehicles until October 15, 2015, which is the effective date of the complaint.

<sup>16</sup> Complainant Ex. 9, Letter to Ford Manufacturer/Convertor or Distributor, undated.

### C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst for Consumer Affairs, testified for Respondent. Ms. Diaz stated that she first became aware of Complainant's dissatisfaction with the vehicle on October 28, 2015, when she received Complainant's Lemon Law complaint. Ms. Diaz contacted Complainant to discuss the issues with the vehicle. In addition, Ms. Diaz obtained a history of the repairs performed by Respondent's authorized dealers on the vehicle. Ms. Diaz informed Complainant that Respondent would cover any repairs to the vehicle's air conditioning system if the issue was the same as the original issue which was raised when the vehicle's warranty was still in effect.

Ms. Diaz was later informed by one of Shamaley's representatives that the concern raised by Complainant regarding the vehicle was not the same as that originally raised when the vehicle was still under warranty. In addition, the representative indicated that he would contact Complainant to inform her of the fact that the issue would not be covered by Respondent. Ms. Diaz further testified that Respondent did not perform a final repair attempt on the vehicle because when Respondent received the Lemon Law complaint, the vehicle was in Shamaley's possession and the service technician determined that the issue involved a different problem from any prior concern raised by Complainant.

Ms. Diaz testified that the repairs performed on January 16, 2015, involved replacing the vehicle's water pump. The repair was covered under the vehicle's powertrain warranty. However, the water pump failure did not affect the vehicle's air conditioning system. The water pump just cools the engine so that it doesn't overheat.

### D. Analysis

Complainant's Lemon Law complaint indicated that the vehicle had two (2) issues: problems with the windshield wiper and air conditioner problems, including a clicking noise from the air conditioner system. However, during the hearing, Complainant indicated that the issue regarding the windshield wipers had been addressed and she was satisfied with the repairs. The only issue to be addressed in the hearing and decision is the concern regarding the vehicle's air conditioning system.

In order to determine whether Complainant has a remedy under this section 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. Texas Occupations Code §§ 2301.204, 2301.603.

The evidence presented in the hearing indicates that there is a clicking noise from the air conditioning system that occurs for a few seconds after the air recirculation button is turned on. This seems to be the only current problem with the air conditioner, as the air conditioner's vents

seemed to be working properly and the air blowing from the system was cold. The issue has not been repaired by Respondent. However, the issue is not covered under the vehicle's warranty, since it has expired. Respondent's basic warranty applicable to Complainant's vehicle provided coverage for three (3) years or 36,000 miles whichever came first. The only issue concerning the vehicle's air conditioning system that was raised during the warranty period had to do with the drain being clogged. All the other complaints regarding the air conditioner were raised after the warranty had expired. As such, Respondent is not obligated to repair the vehicle under the warranty. Texas Occupations Code § 2301.603.

Complainant's request for repair relief is denied.

### III. FINDINGS OF FACT

1. Cynthia Y. Lopez (Complainant) purchased a new 2012 Ford Focus on September 22, 2011, from Shamaley Ford (Shamaley) in El Paso, Texas with mileage of 25 at the time of purchase.
2. The vehicle's mileage on the date of hearing was 69,423.
3. 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 and a powertrain warranty for five (5) years or 60,000 miles.
4. At the time of hearing the bumper-to-bumper and powertrain warranties for the vehicle were no longer in effect.
5. Complainant's mother, Elsa Lopez, is currently the primary driver of the vehicle.
6. The vehicle's air conditioner makes a clicking noise when the recirculation button is initially turned on.
7. Complainant's vehicle was serviced by Shamaley on the following dates because of Complainant's concerns regarding the vehicle's air conditioning system:
  - a. September 21, 2013, at 31,208 miles;
  - b. August 5, 2014, at 44,731 miles;
  - c. June 23, 2015, at 58,772 miles; and
  - d. September 15, 2015, at 62,391 miles.
8. On September 21, 2013, the dealer's service technician determined that the air conditioner drain was clogged, so he unclogged it.

9. On August 5, 2014, no repair was performed on the air conditioner, although Complainant indicated that the vents were not performing properly in that air was not coming out of the dashboard vents.
10. On June 23, 2015, the dealer's service technician determined that the vehicle's air conditioning system was working properly and did not perform any repairs.
11. On September 15, 2015, the dealer's service technician did not perform any repairs because the repairs would not be covered under warranty, although a problem with the vehicle's air conditioner was found.
12. Another repair to the vehicle was performed by Shamaley's service technicians on January 16, 2015, when the vehicle's water pump and serpentine belts were replaced.
13. On October 28, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On January 25, 2016, 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.
15. The hearing in this case convened and the record closed on March 17, 2016, in El Paso, Texas before Hearings Examiner Edward Sandoval. Complainant represented herself in the hearing. In addition, Complainant's mother, Elsa Lopez, testified in the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs. The hearing concluded on February 19, 2016.

#### 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 has not proved by a preponderance of the evidence that the vehicle currently 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 repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **DENIED**.

**SIGNED March 23, 2016**

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