

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0115 CAF**

YULIA BERRY,
Complainant

v.

FORD MOTOR COMPANY,
Respondent

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Yulia Berry (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2013 Ford F-150. Complainant asserts that the vehicle has an issue with its brake rotors which creates a vibration in the steering wheel when the brakes are applied. Ford Motor Company (Respondent) argued that Complainant has not provided them with a reasonable number of repair attempts on the vehicle and, as such, Complainant is not entitled to repurchase or replacement relief. The hearings examiner concludes that the Complainant has not met the presumption that Respondent was allowed a reasonable number of repair attempts on the vehicle and that replacement relief is not warranted.

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 24, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Yulia Berry, was present and was represented by her husband, Jacob Berry. Mr. Berry also testified. Bill Berry, Ms. Berry's father-in-law, was present as an observer. Respondent, Ford Motor Company, was represented via telephone by Maria Diaz, Legal Analyst for Consumer Affairs. Also testifying for Respondent was Asad Bashir, Automotive Technical Consultant.

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

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

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

1. Jacob Berry's Testimony

Complainant purchased a 2013 Ford F-150 from McRee Ford (McRee) in Dickinson, Texas on May 26, 2014. The vehicle had mileage of 32 at the time of purchase.⁶ Respondent's basic bumper-to-bumper warranty provides coverage for three (3) years or 36,000 miles, whichever comes first.⁷ On the date of hearing, the vehicle's mileage was 23,158. At this time, Respondent's basic express warranty for the vehicle is still in effect.

Jacob Berry, Complainant's husband, testified that there is an issue with the vehicle's brake rotors. The front brake rotors have been machined twice within the first 15,000 miles after purchasing the vehicle. Complainant first noticed the problem after the vehicle had been driven about 4,000 miles after purchasing it. Mr. Berry testified that Complainant began noticing a vibration in the vehicle's steering when she was applying the brakes. Mr. Berry also stated that the vibration was more noticeable when making a turn in the vehicle.

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, Vehicle Purchase Order dated May 26, 2014.

⁷ Complainant Ex. 7, 2013 Model Year Ford Warranty Guide, p. 8.

Complainant took the vehicle to McRee for repair for the vibration issue on February 5, 2015. McRee's service technician determined that the front brake rotors needed to be resurfaced (i.e., machined) in order to address the issue which was done during the repair.⁸ The mileage on the vehicle when it was taken to McRee was 7,248.⁹ The vehicle was in McRee's possession for five (5) days. Complainant was provided with a loaner or rental vehicle while her vehicle was being repaired.

Mr. Berry testified that the vehicle drove fine for about 6,500 miles. However, the vehicle began exhibiting the same problem, i.e., vibration in the steering wheel when the brakes were applied. Complainant took the vehicle to McRee on September 23, 2015, in order to have the dealer address the vibration issue. McRee's service technician determined that the front rotors needed to be resurfaced again, so the work was performed at the time.¹⁰ The vehicle's mileage on this occasion was 15,176.¹¹ The vehicle was in McRee's possession for ten (10) days. Complainant was provided a loaner or rental vehicle while her vehicle was being repaired.

Mr. Berry stated that on October 15, 2015, Complainant mailed a letter to Respondent informing them of her dissatisfaction with the vehicle.¹² As a result of the complaint, Respondent scheduled a final repair attempt on the vehicle. The final repair attempt was performed on November 12, 2015, at McRee. Respondent's field service engineer was unable to duplicate Complainant's concern and so no actual repairs were performed at the time.¹³ However, the engineer indicated that if the issue were to recur, then the vehicle's front rotors would need to be replaced.¹⁴ The final repair attempt took one day to perform. Complainant received a loaner vehicle while the final repair attempt took place. The vehicle's mileage on this occasion was 16,806.¹⁵

As a result of the problems with the vehicle, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (TxDMV) with an effective date of December 7, 2015.¹⁶

Mr. Berry testified that he is currently the primary driver of the vehicle. Since becoming the primary driver in February of 2016, he has begun to notice a slight vibration in the steering wheel

⁸ Complainant Ex. 2, Repair Order dated February 5, 2015.

⁹ *Id.*

¹⁰ Complainant Ex. 3, Repair Order dated September 23, 2015.

¹¹ *Id.*

¹² Complainant Ex. 4, Letter to Ford Motor Company dated October 15, 2015.

¹³ Complainant Ex. 6, Repair Order dated November 12, 2015.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 5, Lemon Law complaint dated December 7, 2015. Although the complaint was signed by Complainant on November 29, 2015, it was not received by Texas Department of Motor Vehicles until December 7, 2015, which is the effective date of the complaint.

when applying the vehicle's brakes. Mr. Berry also stated that the vehicle's brakes have never failed to stop the vehicle. Mr. Berry started driving the vehicle because he feels that he's taking less of a chance driving the vehicle than the Complainant, since he drives fewer miles on a daily basis than Complainant.

Mr. Berry's concern is that the brake rotors have been machined twice and the issue was not corrected, just repaired. He feels that it's not safe to drive on bad rotors. Mr. Berry stated that due to the problem with the rotors, the vehicle is not stopping as it was designed. He feels that the vehicle doesn't stop as promptly as it was designed to when the vibration is present. Mr. Berry also feels that he could lose control of the vehicle on a wet road if the rotors aren't working as designed. Mr. Berry also testified that he feels that the vehicle's value has decreased because he wouldn't buy a vehicle with brake issues and doesn't think that many other people would either.

2. Yulia Berry's Testimony

Complainant, Yulia Berry, testified that she was the primary driver of the vehicle until February of 2016. Ms. Berry testified that she sometimes felt the vehicle's steering wheel vibrate from side to side when she stepped on the vehicle's brakes. This made her feel uncomfortable because she feels that it takes longer for the vehicle to stop when the vibration is occurring.

Ms. Berry stated that after the second repair on the vehicle, September 23, 2015, she spoke to McRee's service manager to ask about why there was a problem with the vehicle's brake rotors. She asked the advisor what was causing the problems. Ms. Berry was told by the manager that it was probably due to the way she was driving the vehicle and that driving through water puddles could cause issues with the vehicle's brakes.

C. Respondent's Evidence and Arguments

1. Maria Diaz' Testimony

Maria Diaz, Legal Analyst for Consumer Affairs for Ford Motor Co., testified that Respondent first became aware of Complainant's concerns with the vehicle when they received a letter from Complainant in October of 2015. Ms. Diaz spoke to Mr. Berry on October 30, 2015, and arranged for Respondent to perform a final repair attempt on the vehicle. The final repair attempt was performed by Steve Kyle, Field Service Engineer, on November 2, 2015, at McRee. Ms. Diaz has never personally seen the vehicle.

Ms. Diaz testified that Mr. Kyle wrote a vehicle inspection report after inspecting Complainant's vehicle. Mr. Kyle indicated that he could not duplicate the concern, so no repairs were performed on the vehicle.¹⁷ Ms. Diaz spoke to Mr. Berry on November 24, 2015, and informed him of Mr. Kyle's findings. Ms. Diaz indicated that she informed Mr. Berry that since they had already filed a Lemon Law complaint that Respondent would go to hearing.

2. Asa Bashir's Testimony

Asad Bashir is an automotive technical consultant for Respondent. He serves as a liaison between Respondent's engineering unit and their customer service department. Mr. Bashir has worked for Respondent for approximately eight (8) years and has worked for 16 years total in the automotive industry.

Mr. Bashir testified that the vibration in the steering wheel felt by Mr. Berry and Complainant was probably caused by the vehicle's brake rotors. He stated that any type of variation in the rotor surface can cause the vibration. Material can be transferred from the brake pads to the rotor which can build up and cause vibration. Therefore, it becomes necessary to resurface or machine the rotors. Mr. Bashir stated that when the vibration is present, the vehicle can take longer or more of a distance to stop. However, driving through puddles of water would ordinarily not cause any problems with the rotors.

Rotor replacement is covered under the vehicle's warranty for the first three (3) years or 36,000 miles after purchase of the vehicle. However, brake pads are normally not covered under the vehicle warranty as they may be considered a maintenance item.

During cross-examination, Mr. Bashir stated that driving habits can affect the brake rotors. He suggested that the driver, when at a stop, allow the vehicle to roll forward a bit to prevent a hot transfer of material from the brake pad to the rotor. He also testified that rotors typically last longer than brake pads. However, machining the rotors twice during the first 15,000 miles of ownership wouldn't necessarily raise a red flag. In addition, Ms. Bashir stated that a vehicle with machined rotors would not necessarily have more vibration than a vehicle with non-machined rotors. He feels that the brakes are still safe, even though it may take a slightly longer distance for the vehicle to come to a complete stop.

¹⁷ Respondent Ex. 1, Vehicle Inspection Report dated November 2, 2015.

D. Analysis

Under the Lemon Law, Complainant bears 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, Complainant must meet the presumption that a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is 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, Complainant is entitled to have the vehicle repurchased or replaced.

Complainant purchased the vehicle on May 26, 2014, and presented the vehicle to Respondent's authorized dealer due to her concerns with the steering wheel vibrating when the brakes were depressed on the following dates: February 5, 2015; September 23, 2015; and November 12, 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 Complainant has not met the requirements of this test since Complainant has presented the vehicle for repair only three times since the date of purchase. In addition, the second repair attempt for the concern raised by Complainant occurred after the vehicle had been driven 12,000 miles from the date of original delivery. (The vehicle's mileage at the second repair attempt was 15,176.) Complainant did not present the vehicle for repairs twice within the first 12,000 miles after delivery. As such, Complainant has not met the presumption that Ford has been provided with a reasonable number of attempts to repair the vehicle. Therefore, the hearings examiner must hold that repair relief cannot be granted for Complainant.

Ford's express warranty applicable to Complainant's 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 whenever any issue covered by the warranty is raised.

Complainant's request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Yulia Berry (Complainant) purchased a 2013 Ford F-150 on May 26, 2014, from McRee Ford (McRee) in Dickinson, Texas with mileage of 32 at the time of purchase.
2. Respondent issued a bumper-to-bumper warranty for the vehicle for three (3) years or 36,000 miles.
3. The vehicle's mileage on the date of hearing was 23,158.
4. At the time of hearing the warranty for the vehicle was still in effect.
5. After driving the vehicle about 4,000 miles, Complainant began experiencing a vibration in the vehicle's steering wheels when she applied the brakes or during a turn.
6. Complainant's vehicle was serviced by McRee's service technicians on the following dates because of the vibration issue:
 - a. February 5, 2015, at 7,248 miles;
 - b. September 23, 2015, at 15,176 miles; and
 - c. November 12, 2015, at 16,806 miles.
7. On February 5, 2015, McRee's service technician machined the front brake rotors in order to address the vibration issue.
8. On September 23, 2015, McRee's service technician again machined the front brake rotors in order to address the vibration issue.
9. On November 12, 2015, Respondent performed a final repair attempt on the vehicle. Respondent's field service engineer could not duplicate Complainant's concern, so no repairs were performed at the time.
10. On December 7, 2015, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On January 4, 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.

12. The hearing in this case convened and the record closed on March 24, 2016, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainant, Yulia Berry, was present and was represented by her husband, Jacob Berry. Mr. Berry also testified. Bill Berry, Ms. Berry's father-in-law, was present as an observer. Respondent, Ford Motor Company, was represented via telephone by Maria Diaz, Legal Analyst for Consumer Affairs. Also testifying for Respondent was Asad Bashir, Automotive Technical Consultant.

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. 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 did not prove 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. Complainant 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. Complainant's 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 Complainant's petition for repurchase relief pursuant to Texas Occupations Code §§ 2301.601-.613 is hereby **DISMISSED**.

SIGNED April 7, 2016.



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