

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 16-0358 CAF**

JUSTIN VEAZEY,	§	BEFORE THE OFFICE
Complainant	§	
v.	§	
	§	OF
FORD MOTOR COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Justin Veazey (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2015 Ford Edge Sport. Complainant asserts that the vehicle is defective because there is a noise from the vehicle’s sunroof and because pieces of the vehicle’s sunroof trim fell off of the vehicle. Ford Motor Company (Respondent) argued that the vehicle does not have any defects and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainant is not eligible for repurchase or replacement 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 on November 3, 2016, in San Angelo, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs. A continuance in the hearing was conducted telephonically on November 28, 2016. Present at the continuance was Complainant representing himself. Also present was Amanda Bemiller, Legal Analyst for Consumer Affairs, representing Respondent. The hearing record was closed on November 28, 2016.

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 manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.³ Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.⁴ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁵

In addition to the five 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.⁶

B. Complainant's Evidence and Arguments

Complainant purchased a new 2015 Ford Edge Sport from Jim Bass Ford (Bass) in San Angelo, Texas on October 15, 2015, with mileage of 14 at the time of delivery.^{7,8} Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle. On the date of hearing the vehicle's mileage was 16,475. Respondent's warranty was still in effect at the time of hearing.

Complainant testified that several months after purchasing the vehicle he began to notice that there was a noise coming from the vehicle's sunroof area. He noticed the noises primarily when driving on rough roads. On March 14, 2016, Complainant took the vehicle to Bass for an oil change. He informed Bass's service technician of the noise that he heard from the sunroof. The technician test drove the vehicle, but could not hear any unusual noise, so he did not perform any

² *Id.*

³ *Id.*

⁴ Tex. Occ. Code § 2301.606(c)(1).

⁵ Tex. Occ. Code § 2301.606(c)(2).

⁶ 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.

⁷ Complainant Ex. 1, Motor Vehicle Retail Installment Contract dated October 15, 2015.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated October 15, 2015.

repairs for the issue. The vehicle's mileage when Complainant took it to the dealer on this occasion was 5,280.⁹

Complainant continued to hear the noise from the vehicle's sunroof. He returned the vehicle to Bass on April 7, 2016. On this occasion, the service technician verified a "creak type" noise from the sunroof area.¹⁰ The service technician followed the instructions provided on one of Respondent's technical service bulletins (TSB) for repair for the noise.¹¹ The repair required that the technician install sheet metal screws to the vehicle's C-pillar to resolve the noise issue.¹² Bass had the vehicle in their possession until April 16, 2016. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle was 6,068.¹³

Complainant testified that the vehicle drove normally for a while, but he then began to hear noise from the sunroof area again. He stated that the noise sounded like something was loose and rolling around. He took the vehicle back to Bass for repair on May 3, 2016. During the repair visit, the technicians removed and replaced the vehicle's roof glass assembly.¹⁴ The vehicle was returned to Complainant on May 18, 2016. Complainant was provided with a loaner vehicle during this repair visit. The mileage on the vehicle at the time Complainant turned it over Bass was 7,364.¹⁵

Complainant testified that as soon as he got the vehicle back, he began to hear the noise again. He returned the vehicle to Bass on May 23, 2016.¹⁶ Complainant stated that he spoke to the service manager about the issue and took him on a test drive with him where the service manager heard the noise. Complainant was informed that one of Respondent's technicians was going to Bass to repair the vehicle. Complainant did not know what repair was performed on this occasion. The vehicle was in the dealer's possession until May 31, 2016. Complainant was provided with a loaner vehicle while his vehicle was being repaired. The mileage on the vehicle when he delivered it to Bass on this occasion was 7,367.¹⁷

Complainant felt that the vehicle was repaired and the noise was no longer present. However, the noise came back. In addition, some of the vehicle's trim from the sunroof came off the vehicle while Complainant was driving it. Complainant took the vehicle to Bass for repair to the trim and

⁹ Complainant Ex. 3, Repair Order dated March 14, 2016.

¹⁰ Complainant Ex. 4, Repair Order dated April 7, 2016.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 5, Repair Order dated May 3, 2016.

¹⁵ *Id.*

¹⁶ Complainant Ex. 7, Repair Order dated May 23, 2016.

¹⁷ *Id.*

for the noise issues on July 14, 2016. The technician verified the concern and sublet the repairs to Three Rivers Glass and Accessories whose technician replaced the trim panel above the windshield.¹⁸ No repairs were performed for the noise issue. The vehicle was in Bass's possession until July 29, 2016.¹⁹ Complainant was provided with a loaner vehicle while his vehicle was being repaired. The vehicle's mileage on this occasion was 10,122.²⁰

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on August 5, 2016.²¹

Sometime in August of 2016, Complainant spoke to Bob Swartz, case advisor for the Department. Mr. Swartz advised Complainant that the dealer had been given sufficient opportunity to repair the vehicle and that he did not have to take it back for further repair. In addition, Complainant sent Mr. Swartz a letter outlining the problems he had been experiencing with the vehicle.²²

Complainant has continued to hear a rattling noise from the sunroof area of the vehicle. He hears the noise particularly on rough and bumpy roads. He stated that he does not usually hear any noise when he's driving on smooth roads. In addition, Complainant stated that two of the vehicle's side trim pieces are still loose. He has not taken the vehicle for repair for the trim issue because of the advice given to him by Mr. Swartz.

C. Respondent's Evidence and Arguments

Maria Diaz, Legal Analyst for Consumer Affairs, testified for Respondent. She stated that Respondent first became aware that Complainant had filed a Lemon Law complaint when she received a 14 page fax from Mr. Swartz. The fax contained repair invoices and the letter regarding Complainant's dissatisfaction with the vehicle submitted by Complainant to Mr. Swartz.

Ms. Diaz attempted to contact Complainant to schedule a final repair attempt on the vehicle. She called Complainant on August 16 and 18, 2016, but his phone number was not working. Ms. Diaz attempted to call Complainant on August 30, 2016, but got a voice mail message. However, the voice mail system would not allow Ms. Diaz to leave a message. Ms. Diaz testified that as a

¹⁸ Complainant Ex. 9, Repair Order from Three Rivers Glass and Accessories dated July 18, 2016.

¹⁹ Complainant Ex. 8, Repair Order dated July 14, 2016.

²⁰ *Id.*

²¹ Complainant Ex. 10, Lemon Law Complaint dated August 5, 2016. Complainant signed and dated the complaint on August 1, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until August 5, 2016, which is the effective date of the complaint.

²² Complainant Ex. 12, Undated Letter Addressed To Whom This May Concern.

result of her inability to contact Complainant a final repair attempt on Complainant's vehicle was never performed by Respondent.

Ms. Diaz also stated that she became aware that Complainant had filed a complaint with the Better Business Bureau (BBB) in his area. Ms. Diaz informed Mr. Swartz of the existence of the BBB complaint. Mr. Swartz contacted Complainant to see if he intended to pursue the BBB complaint and was informed by Complainant that he was going to drop it.

Ms. Diaz testified that she does not believe that Complainant is entitled to his requested relief of repurchase of the vehicle, because Complainant has not made the requisite number of repair attempts on the vehicle. Ms. Diaz stated that Complainant has made only three (3) repair attempts on the vehicle: April 7, 2016; May 3, 2016; and July 14, 2016. Ms. Diaz also stated that the vehicle was being repaired for a full month during May of 2016, from May 3, 2016 to May 31, 2016.

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 the manufacturer was given a reasonable number of attempts to repair or correct the defect or condition to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the defect or 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 or condition, Complainant is entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainant's vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Complainant indicated that he had two concerns regarding the vehicle: the noise from the sunroof area and "pieces of the sun roof coming off down highway [sic]."²³

Complainant indicated that he was concerned with a noise that comes from the vehicle's sunroof area when driving on rough or bumpy roads. Complainant indicated that the noise does not occur on smooth roads. It is understandable that the noise can be annoying and Complainant testified as much. However, the noise does not create a serious safety hazard as defined in Section 2301.601(4) of the Texas Occupations Code. It's not a life-threatening malfunction or

²³ Complainant Ex. 10, Lemon Law Complaint dated August 5, 2016.

nonconformity that substantially impedes Complainant's ability to control or operate the vehicle and it does not create substantial risk of fire or explosion.

In addition, the rattling noise does not *substantially* impair the use or market value of the vehicle. If Complainant were to trade in the vehicle or attempt to sell it to another party, it's doubtful that the noise would affect the purchase price, since most people would not even notice it.

In regards to the trim coming off of the vehicle, Complainant has not allowed Respondent an adequate opportunity to repair the vehicle's trim. There's no evidence that the trim cannot be repaired so that it does not fall off, since Complainant has not taken the vehicle back for his concerns about the currently loose trim. Since the issue is still under warranty, Respondent will be responsible for performing any necessary repairs to the vehicle's trim.

The hearings examiner must hold that there is no evidence of a defect with the vehicle and, as such, repurchase or replacement relief for Complainant is not warranted.

On the date of hearing, the vehicle's mileage was 13,794 and it remains under warranty. As such, Respondent is still under an obligation to repair the vehicle's trim and to repair any other issues that arise that are covered by the vehicle's warranty.

Complainant's request for repurchase or replacement relief is denied. However, Respondent is hereby ordered to perform any necessary repairs to the vehicle's trim to conform the vehicle to the limited warranty. All such repairs must be performed within 20 days from the issuance of this order.

III. FINDINGS OF FACT

1. Justin Veazey (Complainant) purchased a new 2015 Ford Edge Sport on October 15, 2015, from Jim Bass Ford in San Angelo, Texas, with mileage of 14 at the time of delivery.
2. The vehicle's mileage on the date of hearing was 13,794.
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.
4. At the time of hearing the bumper-to-bumper warranty for the vehicle was still in effect.

5. Complainant took the vehicle to Respondent's authorized dealer, Bass, in order to address his concerns regarding noise coming from the vehicle's sunroof on the following dates:
 - a. March 14, 2016, at 5,280 miles;
 - b. April 7, 2016, at 6,068 miles;
 - c. May 3, 2016, at 7,364 miles;
 - d. May 23, 2016, at 7,367 miles; and
 - e. July 14, 2016, at 10,122 miles.
6. On March 14, 2016, the dealer's service technician could not recreate the noise, so no repair was performed.
7. On April 7, 2016, the dealer's service technician installed sheet metal screws to the vehicle's C-pillar pursuant to guidance provided by Respondent's technical service bulletin (TSB) in order to address the noise issue.
8. On May 3, 2016, the dealer's service technician replaced the vehicle's rooftop glass assembly in an effort to address the noise concern.
9. On May 23, 2016, a repair was performed by Respondent's representative. However, there is no record as to what repair was performed.
10. On July 14, 2016, the dealer's subcontractor's service technician replaced the trim panel above the vehicle's windshield in order to address the issue of the trim coming off. There was no repair for the noise issue.
11. On August 5, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
12. On August 29, 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.

13. The hearing in this case convened on November 3, 2016, in San Angelo, Texas before Hearings Examiner Edward Sandoval. Complainant represented himself at the hearing. Respondent was represented telephonically by Maria Diaz, Legal Analyst for Consumer Affairs. A continuance in the hearing was conducted telephonically on November 28, 2016. Present at the continuance was Complainant representing himself. Also present was Amanda Bemiller, Legal Analyst for Consumer Affairs, representing Respondent. The hearing record was closed on November 28, 2016.

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. 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 failed to prove that the vehicle has an existing warrantable defect. 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. 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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**. However, Respondent is **ORDERED** to **PERFORM ALL NECESSARY REPAIRS** to the vehicle's trim to conform the vehicle to the limited warranty. All such repairs must be performed within 20 days from the issuance of this order.

SIGNED December 6, 2016



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