

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 17-0036 CAF**

**RAY RAJAN and NADIA RAJAN,
Complainants**

v.

**FORD MOTOR COMPANY,
Respondent**

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**BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Ray and Nadia Rajan (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their new 2016 Ford Explorer XLT. Complainants assert that the vehicle exhibits a rotten egg smell coming out of the air conditioning vents when the engine's RPM's exceed 2300. Ford Motor Company (Respondent) argued that there is no defect with the vehicle and that no relief is warranted. The hearings examiner concludes that the vehicle does not have an existing warrantable defect and Complainants are 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 and the record closed on February 1, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants both appeared and testified in the hearing. Respondent was represented by Mircia Currie, Consumer Affairs Legal Analyst. Sayeed Asad Bashir, Automotive Consultant, also testified for Respondent.

II. DISCUSSION

A. Applicable Law

The Texas Lemon Law provides that a manufacturer of a motor vehicle must repurchase or replace a vehicle complained of under the Texas Occupations Code with a comparable vehicle if five conditions are met. First, the manufacturer has not conformed the vehicle to an applicable express warranty because the manufacturer cannot repair or correct a defect or condition in the vehicle. Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle. Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.¹ Fourth, the

¹ Tex. Occ. Code § 2301.604(a)(1) and (2).

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

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.⁴

B. Complainant's Evidence and Arguments

Complainants purchased a new 2016 Ford Explorer XLT from Friendly Ford (Friendly) in Crosby, Texas on February 6, 2016, with mileage of 19 at the time of delivery.⁵ Respondent's bumper-to-bumper warranty for the vehicle provides coverage for three (3) years or 36,000 miles, whichever comes first. On the date of hearing the vehicle's mileage was 13,396. At this time, Respondent's warranty for the vehicle is still in effect.

1. Ray Rajan's Testimony

Ray Rajan, co-Complainant, testified that approximately two (2) months after purchasing the vehicle, he began noticing a rotten egg odor in the vehicle emitting from the air conditioning vents whenever he accelerated the engine over 2300 RPM's. Mr. Rajan stated that the odor does not occur during normal driving, only when he accelerates quickly. He did not take the vehicle to Friendly for repair, but sent an email to them. In addition, he mailed the dealer a letter on May 19, 2016, informing the dealer representatives of the issue and indicated that he would wait for a reply.

² Tex. Occ. Code § 2301.606(c)(1).

³ Tex. Occ. Code § 2301.606(c)(2).

⁴ Tex. Occ. Code § 2301.605(a)(1)(A) and (B). Texas Occupations Code § 2301.605(a)(2) provides an alternative method 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.

⁵ Complainant Ex. 1, Purchase Order dated February 6, 2016.

On June 14, 2016, Mr. Rajan took the vehicle to Planet Ford in Spring, Texas to address the odor issue. He informed the service advisor that the odor occurred during acceleration and whether the air conditioner was on or off.⁶ The service technician was unable to duplicate the issue, but reprogrammed the vehicle's heating, ventilation, and air conditioning (HVAC) module with the latest calibration in an attempt to address the issue.⁷ The vehicle's mileage on this occasion was 6,725.⁸

Mr. Rajan also testified that he took the vehicle to Planet Ford again on August 20, 2016. He indicated that a dealer representative, Charlie Mutz, drove the vehicle and was able to smell the odor. However, no repairs were performed at the time. Complainants were not told why the dealer would not attempt a repair and were not provided with a service invoice for this repair visit.

Mr. Rajan stated that he contacted various dealers about the odor problem, he was informed that there was not a repair for the issue. As a result, Mr. Rajan did not attempt any further repairs for the vehicle. Mr. Rajan did testify that the odor does not occur every time he drives the vehicle, but occurs intermittently. He stated that the odor sometimes gets very strong and that passengers have commented on it. The odor only occurs during acceleration and lasts for about five (5) minutes. Mr. Rajan stated that he sometimes has to open the vehicle's windows in order to allow the odor to dissipate.

Complainants filed a Lemon Law complainant with the Texas Department of Motor Vehicles (Department) on October 7, 2016.⁹ Complainants also mailed a letter to Respondent advising them of their dissatisfaction with the vehicle.¹⁰

Mr. Rajan was contacted by Maria Diaz, Respondent's Consumer Affairs Legal Analyst, in order to schedule a final repair attempt on the vehicle. The final repair attempt was performed on December 15, 2016, at Planet Ford. Respondent's field service engineer, Steven Kyle, was unable to duplicate the concern, so he did not perform any repairs on the vehicle.¹¹ The vehicle's

⁶ Respondent Ex. 2, Repair Order dated June 14, 2016.

⁷ *Id.*

⁸ *Id.*

⁹ Complainant Ex. 3, Lemon Law complaint dated October 7, 2016. Although the complaint was signed on October 1, 2016, the effective date of the complaint is the date that it was received by the Texas Department of Motor Vehicles, which was October 7, 2016.

¹⁰ Complainant Ex. 4, Undated Letter to Ford Motor Company.

¹¹ Respondent Ex. 1, FSE Vehicle Inspection Report dated December 15, 2016.

mileage on this occasion was 12,869.¹² Complainants were provided with a loaner vehicle while the final repair attempt was performed.

Mr. Rajan stated that the problem continues to occur. There continues to be a rotten egg odor intermittently when he accelerates in the vehicle and the engine RPM's exceed 2300.

2. Nadia Rajan's Testimony

Nadia Rajan, co-Complainant, testified that she is usually a passenger in the vehicle. She has experienced the rotten egg odor in the vehicle in the past. The odor seems to come from the vehicle's air conditioning vents and seems to come and go. The odor lasts for a few minutes when accelerating in the vehicle. She feels that the vehicle has a problem that needs to be repaired.

C. Respondent's Evidence and Arguments

1. Mircia Currie's Testimony

Mircia Currie, Consumer Affairs Legal Analyst, testified for Respondent. She testified that Respondent first became aware of Complainant's dissatisfaction with the vehicle on November 28, 2016, when Maria Diaz, Consumer Affairs Legal Analyst, received Mr. Rajan's letter advising Respondent of the problems he was experiencing with the vehicle. Ms. Diaz made arrangements for Respondent's Field Service Engineer to perform a final repair attempt on the vehicle. The final repair attempt was performed by Steven Kyle on December 15, 2016, at Planet Ford in Spring, Texas. Mr. Kyle determined could not detect an unusual odor in the vehicle.¹³ He did not feel that any repairs needed to be performed on the vehicle.¹⁴

Ms. Currie stated that Respondent provides a bumper-to-bumper warranty for the vehicle good for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provides a five (5) year or 60,000 mile powertrain warranty.

2. Sayeed Asad Bashir's Testimony

Sayeed Asad Bashir, Automotive Consultant, testified for Respondent. He has worked for Respondent since 2007. Prior to being hired by Respondent, Mr. Bashir worked as an automotive

¹² *Id.*

¹³ Respondent Ex. 1, FSE Vehicle Inspection Report dated December 15, 2016.

¹⁴ *Id.*

technician for independent repair shops for eight (8) years. He's worked since 2009 in his present position.

Mr. Bashir stated that he's aware of a technical service bulletin (TSB) being issued by Respondent for 2011 through 2015 Ford Explorers to address an exhaust odor problem. In addition, he was aware of a class action lawsuit brought against Respondent for the same issue. However, neither the TSB nor the lawsuit apply to 2016 Explorers which is Complainants' vehicle. Mr. Bashir has never seen Complainants' vehicle and has never driven in it. Mr. Bashir stated that odors are a subjective matter and that there are no standards for what may or may not be acceptable.

During cross-examination, Mr. Bashir stated that Respondent's workshop manual provides instructions to technicians on how to address different kinds of vehicle odors. However, the problem must be duplicated in order for the technician to know what action to take.

D. Analysis

Under Texas' 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.

Complainants have not met the burden of proof to establish that their vehicle has a defect which creates a serious safety hazard or which substantially impairs its use or market value. Complainants testified that there is a rotten egg odor which they detect intermittently when they accelerate in the vehicle. The engine's RPM's have to exceed 2300 in order for the odor to manifest. The fact that there is an odor that occurs when the vehicle is driven does not indicate the presence of a defect in the vehicle, since the odor could be created by outside forces. Since the evidence does not indicate the presence of a manufacturer's defect which causes the odor in question, the hearings examiner must hold that Complainants are not entitled to the requested relief.

Respondent's bumper-to-bumper warranty applicable to Complainants' vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle's mileage was 13,396 and the basic warranty coverage is still in effect. Respondent is still under an obligation to repair any issues with the vehicle that are covered under the warranty.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Ray and Nadia Rajan (Complainants) purchased a new 2016 Ford Explorer XLT on February 6, 2016, from Friendly Ford in Crosby, Texas, with mileage of 19 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty for the vehicle good for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 13,396.
4. At the time of hearing the vehicle's basic warranty was still in effect.
5. Complainants feel that the vehicle's interior has a rotten egg odor that occurs intermittently when the vehicle's engine exceeds 2300 RPM's.
6. Complainants took the vehicle to Respondent's authorized dealer, Planet Ford in Spring, Texas, in order to address their concerns with the odor in the vehicle, on the following dates:
 - a. June 14, 2016, at 6,725 miles; and
 - b. August 20, 2016, at unknown miles.
7. On June 14, 2016, Planet Ford's service technician was unable to duplicate the concern, but still reprogrammed the vehicle's heating, ventilation, and air conditioning (HVAC) module to provide it with the latest calibration.

8. On August 20, 2016, Planet Ford's service technician verified the odor, but performed no repairs. Complainants were not provided with a reason as to why no repair was attempted and Complainants did not receive an invoice indicating that they had submitted the vehicle for repair.
9. On October 7, 2016, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
10. On December 15, 2016, Respondent's field service engineer, Steven Kyle, performed a final repair attempt on the vehicle, but could not duplicate the concern. No repairs were actually performed at the time.
11. On December 2, 2016, 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.
12. The hearing in this case convened and the record closed on February 1, 2017, in Houston, Texas before Hearings Examiner Edward Sandoval. Complainants both appeared and testified in the hearing. Respondent was represented by Mircia Currie, Consumer Affairs Legal Analyst. Sayeed Asad Bashir, Automotive Consultant, also testified 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 failed to 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. Respondent remains responsible to address and repair or correct any defects that are covered by Respondent's warranties. Tex. Occ. Code § 2301.204.
8. 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**.

SIGNED February 28, 2017



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