

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 17-0037 CAF**

**VERONICA RODELA,**  
**Complainant**

v.

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

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Veronica Rodela (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2016 Ford Fusion. Complainant asserts that the vehicle is defective since the vehicle died twice while she was driving it. Ford Motor Company (Respondent) argued that the vehicle has been repaired, does not have any defects, and that no relief is warranted. The hearings examiner concludes that the vehicle has been repaired, 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 April 19, 2017, in Victoria, Texas before Hearings Examiner Edward Sandoval. Complainant, Victoria Rodela, represented herself at the hearing. Pedro Reyna, Jr., husband, also testified for Complainant. Respondent was represented by Maria Diaz, Legal Analyst.

A continuance in the hearing was conducted telephonically on April 27, 2017. Present at the continuance were Veronica Rodela, Complainant, and her representative, Linda Leyva. Maria Diaz represented Respondent in the continuance. The hearing record was closed on April 27, 2017.

**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.<sup>1</sup> Second, the defect or condition in the vehicle creates a serious safety hazard or substantially impairs the use or market

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<sup>1</sup> Tex. Occ. Code § 2301.604(a).

value of the vehicle.<sup>2</sup> Third, the manufacturer has been given a reasonable number of attempts to repair or correct the defect or condition.<sup>3</sup> Fourth, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.<sup>4</sup> Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.<sup>5</sup>

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.<sup>6</sup>

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

Complainant purchased a new 2016 Ford Fusion from Port Lavaca Ford in Port Lavaca, Texas on February 6, 2016, with mileage of 5 at the time of delivery.<sup>7</sup> Respondent warranty provides bumper-to-bumper coverage for the vehicle for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent's powertrain warranty provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles. On the date of the initial hearing the vehicle's mileage was 18,033. Respondent's warranties were still in effect at the time of hearing.

### **1. Veronica Rodela's Testimony**

Complainant testified that the vehicle has died twice while she was driving it. She doesn't feel safe in the vehicle and wants Respondent to repurchase it.

Complainant testified that on August 27, 2016, she was driving in the vehicle to the grocery store with a relative when the vehicle started shaking and then died. Complainant stated that at the time the vehicle died she saw a "wrench light" illuminate on the vehicle's warning screen.

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<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Tex. Occ. Code § 2301.606(c)(1).

<sup>5</sup> Tex. Occ. Code § 2301.606(c)(2).

<sup>6</sup> 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.

<sup>7</sup> Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated February 6, 2016.

Complainant was approximately three blocks from her home when the vehicle died. The vehicle would not restart. Complainant called her husband to help her. He and some other relatives were able to push the vehicle back to their home. Complainant contacted the dealer about the vehicle and he informed her to call roadside assistance to have the vehicle towed. Complainant contacted roadside assistance and was informed that the vehicle could not be towed to the dealer until the following Monday, August 29, 2016. The vehicle was towed to Alexander Ford (Alexander) in Kenedy, Texas for repair on August 29, 2016. Alexander's service technician was unable to duplicate the problem and was unable to find any diagnostic trouble codes (DTC's) on the vehicle's computer.<sup>8</sup> The technician was unable to repair the issue at the time.<sup>9</sup> The vehicle's mileage on this occasion was 10,068.<sup>10</sup> The vehicle was in Alexander's possession for three (3) days during this repair visit. Complainant was not provided with a loaner vehicle while her vehicle was being repaired.

Complainant picked up the vehicle on September 2, 2016. She was told at the time that there was nothing wrong with the vehicle. Complainant began to drive the vehicle to her house when it began to shake again. She turned around to take the vehicle back to Alexander. On the way to the dealer, the vehicle died in the middle of the highway in a left turn lane. The vehicle's check engine light (CEL) illuminated as did the "wrench light." Complainant contacted the dealer who sent a tow truck to pick the vehicle up. The vehicle was taken to Alexander for repair. Alexander's technician observed that the vehicle's check engine light (CEL) was illuminated.<sup>11</sup> The technician was also able to find a DTC on the vehicle's computer indicating that the throttle actuator control system was stuck closed.<sup>12</sup> The technician replaced the vehicle's throttle body and throttle body gasket in order to resolve the issue.<sup>13</sup> The vehicle's mileage on this occasion was 10,079.<sup>14</sup> The vehicle was returned to Complainant on September 8, 2016. Complainant did not receive a rental or loaner vehicle while her vehicle was being repaired.

Complainant testified that the vehicle has not died since the repair performed during the September 2, 2016 repair visit. However, approximately two weeks prior to the initial hearing, the vehicle started shaking again. No trouble or warning lights illuminated nor did the vehicle die. In addition, Complainant stated that the vehicle's back-up camera wouldn't work for a couple of minutes, but then started working again. Complainant did not take the vehicle to a dealer for repair for those issues.

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<sup>8</sup> Complainant Ex. 2, Repair Order dated August 29, 2016.

<sup>9</sup> *Id.*

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

<sup>11</sup> Complainant Ex. 3, Repair Order dated September 2, 2016.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

On September 28, 2016, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.<sup>15</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on October 7, 2016.<sup>16</sup>

Complainant testified that she is scared to drive the vehicle. She doesn't feel safe in it. She feels that the vehicle could be hit from behind if it were to die and she and/or her child could be seriously injured. Complainant stated that she doesn't want to endanger her baby. When the incidents occurred, Complainant was pregnant and she feels that the stress of the vehicle dying while she was driving caused her to be put on bed rest prior to the baby's birth and for the early arrival of the baby.

During cross-examination, Complainant stated that the vehicle has not died again. She has not taken the vehicle to a dealer for any other issue.

## 2. Pedro Reyna, Jr.'s Testimony

Pedro Reyna, Jr., Complainant's husband, testified for Complainant. He stated that he rarely drives the vehicle.

On August 27, 2016, Mr. Reyna and Complainant were hosting family at their home. Complainant left the house to go the grocery store and called Mr. Reyna a few minutes after she had left to inform him that the vehicle had died. Mr. Reyna went to the location where the vehicle was parked and observed that the vehicle did not have any power and wouldn't move. So, Mr. Reyna and some of his relatives pushed the vehicle back to his home. Complainant and Mr. Reyna contacted the sales person who sold them the vehicle and he informed them that they needed to call roadside assistance to have the vehicle towed to a dealer for repair. The roadside assistance representative advised them that a tow truck would not be able pick up the vehicle until the following Monday. The vehicle was taken to Alexander for repair on August 29, 2016.

Mr. Reyna testified that he and Complainant picked up the vehicle from Alexander on September 2, 2016. When they picked up the vehicle, they were informed by Alexander's representative that nothing was wrong with it, since the technician could not find any problems. Complainant began to drive the vehicle to her home with Mr. Reyna following her in another vehicle. They had driven about two miles from Alexander when Complainant pulled the vehicle over and parked it because it had begun to shake and lose power. Mr. Reyna advised Complainant to take the

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<sup>15</sup> Complainant Ex. 5, Letter to Ford Motor Company dated September 28, 2016.

<sup>16</sup> Complainant Ex. 7, Lemon Law Complaint dated October 7, 2016. Complainant signed and dated the complaint on September 28, 2016. However, the complaint was not received by the Texas Department of Motor Vehicles until October 7, 2016, which is the effective date of the complaint.

vehicle back to Alexander. While driving back to the dealer's lot, the vehicle died in the left turn lane of a highway. The CEL and "wrench light" both illuminated when the vehicle died. The vehicle had to be towed back to Alexander for repair.

Mr. Reyna testified that the vehicle has not died again. The vehicle has not had any other repairs performed on it since the last repair visit.

### **C. Respondent's Evidence and Arguments**

Maria Diaz, Legal Analyst, testified for Respondent. She stated that Respondent received Complainant's Lemon Law complaint on or about November 7, 2016. After leaving two voice mail messages with Complainant's designated representative, Linda Leyva, Ms. Diaz was able to actually speak to Ms. Leyva on November 18, 2016. Ms. Diaz testified that she informed Ms. Leyva that Respondent wanted an opportunity for a final repair attempt. Ms. Leyva informed Ms. Diaz that Respondent would not be given an opportunity for such a repair. Ms. Leyva also informed Ms. Diaz that Complainant wanted Respondent to repurchase the vehicle, provide \$30,000 to Complainant as additional compensation, and to pay for Complainant's medical expenses. Ms. Diaz informed Ms. Leyva that she did not have authority to discuss those matters, only the disposition of the vehicle itself. Ms. Diaz informed Ms. Leyva that if she were making a products liability claim, she needed to address it to Respondent's general counsel. Ms. Diaz did not have any other conversations with Ms. Leyva. Respondent was not provided with an opportunity for a final repair attempt on the vehicle.

Ms. Diaz also testified that Respondent provided a three (3) year or 36,000 mile bumper-to-bumper warranty for Complainant's vehicle. In addition, Respondent has provided a five (5) year or 60,000 mile powertrain warranty for the vehicle.

### **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.

Complainant purchased the vehicle on February 6, 2016, and presented the vehicle to Respondent's authorized dealer for repair because the vehicle died while Complainant was driving it. The repairs to the vehicle were performed on August 29, 2016 and September 2, 2016. The vehicle was repaired in September of 2016 and Complainant indicated that the vehicle has not died again since the repair.

Occupations Code § 2301.603 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." Relief under the Lemon Law can only be granted if the manufacturer of a vehicle has been unable to conform a vehicle to the manufacturer's warranty. If a vehicle has been repaired then no relief can be possible. A loss of confidence in the vehicle when a defect has been cured does not warrant relief under the Lemon Law. The Lemon Law requires that in order for a vehicle to be determined to be a "lemon" the "nonconformity continues to exist" after the manufacturer has made repeated repair attempts.<sup>17</sup> In the present case, the evidence reveals that the vehicle has been fully repaired and that it currently conforms to the manufacturer's warranty. Therefore, the hearings examiner finds that there is no defect with the vehicle that has not been repaired and, as such, repurchase or replacement relief for Complainant is not warranted.

Respondent's express warranty applicable to Complainant's vehicle provides bumper-to-bumper coverage for three (3) years or 36,000 miles whichever comes first. In addition, the powertrain warranty provides coverage for five (5) years or 60,000 miles. On the date of hearing, the vehicle's mileage was 18,033 and it remains under the warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

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

### III. FINDINGS OF FACT

1. Veronica Rodela (Complainant) purchased a new 2016 Ford Fusion on February 6, 2016, from Port Lavaca Ford in Port Lavaca, Texas, with mileage of 5 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty good for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty for five (5) years or 100,000 miles.

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<sup>17</sup> Tex. Occ. Code § 2301.605.

3. The vehicle's mileage on the date of hearing was 18,033.
4. At the time of hearing the vehicle was still under warranty.
5. In late August and early September of 2016, the vehicle died twice while Complainant was driving it.
6. Complainant took the vehicle to Respondent's authorized dealer, Alexander Ford (Alexander) in Kenedy, Texas, for repair for the dying issue on the following dates:
  - a. August 29, 2016, at 10,068 miles; and
  - b. September 2, 2016, at 10,079 miles.
7. On August 29, 2016, Alexander's service technician was unable to duplicate the issue and did not perform any repairs to the vehicle.
8. On September 2, 2016, Alexander's service technician found a diagnostic trouble code (DTC) on the vehicle's computer and replaced the vehicle's throttle body and throttle body gasket in order to address the issue.
9. The vehicle has been repaired and has not died since September 2, 2016.
10. On October 7, 2016, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
11. On January 20, 2017, 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 on April 19, 2017, in Victoria, Texas before Hearings Examiner Edward Sandoval. Complainant, Victoria Rodela, represented herself at the hearing. Pedro Reyna, Jr., husband, also testified for Complainant. Respondent was represented by Maria Diaz, Legal Analyst. A continuance in the hearing was conducted telephonically on April 27, 2017. Present at the continuance were Veronica Rodela, Complainant, and her representative, Linda Leyva. Maria Diaz represented Respondent in the continuance. The hearing record was closed on April 27, 2017.

**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 by a preponderance of the evidence that Respondent was unable to conform the vehicle to an express warranty by repairing or correcting a 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, 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 repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

**SIGNED May 1, 2017.**

A handwritten signature in black ink, appearing to read 'Edward Sandoval', is written over a horizontal line.

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