

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 18-0182886 CAF**

GEORGE E. FREEMAN, JR. and AMANDA L. LIAINA, Complainants	§ § § § § § §	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
FORD MOTOR COMPANY, Respondent		

DECISION AND ORDER

George E. Freeman, Jr. and Amanda L. Liaina (Complainants) seek relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in their new 2017 Ford F-150 XLT. Complainants assert that the vehicle is defective because the transmission has shifted from sixth gear to second gear unexpectedly and would not allow the driver to shift the transmission above second gear. Ford Motor Company (Respondent) argued that the vehicle does not have a defect 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 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 was closed on June 6, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. George E Freeman, Jr. and Amanda L. Liaina, Complainants, appeared and represented themselves at the hearing. Also appearing and providing testimony for Complainants was Ida Sanders, friend. Respondent was represented telephonically by Daniel Keevy, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, appeared and testified for Respondent.

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 provided 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. Complainants' Evidence and Arguments

1. Amanda L. Liaina's Testimony

Complainants purchased a new 2017 Ford F-150 XLT on July 17, 2017, from Riata Ford (Riata) in Manor, Texas.⁷ The vehicle's mileage at the time of delivery was 137.⁸ Respondent provided a new vehicle bumper-to-bumper limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever comes first. In addition, Respondent provided a powertrain warranty for the vehicle's powertrain which provides coverage for five (5) years or 60,000 miles. On the date of hearing the vehicle's mileage was 26,836. The vehicle's warranties were still in effect at the time of hearing.

Amanda L. Liaina, co-Complainant, testified that George E. Freeman, Jr., co-Complainant, is the primary driver of the vehicle. Ms. Liaina stated that there was a problem with the vehicle on a trip to Oklahoma. The incident occurred on September 14, 2017. Mr. Freeman was driving and Ida Sanders was a passenger along with Ms. Liaina. Mr. Freeman was accelerating and the vehicle was in sixth gear. The vehicle all of a sudden shifted down to second gear and would not

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, Retail Buyers Order dated July 17, 2017.

⁸ Complainant Ex. 2, Odometer Disclosure Statement dated July 17, 2017.

accelerate any longer. The list of available gears on the instrument panel cluster also changed and indicated that first and second gears were the only gears available at the time. Mr. Freeman pulled the vehicle over to the side of the road. He placed the vehicle's transmission to park and the list of gears became available. Mr. Freeman then placed the vehicle's transmission to drive and they continued on the trip with no other problems with the vehicle.

Ms. Liaina testified that a similar incident occurred a few days later. Mr. Freeman was driving the vehicle at approximately 40 mph and was making a right hand turn when the vehicle wouldn't accelerate and the list of available gears disappeared from the instrument panel cluster. Ms. Liaina stated that at this point they contacted Riata and complained about the issue. Complainants took the vehicle to Riata for repair on September 23, 2017. The service technician placed a "flight recorder" on the vehicle to attempt to diagnose the issue. The vehicle was at Riata until September 29, 2017. The flight recorder stayed on the vehicle until October 7, 2017.

Ms. Liaina testified that a third incident occurred on October 3, 2017, while the flight recorder was still installed on the vehicle. She stated that this time the vehicle shifted from fifth gear to sixth gear and only sixth gear disappeared from the list of available gears. Mr. Freeman activated the flight recorder at the time as instructed. However, no problem was found by Riata's technicians when the data was analyzed.

Ms. Liaina testified that they mailed a letter to Respondent on December 29, 2017.⁹ Ms. Liaina testified that Respondent did not respond to the letter. However, she also stated that Complainants were contacted by Respondent's representatives and requested that Respondent be allowed an opportunity to inspect the vehicle. The inspection took place on January 24, 2018, at Riata. Complainants took the vehicle to Riata on the date in question and were given a loaner vehicle. Ms. Liaina stated that they never heard the results of the inspection from Respondent.

During cross-examination, Ms. Liaina denied that Complainants have ever spilled anything on the vehicle's center console.

2. George Freeman's Testimony

George E. Freeman, Jr., co-Complainant, testified that he is the primary driver of the vehicle. He stated that on September 14, 2017, he, Ms. Liaina, and Ms. Sanders, were in the vehicle driving to Oklahoma when he observed that the vehicle suddenly lacked acceleration. Mr. Freeman was driving and attempting to pass a semi when the vehicle wouldn't shift above second gear. In addition, the list of gears above second gear on the instrument panel cluster disappeared. Mr. Freeman pulled over to the side of the road, since he was unable to pass the truck and shifted the

⁹ Complainant Ex. 5, Letter to Ford Motor Company dated December 29, 2017.

vehicle's transmission to park. When he shifted the transmission to drive, the list of gears reappeared and the vehicle drove normally. They did not have any other problems on their trip.

Complainants took the vehicle to Riata for an oil change on September 23, 2017. At the same time, they raised their concerns with the vehicle losing acceleration on their trip. Riata's service technician inspected the vehicle and could not verify the issue.¹⁰ The technician installed a "flight recorder" to the vehicle in an attempt to capture any unexpected diagnostic codes while the vehicle was being driven.¹¹ Complainants were instructed that if the problem recurred that they should push an activation button on the recorder. The vehicle's mileage when Complainants took it to Riata was 6,325.¹² The vehicle was in Riata's possession for two (2) days. Complainants received a loaner vehicle while their vehicle was being repaired.

Mr. Freeman testified that a few days later, he and Ms. Liaina were riding in the vehicle when the same problem occurred with the vehicle. The vehicle would not shift above second gear and the list of gears on instrument panel cluster disappeared. Mr. Freeman activated the flight recorder as instructed. A few days later, they took the vehicle back to Riata to have the flight recorder removed and to see if it captured any information which would lead to a diagnosis of the issue. However, Riata's service technicians were unable to determine what caused the problem.

Complainants mailed a letter to Respondent on December 29, 2017, outlining their dissatisfaction with the vehicle.¹³ As a result of their complaint, Respondent scheduled another repair of Complainant's vehicle. This occurred on January 24, 2018, at Riata. Respondent's field service engineer (FSE) drove and inspected the vehicle.¹⁴ The FSE did not indicate that any repairs to the vehicle needed to be performed.¹⁵ The vehicle's mileage on this occasion was 15,890.¹⁶ The vehicle was in Riata's possession for a couple of days. Complainants were provided with a loaner vehicle while their vehicle was being repaired.

Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 24, 2018.¹⁷

¹⁰ Complainant Ex. 3, Repair Order dated September 23, 2017.

¹¹ *Id.*

¹² *Id.*

¹³ Complainant Ex. 5, Letter to Ford Motor Company dated December 29, 2017.

¹⁴ Complainant Ex. 4, Repair Order dated January 24, 2018.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Complainant Ex. 6, Lemon Law Complaint dated January 24, 2018. Although the form was signed by Complainants on January 11, 2018, it was not received by the Department until January 24, 2018, which is the effective date of the complaint.

Mr. Freeman testified that the problem has not recurred since October or November of 2017. He drives the vehicle to and from work daily (about 60 miles round trip) and occasionally drives to Killeen or Houston for personal reasons.

3. Ida Sanders' Testimony

Ida Sanders, friend, testified for Complainants. Ms. Sanders was with Complainants on the trip to Oklahoma when the problem with the vehicle first occurred. Ms. Sanders testified that she was a passenger when Mr. Freeman, who was driving, attempted to pass a truck. Ms. Sanders stated that she felt the vehicle lose power and they were unable to pass the truck. Mr. Freeman pulled over to the side of the road and put the vehicle's transmission in park. This seemed to clear out the problem and they continued on their trip.

Ms. Sanders testified that she did not look at the instrument panel cluster to see if the vehicle's RPM's increased or to see if the list of gears changed. She also stated that she did not feel safe with the vehicle losing power at the time they were trying to pass a vehicle.

C. Respondent's Evidence and Arguments

Sayed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir worked as an automotive technician for eight (8) years before being hired by Respondent in 2007. Mr. Bashir has been in his present position since 2009. He is an Automotive Service Excellence (ASE) Certified Master Technician and is one step away from becoming a Ford Certified Master Technician.

Mr. Bashir testified that he has never seen the vehicle and has not performed any inspections of it. Prior to the hearing, Mr. Bashir reviewed all of the repair orders for the vehicle prepared by dealer technicians and all of the information submitted by the dealers.

Mr. Bashir stated that the vehicle has a Selectshift transmission. This allows the vehicle's driver to choose which gear to drive the vehicle. The vehicle's gear shifter has a progressive range selection switch which when selected can prevent a vehicle's transmission from shifting gears. When the switch is activated the higher gears which are normally illuminated on the vehicle's instrument panel cluster will disappear from view and will not allow the transmission to shift into those gears. Activation of the switch inadvertently will not trigger any diagnostic trouble codes (DTC's). There is not a notice to the driver when the switch has been activated. Mr. Bashir stated that a fluid spill on the vehicle's console also could have affected the switch causing it to turn on and limit the available gears for a period of time. This was raised because the FSE inspection report of the vehicle indicated that the vehicle's center console showed signs of a

spilled fluid.¹⁸ The FSE who inspected the vehicle was unable to recreate the problem complained of by Complainants.¹⁹

D. Analysis

Under the Lemon Law, Complainants bear 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, Complainants 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, Complainants are 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, Complainants are entitled to have the vehicle repurchased or replaced.

The first issue to be addressed is whether Complainants' vehicle has a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle. The evidence presented at the hearing did not substantiate that there is currently a problem with the vehicle. The problem complained of (the vehicle's transmission shifting without warning) last occurred in October of 2017 according to Complainants' testimony. In addition, there was no evidence that the problem was due to a manufacturer defect, but may have been caused by Complainant inadvertently pressing the vehicle's progressive range selection switch which would affect the transmission's ability to change gears. Complainants have not met the burden of proof to establish that the vehicle currently has a defect or non-conformity that creates a serious safety hazard or substantially impairs the use or market value of the vehicle.

On the date of hearing, the vehicle's mileage was 26,836 and it remains covered under Respondent's warranties. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranties.

Complainants' request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. George E. Freeman, Jr. and Amanda L. Liaina (Complainants) purchased a new 2017 Ford F-150 XLT on July 17, 2017, from Riata Ford (Riata) in Manor, Texas with mileage of 137 at the time of delivery.

¹⁸ Respondent Ex. 1, FSE Vehicle Inspection Report dated January 24, 2018.

¹⁹ *Id.*

2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty for the vehicle which provides coverage for three (3) years or 36,000 miles, whichever occurs first and a powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 26,836.
4. At the time of hearing the vehicle's warranties were still in effect.
5. On three (3) separate occasions, the vehicle's transmission shifted into a lower gear and refused to shift into a higher gear and, at the same time, the list of higher available gears on the instrument cluster disappeared.
6. Complainants took the vehicle for repair to Respondent's authorized dealer, Riata, in order to address their concerns regarding the vehicle's transmission to operate correctly on September 23, 2017, at 6,325 miles.
7. Riata's service technician could not duplicate the issue and installed a flight recorder in the vehicle in an effort to diagnose the problem.
8. On October 7, 2017, Riata's technicians removed the flight recorder described in Findings of Fact #7 after an incident had occurred with the vehicle's transmission, but no diagnostic trouble codes (DTC's) were stored on the recorder.
9. On January 24, 2018, Respondent performed a final repair attempt on the vehicle at Riata.
10. Respondent's field service engineer could not duplicate the problem with the vehicle's transmission during the final repair attempt.
11. The issue has not repeated since October of 2017.
12. On January 24, 2018, Complainants filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On March 13, 2018, 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.

14. The hearing in this case convened and the record was closed on June 6, 2018, in Austin, Texas before Hearings Examiner Edward Sandoval. George E Freeman, Jr. and Amanda L. Liaina, Complainants, appeared and represented themselves at the hearing. Also appearing and providing testimony for Complainants was Ida Sanders, friend. Respondent was represented telephonically by Daniel Keevy, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, appeared and testified for Respondent.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (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. 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 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. 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 replacement or repurchase relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 is hereby **DISMISSED**.

SIGNED July 3, 2018



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