

**TEXAS DEPARTMENT OF MOTOR VEHICLES  
CASE NO. 18-0184892 CAF**

**JAYCEE RECTOR,**  
**Complainant**

v.

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

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**BEFORE THE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

Jaycee Rector (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2017 Ford Fusion. Complainant asserts that the vehicle is defective because the vehicle would not start on several occasions, because the air conditioning system and radio have intermittently failed to work properly, and because the steering wheel controls for various vehicle functions intermittently fail to work properly. 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 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 August 8, 2016, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant, Jaycee Rector, represented herself at the hearing. Respondent was represented telephonically by Charles Hickey, Legal Analyst/Dispute Resolution Specialist. Daniel Reynolds, Field Service Engineer, appeared personally and testified for Respondent. Harrison Douglas, Field Service Engineer, was present for Respondent as an observer.

The hearing was continued until August 29, 2018, at which time additional testimony was provided by the parties. Present were Complainant, Jaycee Rector, who represented herself at the hearing. Respondent was represented telephonically by Charles Hickey, Legal Analyst/Dispute Resolution Specialist. Daniel Reynolds, Field Service Engineer, appeared telephonically and testified for Respondent. Harrison Douglas, Field Service Engineer, was present for Respondent as an observer. The hearing record was closed on August 29, 2018.

## 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 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 2017 Ford Fusion from Griffith Ford (Griffith) in San Marcos, Texas on July 30, 2016, with mileage of 400 at the time of delivery.<sup>7,8</sup> On the date of hearing the vehicle's mileage was 27,622. At this time, Respondent's warranty coverage for the vehicle remains in place, with bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever comes first.

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

<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. 11, Motor Vehicle Retail Installment Sales Contract dated July 30, 2016.

<sup>8</sup> Complainant Ex. 3, Odometer Disclosure Statement dated July 30, 2016.

Complainant testified that she is dissatisfied with the vehicle because it has failed to start on several occasions, she has experienced problems with the vehicle's air conditioning and heating systems not working intermittently, and she has experienced problems with the steering wheel controls for various vehicle functions failing to work properly. Complainant feels that the vehicle is unreliable and possibly unsafe.

Complainant stated that in October of 2016 the vehicle failed to start because the battery was dead. She had the vehicle towed to Five Star Ford (Five Star) in North Richland Hills, Texas for repair on October 5, 2016. Five Star's service technician verified that the vehicle would not start.<sup>9</sup> The technician replaced the vehicle's battery to resolve the issue.<sup>10</sup> The vehicle's mileage on this occasion was 4,531.<sup>11</sup> The vehicle was in Five Star's possession for five (5) days during this repair. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

The vehicle drove fine after the battery was replaced. In May of 2017 the vehicle failed to start. The vehicle's battery was dead and the vehicle's doors would not open. Complainant had to enter the vehicle through the trunk. She had the vehicle towed to Five Star for repair for the issue on May 29, 2017. Five Star's technician verified that the vehicle's battery voltage was low.<sup>12</sup> The technician recharged the battery and reprogrammed the vehicle's driver door module and audio control module in order to resolve the no start issue.<sup>13</sup> The vehicle's mileage on this occasion was 13,038.<sup>14</sup> The vehicle was in Five Star's possession for four (4) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that the vehicle was fine for several months. In January of 2018, the vehicle failed to start as the battery was dead. Complainant attempted to jump start the vehicle, but was unable to do so. Complainant had the vehicle towed to Five Star for repair on January 15, 2018. Five Star's technician was unable to verify the concern, as the vehicle started immediately when he attempted to start it.<sup>15</sup> Respondent had issued a recall to address an issue involving the possibility of Complainant's vehicle (among others) suffering a power drain due to a gear shift getting stuck. Five Star's technician performed the recall which involved reprogramming the vehicle's powertrain control module (PCM).<sup>16</sup> The vehicle was in Five Star's possession for one (1) day on this occasion. Complainant was provided with a rental vehicle while her vehicle was

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<sup>9</sup> Complainant Ex. 4, Repair Order dated October 5, 2016.

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

<sup>11</sup> *Id.*

<sup>12</sup> Complainant Ex. 6, Repair Order dated May 29, 2017.

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

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

<sup>15</sup> Complainant Ex. 7, Repair Order dated January 15, 2018.

<sup>16</sup> *Id.*

being repaired. Complainant testified that she has not experienced any other instances of the vehicle refusing to start due to a failed battery since the repair was performed.

Complainant stated that about a month later, the vehicle's air conditioning and heating system intermittently failed to work. Complainant took the vehicle to Five Star for repair for this issue on February 10, 2018. Five Star's service technician determined that the vehicle's front display control interface module (FCDIM) was failing and replaced it.<sup>17</sup> The vehicle's mileage on this occasion was 21,979.<sup>18</sup> The vehicle was in Five Star's possession for nine (9) days. Complainant was provided with a loaner vehicle while her vehicle was being repaired. Complainant testified that the air conditioning and heating systems have not failed to work since this repair.

On March 19, 2018, Complainant wrote a letter to Respondent's customer viewpoint email address advising them of her dissatisfaction with the vehicle.<sup>19</sup> Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on March 20, 2018.<sup>20</sup>

On April 16, 2018, Complainant took the vehicle to Five Star upon being contacted by Five Star's service director who asked that they be given an opportunity to look at the vehicle. Daniel Reynolds, Respondent's field service engineer (FSE), inspected the vehicle on this occasion. During this visit, Complainant raised the issue that the steering wheel controls were not working properly and showed a video to Mr. Reynolds which indicated that the controls were not working. This was the first occasion that this issue had been raised by Complainant, although it was included on Complainant's Lemon Law complaint.<sup>21</sup> Mr. Reynolds determined that the steering wheel's right side switches were not working properly and had them replaced.<sup>22</sup> No other repairs were performed at the time. The vehicle's mileage on this occasion was 23,255.<sup>23</sup> The vehicle was in Five Star's possession for one (1) day. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant testified that the vehicle failed to start in April of 2018. She stated that she attempted to start the vehicle several times but it wouldn't start. However, the issue was not due to a lack of power to the vehicle, as the vehicle's lights did turn on and the vehicle appeared to have power. Complainant stated that the vehicle started immediately once she opened the vehicle's door, stepped out, and then sat back down and pushed the start button. Complainant stated that she took the vehicle to Five Star for repair after this occurred and that they kept the vehicle in their possession for several days, but were not able to recreate the problem. Complainant also stated

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<sup>17</sup> Complainant Ex. 8, Repair Order dated February 10, 2018.

<sup>18</sup> *Id.*

<sup>19</sup> Complainant Ex. 9, Letter of Complaint Regarding 2017 Ford Fusion Failures dated March 19, 2018.

<sup>20</sup> Complainant Ex. 1, Lemon Law Complaint dated March 20, 2018.

<sup>21</sup> *Id.*

<sup>22</sup> Complainant Ex. 10, Repair Order dated April 16, 2018.

<sup>23</sup> *Id.*

that a similar issue happened with her husband in July of 2018, but they did not take the vehicle for repair for the issue at the time.

During the continued hearing, the Motor Vehicle Retail Installment Sales Contract was entered in the record as an exhibit. Complainant testified during the continuance that she has not experienced any problems with the vehicle since the incident in July when her husband was unable to start the vehicle.

### C. Respondent's Evidence and Arguments

Douglas Reynolds, Field Service Engineer, has worked in the automotive industry since June of 2015, when he started working for Respondent. He's been in his current position since October of 2016. Mr. Reynolds has Automotive Service Excellence (ASE) student certifications and is a Ford Master Certified Technician. Mr. Reynolds has a BS in Automotive Technology.

Mr. Reynolds testified that he inspected Complainant's vehicle on April 16, 2018, at Five Star. He spoke to Complainant and was informed that the issues with the vehicle were that it failed to start and had to be towed to the dealer for repair, that the air conditioning and heating systems intermittently failed to work, and that the control buttons on the steering wheel intermittently failed to work. In addition, Complainant showed Mr. Reynolds a video where the steering wheel controls didn't work. Mr. Reynolds inspected the vehicle and determined that it used to have a battery drain, but that the issue had been resolved.<sup>24</sup> In addition, he determined that the air conditioning and heating issue had been repaired by the dealer's technicians prior to his inspection of the vehicle.<sup>25</sup> Mr. Reynolds did determine that the switches on the vehicle's steering wheel's right side were faulty and had them replaced to resolve the issue.<sup>26</sup>

Mr. Reynolds indicated that a Customer Satisfaction Program had been issued by Respondent which addressed the possibility of a power drain to the vehicle due to the PCM remaining powered on and continuing to draw power from the vehicle after the vehicle was turned off.<sup>27</sup> The resolution for the issue was to replace the battery if necessary and to reprogram the PCM.<sup>28</sup> In Complainant's case, only the PCM reprogramming was necessary during the repair performed on January 15, 2018.

Mr. Reynolds testified that the later issues of the vehicle not starting may have been because the start system can lock up if the driver presses the vehicle's start button prior to stepping on the

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<sup>24</sup> Respondent Ex. 1, Respondent's Information Packet (FSE Vehicle Inspection Report), pp. 6-7.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*, pp. 9-10.

<sup>28</sup> *Id.*

brake. The system will lock up until it can be reset which can be done if the driver opens and shuts the driver's door. This will restart the key cycle and allow the vehicle to start.

#### **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.

##### **1. No Start Issue**

The evidence reveals that the vehicle failed to start on at least three occasions. The servicing dealer's technicians replaced the vehicle's battery and reprogrammed the vehicle's audio control module, powertrain control module, and driver door module during the various repairs in order to address the no start issue. Although Complainant testified that the vehicle failed to start again in April and July of 2018, it is apparent from her testimony that the failure to start issue on those occasions were not caused by the same issue as the issue which was addressed by Respondent's authorized dealer. The first set of issues was due to a power drain on the battery as Complainant specified that the vehicle was completely dead and had no power. Whereas, the later no start issue was due to some other reason which has not been diagnosed, as Complainant testified that the vehicle had power and just would not start. Respondent has not had an adequate opportunity to address this latter issue, as only one repair attempt was made to address it. In addition, Complainant testified that the last time it occurred was in July of 2018. As such, the hearings examiner must hold that the initial no start issue has been repaired and does not provide grounds to order repurchase or replacement of the vehicle. The later no start issue also cannot provide grounds to order repurchase or replacement, since Respondent has not had an adequate number of attempts to repair the issue.

##### **2. Air Conditioning and Heating Issue**

Complainant raised the issue regarding the vehicle's air conditioning and heating systems intermittently not working. Complainant raised this issue once to the servicing dealer. A repair was performed to the vehicle for the issue on February 10, 2018, at which time the technician replaced the vehicle's front display control interface module. Complainant testified that she has

not had any other problems with the vehicle's air conditioning or heating systems since the repair. As such, the hearings examiner must hold that the issue has been repaired and does not provide grounds to order repurchase or replacement of the vehicle.

### 3. Steering Wheel Controls Issue

Complainant included on the Lemon Law complaint form the issue of the vehicle's steering wheel "buttons" working sporadically. Complainant never took the vehicle to the dealer for repair for the issue. However, the issue was addressed by Respondent's FSE during the final repair attempt on April 16, 2018, at which time he had the dealer's technicians replace the vehicle's right side wheel switches in order to repair the problem. Complainant testified that she has not had any other issues with the steering wheel controls. As such, the hearings examiner must hold that the issue has been repaired and does not provide grounds to order repurchase or replacement of the vehicle.

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. On the date of hearing, the vehicle's mileage was 27,622 and is still covered by the warranty. As such, Respondent is still under an obligation to repair the vehicle whenever there is a problem covered by the warranty. Complainant is encouraged to take the vehicle to Respondent's authorized dealer for repair if she experiences any other no start issues with the vehicle.

Since the vehicle has been fully repaired, Complainant's request for repurchase or replacement relief is denied.

### III. FINDINGS OF FACT

1. Jaycee Rector (Complainant) purchased a new 2017 Ford Fusion on July 30, 2016, from Griffith Ford in San Marcos, Texas, with mileage of 400 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty which provides coverage for three (3) years or 36,000 miles, whichever occurs first.
3. The vehicle's mileage on the date of hearing was 27,622.
4. At the time of hearing the vehicle was still under warranty.

5. Complainant feels that the vehicle is defective because the vehicle would not start on several occasions, because the air conditioning system and radio have intermittently failed to work properly, and because the steering wheel controls for various vehicle functions intermittently fail to work properly.
6. Complainant took the vehicle for repair to Five Star Ford (Five Star) in North Richland Hills, Texas on the following dates:
  - a. October 5, 2016, at 4,531 miles;
  - b. May 29, 2017, at 13,038 miles;
  - c. January 15, 2018, at 20,724 miles; and
  - d. February 10, 2018, at 21,979 miles.
7. On October 5, 2016, Five Star's service technician determined that the vehicle failed to start because the battery was defective and replaced the battery.
8. On May 29, 2017, Five Star's technician verified that the vehicle's battery voltage was low and recharged it.
9. Also on May 29, 2017, Five Star's technician reprogrammed the vehicle's driver door module (DDM) and audio control module (ACM) in order to address the issue of the vehicle failing to start.
10. On January 15, 2018, Five Star's technician performed a recall on the vehicle which Respondent's technicians determined was needed in order to prevent a drain on the vehicle's battery. This involved reprogramming the vehicle's powertrain control module.
11. On February 10, 2018, Five Star's service technician replaced the vehicle's front display control interface module (FDCIM) in order to address the issue of the vehicle's air conditioner and heater intermittently failing to work.
12. Complainant has not had any further issues with the vehicle failing to start due to a lack of power or with the vehicle's air conditioning and heating systems since February of 2018.
13. On March 20, 2018, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On April 16, 2018, Respondent's field service engineer, Daniel Reynolds, performed a final repair attempt on the vehicle at Five Star Ford.

15. During the final repair attempt, Mr. Reynolds did not perform any repairs to the vehicle for the non-start or air conditioning issues as the issues could not be duplicated.
16. During the final repair attempt, Mr. Reynolds did have the vehicle's right steering wheel switches replaced since he saw a video provided by Complainant verifying a problem with the switches.
17. On May 25, 2018, 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.
18. The hearing in this case convened on August 8, 2016, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant, Jaycee Rector, represented herself at the hearing. Respondent was represented telephonically by Charles Hickey, Legal Analyst/Dispute Resolution Specialist. Daniel Reynolds, Field Service Engineer, appeared personally and testified for Respondent. Harrison Douglas, Field Service Engineer, was present for Respondent as an observer. The hearing was continued until August 29, 2018, at which time additional testimony was provided by the parties. Present were Complainant, Jaycee Rector, who represented herself at the hearing. Respondent was represented telephonically by Charles Hickey, Legal Analyst/Dispute Resolution Specialist. Daniel Reynolds, Field Service Engineer, appeared telephonically and testified for Respondent. Harrison Douglas, Field Service Engineer, was present for Respondent as an observer. The hearing record was closed on August 29, 2018.

#### 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 September 6, 2018.**



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