

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 19-0007818 CAF**

**STACEY A. MADDOUX,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Stacey A. Maddoux (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in her 2018 Ford Edge. Complainant asserts that the vehicle is defective because there was a bad weld in the vehicle's engine resulting in an oil leak from the vehicle's undercarriage. 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 and the record was closed on October 31, 2019, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant, Stacey A. Maddoux, represented herself at the hearing. Respondent was represented telephonically by Shirley Calderon-Pagan, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared telephonically 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 value of the vehicle.² Third, the manufacturer has been given a reasonable number of attempts to

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

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 these 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 by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the repair attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁶

If a vehicle is found to have a nonconformity that creates a serious safety hazard which continues to exist, the rebuttable presumption that a reasonable number of repair attempts have been performed can be established if the vehicle has been subject to repair two or more times by the manufacturer, converter, or distributor, or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and the attempts were made before the earlier of: (A) the date the express warranty expires; or (B) 24 months or 24,000 miles, whichever occurs first, following the date of original delivery of the motor vehicle to the owner.⁷

“Serious safety hazard” means a life-threatening malfunction or nonconformity that substantially impedes a person’s ability to control or operate a vehicle for ordinary use or intended purposes, or creates a substantial risk of fire or explosion.⁸

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2018 Ford Edge from Westway Ford (Westway) in Irving, Texas on November 26, 2018, with mileage of 14 at the time of delivery.^{9,10} Respondent issued a new vehicle limited warranty which provides bumper-to-bumper coverage for the vehicle for three (3)

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) (3) provides a third 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. This section 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 Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁸ Tex. Occ. Code § 2301.601(4).

⁹ Complainant Ex. 1, Purchase Agreement dated November 26, 2018.

¹⁰ Complainant Ex. 2, Odometer Disclosure Statement dated November 26, 2018.

years or 36,000 miles, whichever occurs first.¹¹ Respondent also provided a powertrain warranty for the vehicle which provides coverage for five (5) years or 60,000 miles.¹² The vehicle's mileage on the date of hearing was 5,731. At this time, the vehicle's warranties are still in effect.

Complainant testified that she feels that the vehicle is defective because of bad welds that allow oil to leak from the vehicle's undercarriage. She feels that there may be other bad welds on the vehicle which may cause damage or problems with the vehicle in the future.

Complainant stated that in January of 2019, while parking the vehicle in her home garage, she detected a strong odor of something burning. Complainant stated that she did not know what it was at the time and did not take any action. The next morning, as she was leaving for work, she observed a substantial puddle of oil on the garage floor beneath where the vehicle was parked.

Complainant took the vehicle to AutoNation Ford (AutoNation) in Arlington, Texas for repair for the oil leak on January 28, 2019. AutoNation's service technician verified the oil leak by performing an oil leak test on the vehicle.¹³ The technician removed and cleaned the vehicle's oil pan, before putting new sealant on it and reinstalling it in order to resolve the oil leak issue.¹⁴ The vehicle's mileage on this occasion was 1,273.¹⁵ The vehicle was in AutoNation's possession for three (3) to four (4) days during this repair. Complainant was provided with a loaner vehicle while her vehicle was being repaired.

Complainant stated that a few days later she again observed an indication that oil was leaking from the vehicle's undercarriage. She took the vehicle to AutoNation on February 5, 2019, in order to have the issue addressed. AutoNation's service technician performed an oil leak test on the vehicle and verified that oil was leaking from spot welds on the vehicle's oil seal plate.¹⁶ The technician replaced the vehicle's rear main oil seal and plate assembly in order to correct the issue.¹⁷ The vehicle's mileage on this occasion was 1,361.¹⁸ The vehicle was in AutoNation's possession for six (6) days during this repair. Complainant was provided with a loaner vehicle while the repairs were being performed.

Complainant took the vehicle back to Westway after the second repair for the oil leak and asked the dealer's representative to trade her vehicle for another one due to the problems she had

¹¹ Respondent Ex. 7, Excerpts from Warranty Manual, p. 1.

¹² *Id.*

¹³ Complainant Ex. 4, Repair Order dated January 28, 2019.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Complainant Ex. 5, Repair Order dated February 5, 2019.

¹⁷ *Id.*

¹⁸ *Id.*

experienced. The dealer representative refused Complainant's request. Complainant also contacted Respondent to have them buy the vehicle back. Respondent denied Complainant's request.

On March 3, 2019, Complainant wrote a letter to Respondent advising them of her dissatisfaction with the vehicle.¹⁹ Upon receipt of the letter, Respondent's representative contacted Complainant to request that Respondent be allowed an opportunity to inspect the vehicle. Complainant agreed to the inspection. The inspection took place on March 26, 2019, at AutoNation. The vehicle's mileage was 2,207 at the time of inspection.²⁰ The vehicle was in the dealer's possession for one (1) day while the inspection took place. Complainant received a loaner vehicle while her vehicle was being inspected. Respondent's inspector did not observe any oil leaks at the time of the inspection and so performed no repair to the vehicle.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on April 8, 2019.²¹ After the Lemon Law complaint was filed, Complainant was again asked by Respondent's representative to allow them a second opportunity to inspect the vehicle. Complainant agreed to allow a second inspection. The inspection took place in April of 2019 at the AutoNation dealership. The vehicle was at AutoNation for one (1) day. Complainant did not receive a loaner vehicle for this repair visit. Respondent's inspector did not observe any oil leaks at the time of the second inspection and so performed no repair to the vehicle.

Complainant testified that she has experienced one other problem with the vehicle since purchasing it. On one occasion, the vehicle's air bag light illuminated and did not turn off. Complainant said that she did not take the vehicle to a dealer for repair for the issue, as the light was off the next day and has not turned back on.

Complainant stated that the vehicle drives fine. She has not experienced any problems with the vehicle's operation. It has not died while she's been driving it and she's never been left stranded anywhere. Complainant has never noticed a warning message or light for low oil in the vehicle.

Complainant stated that she believes that an oil leak in the vehicle could be a fire hazard. She also stated that she feels that the resale value of the vehicle has been affected by the repairs performed to it. She has not had the vehicle appraised to determine if the value of the vehicle has decreased.

¹⁹ Complainant Ex. 5, Letter to Ford Motor Company dated March 3, 2019.

²⁰ Complainant Ex. 6, Repair Order dated March 26, 2019.

²¹ Complainant Ex. 3, Lemon Law Complaint dated April 8, 2019.

C. Respondent's Evidence and Arguments

1. Shirley Calderon-Pagan's Testimony

Shirley Calderon-Pagan, Consumer Affairs Legal Analyst, testified for Respondent. She stated that the vehicle has been repaired and that the vehicle is operating as designed.

Ms. Pagan stated that after receiving Complainant's demand letter dated March 3, 2019, she contacted Complainant to request that Respondent's field service engineer (FSE) be given an opportunity to inspect the vehicle. Complainant agreed to the inspection which took place on March 26, 2019, at AutoNation. Harrison Douglas, the FSE, inspected the vehicle for oil leaks. He found no leaks. Since no leaks were found, no repairs were performed.

Ms. Pagan also stated that she requested a second inspection of the vehicle after Respondent received the Lemon Law complaint. The second inspection took place at AutoNation on May 21, 2019. Mr. Douglas again performed the inspection. On this occasion, Mr. Douglas inspected the vehicle's engine welds, in addition to searching for oil leaks. The welds appeared fine and no oil leaks were found. Again, no repairs were performed to the vehicle.

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has worked in the automotive industry for 19 years. Prior to being hired by Respondent, Mr. Bashir worked for seven (7) years with independent automotive repair facilities. He was hired 12 years ago by Respondent. Mr. Bashir has worked for ten (10) years in his present position. Mr. Bashir is an Automotive Service Excellence (ASE) Certified Master Technician.

Mr. Bashir stated that he has never inspected or seen the vehicle. He is aware that Respondent has issued a recall for certain 2017 and 2018 Ford Edge vehicles which have 2.0 liter engines due to an issue with bad welds on the vehicle's torque converter. Complainant's vehicle has a 3.5 liter engine and is not included in this recall. Respondent has not issued any recalls for any vehicles due to oil leaks. In addition, Respondent has not issued any technical service bulletins or special service messages dealing with oil leaks in Ford Edges.

Mr. Bashir also testified about the repairs that were performed by AutoNation's service technicians during the repair visits. On January 28, 2019, the technician performed an oil leak test. He observed a leak from the oil pan area near the vehicle's transmission. The technician removed the oil pan and cleaned it. The technician then applied new sealant to the oil pan before

reinstalling it. On February 5, 2019, AutoNation's service technician performed an oil leak test and verified the existence of a leak between the vehicle's engine and transmission. The technician removed the transmission and determined that oil was leaking from spot welds on the remain oil seal plate. The technician replaced the rear main oil seal and plate assembly in order to resolve the issue.

Mr. Bashir stated that he feels that the vehicle is repaired and that it is operating as designed.

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 November 26, 2019, and presented the vehicle to an authorized dealer of Respondent for repair due to oil leaks from the vehicle's undercarriage on the following dates: January 28, 2019 and February 5, 2019. The vehicle was repaired in February of 2019 and Complainant indicated that she has not observed any indications of an oil leak since prior to the February 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.²² 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

²² Tex. Occ. Code § 2301.605.

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 5,731 and it remains covered 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. Stacey A. Maddoux (Complainant) purchased a new 2018 Ford Edge on November 26, 2018, from Westway Ford (Westway) in Irving, Texas, with mileage of 14 at the time of delivery.
2. The manufacturer of the vehicle, Ford Motor Company (Respondent), issued a bumper-to-bumper warranty providing coverage for the vehicle for three (3) years or 36,000 miles, whichever occurs first and a separate powertrain warranty providing coverage for five (5) years or 60,000 miles.
3. The vehicle's mileage on the date of hearing was 5,731.
4. At the time of hearing the vehicle's warranties were still in effect.
5. In January of 2019, Complainant noticed that the vehicle seemed to be leaking oil from its undercarriage.
6. Complainant took the vehicle to Respondent's authorized dealer, AutoNation Ford located in Arlington, Texas, for repair for the oil leak issue on the following dates:
 - a. January 28, 2019, at 1,273 miles; and
 - b. February 5, 2019, at 1,361 miles.
7. On January 28, 2019, AutoNation's service technician verified the oil leak and applied sealant to the vehicle's oil pan in order to resolve the issue.

8. On February 5, 2019, AutoNation's technician determined that oil was leaking from spot welds on the vehicle's oil seal plate. The technician replaced the main oil seal and plate assembly on the vehicle in order to resolve the issue.
9. Complainant has not seen any indications of oil leaking from the vehicle since before the February 5, 2019 repair.
10. On March 3, 2019, Complainant wrote a letter to Respondent advising them that she is dissatisfied with the vehicle.
11. On March 26, 2019, Respondent's Field Service Representative (FSE), Harrison Douglas, inspected the vehicle for oil leaks and found none.
12. On April 8, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
13. On May 21, 2019, Respondent's FSE, Harrison Douglas, inspected the vehicle's welds and found no problem with them. In addition, he did not observe the vehicle leaking any oil.
14. On July 15, 2019, 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.
15. The hearing in this case convened and the record was closed on October 31, 2019, in Fort Worth, Texas, before Hearings Examiner Edward Sandoval. Complainant, Stacey A. Maddoux, represented herself at the hearing. Respondent was represented telephonically by Shirley Calderon-Pagan, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared telephonically and testified for Respondent.

IV. CONCLUSIONS OF LAW

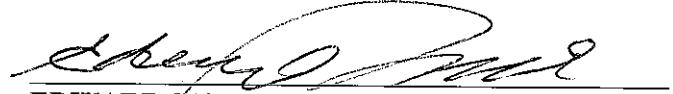
1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-2301.613 (Lemon Law).

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. 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 November 22, 2019.



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