

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0006166 CAF**

**GREGORY INGLE,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Gregory Ingle (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his 2019 Ford F-250 pickup truck. Complainant asserts that the vehicle intermittently shakes or wobbles uncontrollably when driving at highway speed. 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 telephonically on March 25, 2020, before Hearings Examiner Edward Sandoval. Complainant, Gregory Ingle, represented himself at the hearing. His wife, Cynthia Ingle, was present and offered testimony. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and testified for Respondent. The hearing record closed on March 25, 2020.

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

¹ Tex. Occ. Code § 2301.604(a).

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 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

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) (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).

B. Complainant's Evidence and Arguments

1. Gregory Ingle's Testimony

Complainant purchased a new 2019 Ford F-250 pickup truck from Sterling McCall Ford (McCall) in Houston, Texas on July 15, 2019, with mileage of 8 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) years or 36,000 miles, whichever occurs first. Respondent also provided a powertrain warranty for the vehicle which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles. The vehicle's mileage on the date of hearing was 16,850. At this time, the vehicle's warranties are still in effect.

Complainant testified that he feels that the vehicle is defective because when driving at highway speeds the vehicle will intermittently shake or wobble. Complainant stated that he test drove the vehicle at the time of purchase and the vehicle drove fine, although he never drove above 40 mph during the test drive.

Complainant stated that he first became aware of the issue in August or September of 2019. Complainant's son was driving the vehicle when he began to experience a shake or wobble when driving at a high rate of speed. Complainant testified that his son experienced the issue three (3) or four (4) times. The only way to stop the wobble was to pull the vehicle to the side of the road and come to a complete stop.

Complainant took the vehicle to DeMontrond Ford (DeMontrond) in Cleveland, Texas for repair for the shake/wobble issue in late October of 2019. Complainant was informed by DeMontrond's service advisor that they needed to order a part for the vehicle in order to repair it. Complainant was advised that it would take about a month for the part to arrive and that he should take the vehicle home while they were waiting. Complainant was not offered a loaner vehicle at the time.

Complainant testified that he did not drive the vehicle after taking it for repair. However, Ms. Ingle decided to drive the vehicle to work on November 19, 2019. During the drive she experienced a severe shake and wobble in the vehicle which frightened her severely. She took the vehicle to DeMontrond that same day and informed them of the incident. Ms. Ingle asked for and received a loaner vehicle and left the vehicle at DeMontrond to wait for the ordered part to arrive. The vehicle was in DeMontrond's possession from November 19, 2019 until January 23, 2020. Complainant was allowed to drive the loaner vehicle during the entire time that the vehicle was at the dealership.

⁹ Complainant Ex. 1, Buyer's Order dated July 15, 2019.

¹⁰ Complainant Ex. 2, Odometer Disclosure Statement dated July 15, 2019.

During the repair, DeMontrond's service technician verified the shake/wobble concern.¹¹ The technician removed and replaced the vehicle's steering shock/damper assembly in order to resolve the issue.¹² The vehicle's mileage on this occasion was 13,157.¹³ The vehicle was returned to Complainant on January 23, 2020.

Complainant testified that he now feels that the vehicle is driving rough and that it pulls to the left. He returned the vehicle to DeMontrond for these issues about two (2) days after the vehicle was returned to him. Complainant stated that no repairs were performed for the issues and he received no invoice.

On December 23, 2019, Complainant wrote a letter to Respondent advising them of his dissatisfaction with the vehicle.¹⁴ Complainant also filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on December 23, 2019.¹⁵ Complainant stated that he did not receive a response to his letter. He did not receive a request from Respondent to allow a final inspection or repair on his vehicle.

Complainant testified that he has never experienced the shake or wobble when driving the vehicle. Ms. Ingle was the primary driver of the vehicle and he drove it occasionally. Complainant stated that neither he nor Ms. Ingle drive the vehicle much now. However, his son drives the vehicle to his boss's house on a daily basis. Complainant also stated that to his knowledge the vehicle has been repaired.

2. Cynthia Ingle's Testimony

Cynthia Ingle, Complainant's wife testified in the hearing. She stated that she is the primary driver of the vehicle. When they first purchased the vehicle, she would drive it to and from work in Kingwood, Texas which is about 45 minutes from their home.

Ms. Ingle testified that she first experienced an issue with the vehicle near the end of October of 2019. She felt that the vehicle was not driving right and that it was shaky, as if it needed a wheel alignment. Ms. Ingle stated that they took the vehicle to DeMontrond for repair and were told that they needed to order a part in order to repair the vehicle. Ms. Ingle stated that they were not offered a loaner vehicle and that they were told that they could take the vehicle home to drive while they waited for the part to arrive.

¹¹ Complainant Ex. 3, Repair Order dated November 19, 2019.

¹² *Id.*

¹³ *Id.*

¹⁴ Complainant Ex. 5, Letter to Ford Motor Company dated December 23, 2019.

¹⁵ Complainant Ex. 4, Lemon Law Complaint dated December 23, 2019.

Ms. Ingle stated that they did not drive the vehicle very often while they were waiting for the part to repair it. The vehicle had actually not been driven for two (2) to three (3) weeks before it was driven again. On November 19, 2019, Ms. Ingle decided to drive the vehicle to work. While on the freeway to Kingwood the vehicle began to shake uncontrollably. She was driving around 65 to 70 mph at the time. Ms. Ingle stated that she was having great difficulty controlling the vehicle and was afraid that she was going to hit one of the concrete barriers on the side of the highway. Ms. Ingle stated that she was finally able to pull the vehicle over to the side of the road and stop. Ms. Ingle called the dealer and told the DeMontrond representative that she no longer wanted the vehicle and that she wanted a loaner vehicle. The representative was able to arrange for a loaner vehicle to be provided to Complainant while they were waiting for the new replacement part to arrive.

Ms. Ingle stated that she began researching the vehicle and contacted Respondent's customer service center with her complaints about the vehicle. As a result of the complaint regarding the vehicle, Respondent agreed to make one month's payment of \$1269.59 for Complainant. Ms. Ingle also stated that she looked into filing a complaint with the Better Business Bureau regarding the vehicle, but was informed that it would be better for her to file a Lemon Law complaint with the Department. Ms. Ingle stated that Respondent never contacted her to request that they be allowed a final inspection of the vehicle.

Ms. Ingle testified that she has not driven the vehicle since it was repaired and returned to Complainant. She stated that her son drives the vehicle occasionally.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, testified for Respondent. He stated that Respondent has provided a three (3) year or 36,000 mile bumper-to-bumper warranty for the vehicle. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain.

Mr. Gregory stated that Respondent did receive Complainant's letter dated December 23, 2019, in which Complainant indicated his dissatisfaction with the vehicle. Respondent did not request for a final opportunity to inspect the vehicle, since the vehicle was in the dealer's service center waiting for a back ordered part to be delivered which would resolve the issue. Mr. Gregory stated that the vehicle has been repaired and that no relief should be granted to Complainant.

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent. Mr. Bashir has worked in the automotive industry for 20 years. Prior to being hired by Respondent, Mr. Bashir worked for eight (8) 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 nor seen the vehicle. He also stated that Respondent has issued a Technical Service Bulletin (TSB 19-23-22) for sustained steering wheel oscillation in their four (4) wheel drive super duty vehicles which pertains to Complainant's vehicle. Respondent is aware that sometimes some of their manufactured vehicles will have an abnormal steering wheel oscillation which usually will occur when a part has worn out. In addition, Respondent had a concern with the quality of the steering dampers put in the super duty vehicles manufactured from 2017 to 2019. The damper has been redesigned in order to address the issue of the severe shake or wobble. The redesigned damper is supposed to prevent the shake or wobble from occurring. In regards to Complainant's vehicle, the part that was ordered was the redesigned damper which was installed in the vehicle during the November 19, 2019 repair.

Mr. Bashir stated that he feels that the vehicle has now been 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 July 15, 2019, and presented the vehicle to Respondent's authorized dealer for repair due to the vehicle shaking or wobbling at highway speed on November 19, 2019. The vehicle's steering shock/damper assembly was replaced during the repair and Complainant testified that to his knowledge the vehicle was repaired.

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.¹⁶ 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 16,850 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. Gregory Ingle (Complainant) purchased a new 2019 Ford F-250 pickup truck on July 15, 2019, from Sterling McCall Ford (McCall) in Houston, Texas, with mileage of 8 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 16,850.
4. At the time of hearing the vehicle’s warranties were still in effect.
5. In October and November of 2019, Complainant’s son on three (3) or four (4) different occasions experienced a severe shaking or wobbling in the vehicle when driving it at a high rate of speed.

¹⁶ Tex. Occ. Code § 2301.605.

6. Cynthia Ingle, Complainant's wife, also experienced an issue during October and November of 2019 when driving the vehicle where it was shaking and felt like it needed a wheel alignment.
7. Ms. Ingle is the primary driver of the vehicle.
8. Complainant took the vehicle to Respondent's authorized dealer, DeMontrond Ford located in Cleveland, Texas, for repair for the shaking and wobbling issue in late October of 2019, and was told that a part had to be ordered in order to resolve the issue.
9. Complainant took the vehicle home while waiting for the replacement part to be delivered to the dealer.
10. On November 19, 2019, Ms. Ingle attempted to drive the vehicle to work for the first time in approximately three weeks.
11. During the drive described in Findings of Fact #10, Ms. Ingle experienced a severe shaking in the vehicle and had difficulty controlling the vehicle.
12. Ms. Ingle took the vehicle to DeMontrond for repair for the shaking issue and received a loaner vehicle for the period of time while Complainant's vehicle was being repaired.
13. On December 23, 2019, Complainant wrote a letter to Respondent advising them that he was dissatisfied with the vehicle.
14. On December 23, 2019, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
15. The repaired vehicle was returned to Complainant on January 23, 2020.
16. Sometime between November 19, 2019 and January 23, 2020, the vehicle's steering shock/damper assembly was replaced in order to resolve the shaking or wobbling issue when driving the vehicle at high speeds.
17. On February 6, 2020, 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 telephonically on March 25, 2020, before Hearings Examiner Edward Sandoval. Complainant, Gregory Ingle, represented himself at the hearing. His wife, Cynthia Ingle, was present and offered testimony. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Sayyed Asad Bashir, Automotive Technical Consultant, also appeared and testified for Respondent. The hearing record closed on March 25, 2020.

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 April 13, 2020



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