

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0012559 CAF**

**TOMMIE JACKSON,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

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BEFORE THE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Tommie Jackson (Complainant) seeks relief pursuant to Texas Occupations Code §§ 2301.601-2301.613 (Lemon Law) for alleged defects in his new 2019 Ford F-150 Platinum pickup truck. Complainant asserts that the vehicle had sustained body damage prior to being sold to him and that the lane assist feature did not work properly. Ford Motor Company (Respondent) argued that the vehicle has been repaired, does not have any current defects or nonconformities, 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 January 21, 2021, before Hearings Examiner Edward Sandoval. Tommie Jackson, Complainant, represented himself in the hearing. Emily Austin, Consumer Affairs Legal Analyst, represented Respondent, Ford Motor Company, in the hearing. Also present and testifying for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. The hearing record closed on January 21, 2021.

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

B. Complainant’s Evidence and Arguments

Complainant purchased a new 2019 Ford F-150 Platinum pickup truck from Baytown Ford (Baytown) in Baytown, Texas on February 22, 2020, with mileage of 12 at the time of delivery.⁹ Respondent issued a new vehicle bumper-to-bumper warranty which provides coverage for the

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).

⁹ Complainant Ex. 1, Motor Vehicle Retail Installment Sales Contract dated February 22, 2020.

vehicle for three (3) years or 36,000 miles from the date of delivery, whichever occurs first. In addition, Respondent provided a powertrain warranty for the vehicle providing coverage for the powertrain for five (5) years or 60,000 miles. The vehicle's mileage on the date of hearing was 20,763. At the time of hearing the vehicle's warranties were still in effect.

Complainant testified that when he purchased the vehicle he did not notice any issues with the vehicle's body. He took pictures of the vehicle prior to purchase. After he purchased the vehicle, Complainant noticed that in the pictures the vehicle's antenna seemed to be tilted to the right. Complainant also took a test drive in the vehicle prior to purchase. During the test drive, Complainant noticed that the vehicle's lane assist feature did not seem to be working. However, he did not mention anything about it at the time, since he was not completely sure as to how it should have operated.

After taking the vehicle home and noticing the issues regarding the antenna and the lane assist not operating properly, Complainant made an appointment with Baytown to perform repairs for the issues. Complainant took the vehicle to Baytown for repair on March 12, 2020. Baytown's service technician determined that the antenna was tilting due to body damage to the vehicle's front bumper.¹⁰ Complainant stated that no repair was done for the issue at the time because the dealer's representative felt that the issue was the result of Complainant having an accident in the vehicle and such damage was not covered by the vehicle's warranty. Regarding the lane assist feature not working, the technician did not find any trouble codes for the issue, so he did not attempt to repair the issue.¹¹ However, Complainant was advised by the service technician to experiment with the lane assist feature to see if there was really a problem with it. The vehicle's mileage at the time was 1,361.¹² The vehicle was in the dealer's possession for one (1) day. Complainant was not provided a loaner vehicle while the subject vehicle was being repaired.

Complainant testified that he took the vehicle back to Baytown for repair for the two (2) issues he had with the vehicle on the following day, March 13, 2020. He spoke to Baytown's sales manager and a sales person and showed them the pictures of the vehicle that Complainant had taken prior to taking possession of the vehicle. The pictures showed that the vehicle's antenna was tilted to the right before the vehicle was sold to Complainant. The sales manager agreed that it appeared that the vehicle was damaged prior to Complainant taking possession of it. As a result, the manager made arrangements for the vehicle to be repaired. Complainant left the vehicle at Baytown's service department that day. After several days had passed, Complainant went to the dealer to see what was going on with the vehicle. Complainant spoke to the service manager again who told him that he was not aware that the vehicle had been in Baytown's possession since March 12 and that no work had been done on the vehicle.

¹⁰ Complainant Ex. 3, Repair Order dated March 12, 2020.

¹¹ *Id.*

¹² *Id.*

Baytown's service advisor opened a repair order for Complainant's vehicle on March 18, 2020. Baytown's staff referred the vehicle to Caliber Collision (also in Baytown, Texas) to repair the body damage and to repair the vehicle's radio antenna.¹³ In addition, Baytown's service technician determined that the lane assist feature was unplugged in the mirror housing and repaired the issue. The vehicle's mileage on this occasion was 1,381.¹⁴ The vehicle was in Baytown's possession until March 31, 2020, during this repair visit. Complainant was provided a loaner vehicle only for the last week of the repair visit.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on June 18, 2020.¹⁵ Complainant did not send written notice to Respondent advising them that he was dissatisfied with the vehicle.

Complainant testified that the vehicle was repaired during the March 18, 2020, repair visit. The body damage and the antenna housing were both repaired at the time. In addition, the lane assist feature has been working since the final repair to the vehicle.

C. Respondent's Evidence and Arguments

1. Emily Austin's Testimony

Emily Austin, Consumer Affairs Legal Analyst, testified for Respondent. Ms. Austin testified that Respondent provided a bumper-to-bumper new vehicle limited warranty for the vehicle providing coverage for three (3) years or 36,000 miles from the date of delivery. In addition, Respondent provided a five (5) year or 60,000 mile warranty for the vehicle's powertrain.

Ms. Austin stated that she has never inspected or seen the vehicle. She was not aware of any damage to the vehicle prior to Baytown selling it to Complainant. She's not aware of how the vehicle may have been damaged. Ms. Austin stated that Respondent never received written notice from Complainant indicating that he was dissatisfied with the vehicle.

Ms. Austin testified that all of Complainant's concerns with the vehicle have been repaired. Although none of the repairs were covered by warranty, Complainant did not have to pay out of pocket for any of the repairs.

¹³ Complainant Ex. 4, Repair Order dated March 18, 2020.

¹⁴ *Id.*

¹⁵ Complainant Ex. 2, Lemon Law Complaint dated June 18, 2020.

Ms. Austin testified that she contacted Complainant on July 22, 2020, in order to request that Respondent's field service engineer be allowed to inspect the vehicle. At the time, Complainant indicated that the vehicle was fully repaired and an inspection was not needed.

2. Sayyed Asad Bashir's Testimony

Sayyed Asad Bashir, Automotive Technical Consultant, testified for Respondent at the hearing. Mr. Bashir testified that he has worked in the automotive industry for 21 years. For the first eight (8) years of his career, Mr. Bashir worked for various independent automotive repair shops. He was hired by Respondent in 2007, as a claims adjuster in their warranty department. In 2009, Mr. Bashir was hired in his present position. He is an Automotive Service Excellence (ASE) Master Certified Technician and is enrolled in Respondent's senior master technician certification program.

Mr. Bashir testified that he has not inspected nor seen the vehicle. He stated that he has seen the pictures of the vehicle submitted by Complainant verifying the damage to the vehicle. Mr. Bashir stated that the damage could be considered lot damage and that the dealer (Baytown) would be responsible for repairing such damage as it would not be considered to be covered by the vehicle's warranty.

Mr. Bashir stated that he does not know why the March 18, 2020 repair order indicated that Complainant raised any issue with the blind spot indicator system (BLIS) when Complainant denied in the hearing that he raised the issue. He thinks the service technician may have confused the BLIS with the lane departure feature with which Complainant did have a concern.

E. 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 experienced issues where the vehicle's antenna housing was damaged and the lane departure feature was not working properly. Complainant became aware of these issues shortly after purchasing the vehicle on February 22, 2020. The vehicle was taken to Baytown for repair

for the issues on March 12, 2020 and March 18, 2020. Both issues were repaired during the March 18, 2020 repair visit. 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. 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 As such, the hearings examiner must hold that the issues raised by Complainant have been repaired and do not provide grounds to order repurchase or replacement of the vehicle.

Respondent’s new vehicle bumper-to-bumper warranty applicable to Complainant’s vehicle provides coverage for three (3) years or 36,000 miles whichever comes first. On the date of hearing, the vehicle’s mileage was 20,763 and the vehicle 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. Tommie Jackson (Complainant) purchased a new 2019 Ford F-150 Platinum pickup truck on February 22, 2020, from Baytown Ford (Baytown) in Baytown, Texas, with mileage of 12 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), issued a new vehicle bumper-to-bumper warranty for the vehicle providing coverage for three (3) years or 36,000 miles, whichever comes first, from the date of delivery and a powertrain warranty providing coverage for the vehicle’s powertrain for five years (5) or 60,000 miles.
3. The vehicle’s mileage on the date of hearing was 20,763.
4. At the time of hearing the vehicle’s warranties were still in effect.
5. After purchasing the vehicle, Complainant noticed that the vehicle’s radio antenna housing was damaged.

¹⁶ Tex. Occ. Code § 2301.605.

6. Complainant also noticed after purchasing the vehicle that the vehicle's lane assist feature was not working properly.
7. Complainant took the vehicle to Respondent's authorized dealer, Baytown, for repair for the issues described in Findings of Fact #5 and #6 on the following dates:
 - a. March 12, 2020, at 1,361 miles; and
 - b. March 18, 2020, at 1,381 miles.
8. On March 12, 2020, Baytown's service technician determined that the vehicle had sustained damage to the front bumper which, in turn, damaged the vehicle's antenna housing.
9. No repair was performed at the time as the dealer's representative thought that the damage to the vehicle had been the result of an accident where Complainant was driving the vehicle and such damage would not be covered by the vehicle's warranty.
10. Also, on March 12, 2020, Baytown's service technician checked the vehicle's lane assist feature and found no trouble codes at the time. No work was performed to repair the issue.
11. On March 13, 2020, Complainant spoke to Baytown's sales manager and a salesperson and showed photographic evidence that the vehicle was damaged prior to his purchase of it.
12. On March 13, 2020, Complainant left the vehicle at Baytown for repair for the damaged antenna housing and the lane assist not working properly issues.
13. Baytown's sales staff was not aware that the vehicle had been left at the facility on March 13, 2020.
14. On March 18, 2020, Complainant went to Baytown to check on the vehicle and discovered that no work had been done to it because the sales staff was not aware that the vehicle was on the premises.
15. On March 18, 2020, Baytown's service department sent the vehicle to Caliber Collision in Baytown in order to repair the body damage to the front bumper and the antenna housing.

16. Also during the March 18, 2020 repair visit, Baytown's service technician determined that the vehicle's lane departure system was unplugged in the mirror housing and was not working, which he corrected.
17. The vehicle was fully repaired when Complainant received the vehicle from Baytown on March 27, 2020.
18. On June 18, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
19. On October 26, 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.
20. The hearing in this case convened telephonically on January 21, 2021, before Hearings Examiner Edward Sandoval. Tommie Jackson, Complainant, represented himself in the hearing. Emily Austin, Consumer Affairs Legal Analyst, represented Respondent, Ford Motor Company, in the hearing. Also present and testifying for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. The hearing record closed on January 21, 2021.

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 January 25, 2021



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