

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 21-0005258 CAF**

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| ROSS NILLES, Complainant | § | BEFORE THE OFFICE |
| | § | |
| v. | § | OF |
| | § | |
| FORD MOTOR COMPANY, Respondent | § | ADMINISTRATIVE HEARINGS |
| | § | |

DECISION AND ORDER

Ross Nilles (Complainant) seeks repair relief pursuant to Texas Occupations Code § 2301.204 (Warranty Performance) for alleged defects in his 2016 Ford Expedition EL. Complainant asserts that the vehicle has a defect or nonconformity which has resulted in vibrations and a whining noise that comes from the rear of the vehicle. 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 does have an existing warrantable defect and Complainant is eligible for repair 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 at the office of the Justice of the Peace, Pct. 4 in League City, Texas on June 16, 2021, before Hearings Examiner Edward Sandoval. Ross Nilles, Complainant, appeared and represented himself at the hearing. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also present and offering testimony for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. However, because the vehicle was in the process of being repaired at the time of the hearing, the hearing was continued for up to a year, in order to provide the Complainant an opportunity to determine if the vehicle had been repaired to his satisfaction. The Complainant received the vehicle from the dealer on June 24, 2021, and he indicated the repairs performed did not resolve the issue with the vehicle. The case was then set for a hearing on the merits on July 14, 2021, in Houston, Texas.

The hearing continuance was conducted by Hearings Examiner Edward Sandoval on July 14, 2021, at the Texas Department of Motor Vehicles' regional service center in Houston, Texas. Ross Nilles, Complainant, appeared and represented himself at the continuance. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst who appeared telephonically. Sayyed Asad Bashir, Automotive Technical Consultant, was scheduled to appear telephonically to testify for Respondent, but he could not be contacted on the day of the hearing. The hearing record closed on July 14, 2021.

II. DISCUSSION

A. Applicable Law

Texas Occupations Code § 2301.002(24) provides that a “[n]ew motor vehicle” means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.”

Occupations Code § 2301.603(a) 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.” (Emphasis mine.) Therefore, repurchase or replacement relief for defects in a vehicle is available only for new vehicles as defined in the Code. However, relief is available for purchasers of used vehicles under Occupations Code § 2301.204(a) which provides that “[t]he owner of a motor vehicle or the owner’s designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer’s, converter’s, or distributor’s warranty agreement applicable to the vehicle.” The relief available under this section of the Code is repair of the vehicle in question.

B. Complainant’s Evidence and Arguments

Complainant purchased a certified pre-owned 2016 Expedition EL on August 5, 2017, from Century Ford in Mount Airy, Maryland.¹ The vehicle’s mileage at the time of delivery was 33,958.² Respondent provided a powertrain limited warranty for the vehicle which provides coverage for the vehicle for 7 years or 100,000 miles from the original new-vehicle purchase date, whichever comes first, and a comprehensive certified pre-owned warranty for 12 months or 12,000 miles, whichever comes first.³ On the date of hearing the vehicle’s mileage was 77,804. At the time of hearing the vehicle’s comprehensive certified pre-owned warranty had expired. However, the powertrain limited warranty was still in effect.

Complainant stated that he first experienced the issues with whining coming from the rear of the vehicle and the shuddering/skipping of the rear tires when turning and accelerating in mid-September of 2017. He noticed the issues daily and that it occurred more often when turning left. He took the vehicle to Prince Frederick Ford in Maryland for repair for the issues on October 9, 2017. Prince Frederick’s service technician overhauled the vehicle’s rear differential in order to repair the issue.⁴ The vehicle’s mileage on this occasion was 37,358.⁵ The vehicle was in Prince

¹ Complainant Ex. 2, Purchase Agreement and Warranty Information dated August 5, 2017.

² Complainant Ex. 3, Odometer Disclosure Statement dated August 5, 2017.

³ Complainant Ex. 2, Purchase Agreement and Warranty Information dated August 5, 2017.

⁴ Complainant Ex. 4, Repair Order dated October 9, 2017.

⁵ *Id.*

Frederick's possession for 10 days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired.

The Complainant stated that the issues with the vehicle seem to have been resolved after the repairs. However, he claimed that the issues returned around the beginning of July 2019. Complainant testified that he continued to experience the same issues with the shuddering and whining in the rear of the vehicle. On July 23, 2019, Complainant took the vehicle to Eide Ford (Eide) in Bismarck, North Dakota for repair for the issues. Eide's service technician performed repairs to the rear differential by installing a new clutch pack in order to resolve Complainant's concerns with the vehicle.⁶ The vehicle's mileage at the time was 55,439.⁷ The vehicle was in Eide's possession for five (5) days. Complainant did not remember if he was provided a loaner vehicle while his vehicle was being repaired.

Complainant testified that when he got the vehicle back, the whining and shuddering were gone. However, the issues returned again in the end of December of 2019. Complainant took the vehicle to Eide for repair for the issue on January 8, 2020. Eide's service technician repaired the rear differential by replacing the clutch packs as well as the washers and spacers.⁸ The vehicle's mileage on this occasion was 58,269.⁹ The vehicle was in Eide's possession for five (5) days. Complainant did not remember if he received a loaner vehicle while his vehicle was being repaired.

Complainant stated that the shuddering and the whining noises were gone when he received the vehicle back from the dealer. However, the same issues returned around December of 2020. As a result, Complainant took the vehicle to McRee Ford (McRee) in Dickinson, Texas for repair on January 5, 2021. McRee's service technician repaired the rear differential by replacing the clutch pack as well as the ring and pinion.¹⁰ The vehicle's mileage on this occasion was 75,487.¹¹ The vehicle was in McRee's possession for 27 days on this occasion. Complainant received a loaner vehicle for the last two weeks while his vehicle was being repaired.

Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department) on January 19, 2021.¹²

⁶ Complainant Ex. 5, Repair Order dated July 23, 2019.

⁷ *Id.*

⁸ Complainant Ex. 6, Repair Order dated January 8, 2020.

⁹ *Id.*

¹⁰ Complainant Ex. 7, Repair Order dated January 5, 2021.

¹¹ *Id.*

¹² Complainant Ex. 1, Warranty Performance Complaint dated January 19, 2021.

Complainant stated that when he received the vehicle back from McRee he still felt a vibration, but it was not shuddering or whining. The Complainant noticed that there were three loose bolts in the rear differential that he believed were causing the vibration. He returned the vehicle to McRee for repair for the issue on March 25, 2021. McRee's service technician determined that the vehicle has a vibration when driven over 60 MPH.¹³ The technician replaced the driveshaft in order to address the vibration issue.¹⁴ The vehicle's mileage on this occasion was 76,993.¹⁵ The vehicle was in McRee's possession for 90 days on this occasion. Complainant was provided a loaner vehicle while his vehicle was being repaired. Complainant stated that there was no change in the vibration in the vehicle when it was returned to him.

Complainant testified that he can still detect a vibration in the vehicle when driving between 55 to 65 MPH. He described the vibration as strong enough to rattle coins that are in the cup holder.

On June 28, 2021, Respondent contacted the Complainant and asked for an opportunity to send an engineer to inspect the vehicle. The inspection was scheduled for July 21, 2021, after the date of the hearing.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, represented and testified for Respondent at the hearing. Mr. Gregory indicated that he had not personally inspected the vehicle, but that Respondent had scheduled one of its field service engineers to inspect the vehicle on July 21, 2021, a week after the hearing. Mr. Gregory stated that the start date for the original manufacturer's warranty was November 14, 2015. The extended powertrain warranty provided by the manufacturer under the Certified Pre-Owned program was still in effect at the time of hearing. Mr. Gregory feels that Complainant is not entitled to repair relief at this time.

D. Analysis

The issue to be addressed is whether Complainant's vehicle has a defect or condition that causes the vehicle to vibrate and/or to make a whining sound. The evidence establishes that there have been several incidents of a whining sound being heard from the rear of the vehicle, which were identified by Respondent's authorized dealer's service technicians as issues with the rear differential. Because the sound returned after each repair, there is question as to whether the

¹³ Complainant Ex. 8, Repair Order dated March 25, 2021.

¹⁴ *Id.*

¹⁵ *Id.*

technicians properly remediated the issue. There is also a question of whether the vibration is caused by the repair work attempted by Respondent's service technicians. In addition, Respondent's FSE was not able to perform an inspection of the vehicle on/or before the date of the hearing. Given the overall evidence, the hearings examiner must hold that the vehicle does not currently conform to Respondent's warranty and should be repaired to ensure that there is no vibration and that there is no whining sound coming from the rear of the vehicle. Respondent will be ordered to repair the vehicle so that it meets their warranties.

Complainant's request for repair relief is granted. Such repairs must be completed within the time frame indicated below.

III. FINDINGS OF FACT

1. Ross Nilles (Complainant) purchased a certified pre-owned 2016 Ford Expedition EL on August 5, 2017, from Century Ford in Mount Airy, Maryland with mileage of 33,958 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), provided a powertrain limited warranty for the vehicle providing coverage for the vehicle's powertrain for 7 years or 100,000 miles from the original new-vehicle purchase date, whichever came first, and a comprehensive certified pre-owned warranty for 12 months or 12,000 miles, whichever came first.
3. The vehicle's mileage on the date of the continued hearing was 77,804.
4. At the time of hearing the vehicle's comprehensive certified pre-owned warranty had expired. However, the powertrain limited warranty was still in effect.
5. In September of 2017, Complainant began to notice a vibration and a whining noise coming from the rear of the vehicle.
6. Prior to filing the Warranty Performance complaint, Complainant took the vehicle for repair to Respondent's authorized dealers to address his concerns with the whining and shuddering or vibration on the following dates:
 - a. October 9, 2017, at 37,358 miles at Prince Frederick Ford;
 - b. July 23, 2019, at 55,439 miles at Eide Ford;
 - c. January 8, 2020, at 58,269 miles at Eide Ford;
 - d. January 5, 2021, at 75,487 miles at McRee Ford;
 - e. March 25, 2021 at 76,993 Miles at McRee Ford.

7. On October 9, 2017, Complainant took the vehicle to Prince Frederick Ford located in Prince Frederick, Maryland for repair.
8. During the repair visit described in Findings of Fact #7, Complainant indicated to the dealer's service advisor that there was a whining noise coming from the rear of the vehicle and the rear tires were shuddering/skipping when turning and accelerating. The service technician overhauled the vehicle's rear differential in order to resolve the issue.
9. On July 23, 2019, Complainant took the vehicle for repair to Eide Ford–Lincoln (Eide) located in Bismarck, North Dakota. Eide's service technician performed repairs to the rear differential by installing new clutch packs on the rear differential in order to resolve Complainant's concerns with the vehicle.
10. On January 8, 2020, Eide's service technician repaired the rear differential by replacing the clutch packs as well as the washers and spacers.
11. On January 5, 2021, Complainant took the vehicle for repair to McRee Ford (McRee) located in Dickinson, Texas. McRee's service technician repaired the rear differential by replacing the clutch pack as well as the ring and pinion.
12. On January 19, 2021, Complainant filed a Warranty Performance complaint with the Texas Department of Motor Vehicles (Department).
13. On March 25, 2021, McRee's service technician verified the vehicle vibrated when driven over 60 MPH and determined that it was caused by an issue with the drive shaft and rear differential.
14. During the repair visit described in Findings of Fact #13, McRee's service technician replaced the driveshaft.
15. Complainant still detects the vibration when the car is driven between 55 and 65 MPH.
16. The only remedy available to Complainant is repair of the vehicle since the vehicle was a used vehicle at the time of his purchase.
17. On April 23, 2021, 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 at the office of the Justice of the Peace, Pct. 4 in League City, Texas on June 16, 2021, before Hearings Examiner Edward Sandoval. Ross Nilles, Complainant, appeared and represented himself at the hearing. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also present and offering testimony for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant. However, because the vehicle was in the process of being repaired at the time of the hearing, the hearing was continued for up to a year, in order to provide the Complainant an opportunity to determine if the vehicle had been repaired to his satisfaction.
19. The hearing was continued to July 14, 2021, because Complainant felt that the repairs performed by the dealer in June of 2021, did not resolve the complained of issues.
20. The hearing continuance was conducted by Hearings Examiner Edward Sandoval on July 14, 2021, at the Texas Department of Motor Vehicles' regional service center in Houston, Texas. Ross Nilles, Complainant, appeared and represented himself at the continuance. Ford Motor Company, Respondent, was represented by Anthony Gregory, Consumer Affairs Legal Analyst who appeared telephonically. Sayyed Asad Bashir, Automotive Technical Consultant, was scheduled to appear telephonically and testified for Respondent, but he could not be reached on the day of the hearing. The hearing record closed on July 14, 2021.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code § 2301.204 (Warranty Performance) and §§ 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 proved 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 in the vehicle, *i.e.*, whining in the rear of the vehicle and vibrations in the vehicle. Tex. Occ. Code § 2301.204.
7. Complainant is entitled to repair relief under the terms of Respondent's warranty. Tex. Occ. Code § 2301.204.
8. 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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is **ORDERED** that Complainant's petition for repair relief pursuant to Texas Occupations Code § 2301.204 is hereby **GRANTED**. Respondent shall make any repairs needed to conform the vehicle to the applicable warranty. (The specific issues to be addressed are the vibrations when the vehicle is driven at speed and the whining sound that comes from the rear of the vehicle.) Complainant shall deliver the subject vehicle to Respondent within 20 days after the date this Order becomes final under Texas Government Code § 2001.144.¹⁶ Within 40 days after receiving the vehicle from Complainant, Respondent shall complete repair of the subject vehicle. However, if the Department determines Complainant's refusal or inability to deliver the vehicle caused the failure to complete the required repair as prescribed, the Department may consider Complainant to have rejected the granted relief and deem this proceeding concluded and the complaint file closed under 43 Texas Administrative Code § 215.210(2).

SIGNED August 31, 2021



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

¹⁶ (1) This Order becomes final if a party does not file a motion for rehearing within 20 days after receiving a copy of this Order, or (2) if a party files a motion for rehearing within 20 days after receiving a copy of this Order, this Order becomes final when: (A) the Department renders an order overruling the motion for rehearing, or (B) the Department has not acted on the motion within 45 days after the party receives a copy of this Order.