

**TEXAS DEPARTMENT OF MOTOR VEHICLES
CASE NO. 20-0007484 CAF**

**OSCAR TAMEZ,
Complainant**

v.

**FORD MOTOR COMPANY,
Respondent**

§ **BEFORE THE OFFICE**
§
§
§ **OF**
§
§ **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Oscar Tamez (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 has a defect or nonconformity which causes the vehicle to pull to the left and the right when the vehicle’s brakes are applied when driving at highway speeds. Ford Motor Company (Respondent) argued that the vehicle has been modified by Complainant, that the manufacturer’s warranty does not cover issues that are caused by the modifications, and that no relief is warranted. The hearings examiner concludes that the vehicle has been modified, the warranty does not cover any issues caused by the modification, 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 telephonically and the hearing record closed on August 12, 2020, before Hearings Examiner Edward Sandoval. Oscar Tamez, Complainant, appeared and represented himself. Also appearing for Complainant was Fabiola Sierra, personal assistant. Respondent, Ford Motor Company, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also appearing and testifying for Respondent were Sayyed Asad Bashir, Automotive Technical Consultant, and Brian Jay, Field Service Engineer.

On October 9, 2020, the hearings examiner issued Order No. 3: Reopening Hearing Record and Scheduling Hearing in order to obtain additional evidence from the parties. The hearing record was reopened and further testimony was taken from the parties during a continuance held on November 3, 2020. The continuance was conducted telephonically by Hearings Examiner Edward Sandoval. Oscar Tamez, Complainant, appeared and represented himself. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. The hearing record was closed on November 3, 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 condition in the vehicle creates a serious safety hazard or substantially impairs the use or market value of the vehicle.² Third, the owner must have mailed written notice of the alleged defect or nonconformity to the manufacturer.³ Lastly, the manufacturer must have been given an opportunity to cure the defect or nonconformity.⁴

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 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.⁵

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 and: (1) at least one repair attempt was made during the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) at least one other attempt was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.⁶

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.⁷

¹ Tex. Occ. Code § 2301.604(a).

² *Id.*

³ Tex. Occ. Code § 2301.606(c)(1).

⁴ Tex. Occ. Code § 2301.606(c)(2).

⁵ Tex. Occ. Code § 2301.605(a)(1)(A) and (B).

⁶ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁷ Tex. Occ. Code § 2301.601(4).

If a vehicle is found to have a nonconformity that substantially impairs the vehicle's use or market value and 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 (1) out of service for repair for a cumulative 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; and (2) at least two repair attempt were made during the 12 months or 12,000 miles, whichever comes first, following the date of original delivery to the owner; and (2) at least one other attempt was made in the 12 months or 12,000 miles, whichever comes first, immediately following the date of the first repair attempt.⁸

B. Complainant's Evidence and Arguments

Complainant purchased a new 2019 Ford F-250 pickup truck (the vehicle) from McRee Ford (McRee), in Dickenson, Texas on January 5, 2019.⁹ The vehicle's mileage was 378 at the time of delivery.¹⁰ Respondent issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first.¹¹ In addition, Respondent provided a powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.¹²

Complainant testified that soon after purchasing the vehicle he had it modified. A lift kit was installed on the vehicle, as well as larger tires. After the lift kit was installed, Complainant began experiencing an issue where the vehicle would pull to the left or the right whenever he applied the brakes when driving at highway speeds.

Complainant took the vehicle to McRee for repair for the pulling issue on February 11, 2019. McRee's service technician inspected the vehicle and determined that the vehicle's alignment was within the manufacturer's specifications.¹³ No repair was performed to the vehicle at the time. The vehicle's mileage on this occasion was 1,658.¹⁴

Complainant drove the vehicle for a period of time after the February 2019 repair visit. He continued to notice that the vehicle would pull to one side or another when he applied the brakes at highway speeds. On May 3, 2019, Complainant took the vehicle to McRee for repair for the pulling issue. McRee's service technician replaced the vehicle's left front brake caliper and brake

⁸ Tex. Occ. Code § 2301.605(a)(2)(A) and (B).

⁹ Complainant Ex. 2, Bill of Sale dated January 5, 2019.

¹⁰ *Id.*

¹¹ Respondent Ex. 1, 2019-Ford-Car-LT-Truck Warranty Manual, p. 8.

¹² *Id.*

¹³ Complainant Ex. 6, Repair Order dated February 11, 2019.

¹⁴ *Id.*

hose in order to resolve the pulling issue.¹⁵ The vehicle's mileage when it was taken to McRee on this occasion was 7,281.¹⁶ The vehicle was in the dealer's possession for fourteen (14) days.¹⁷ Complainant was provided a loaner vehicle while his vehicle was being repaired.

Complainant stated that the vehicle continued to pull whenever he applied the brakes at highway speeds. He took the vehicle back to McRee for repair for the issue on June 18, 2019. McRee's service technician determined that the vehicle's right front brake caliper was dragging and replaced it.¹⁸ The mileage on the vehicle on this occasion was 11,255.¹⁹ The vehicle was in the dealer's possession until July 31, 2019. Complainant was provided with a loaner vehicle while his vehicle was being repaired.

Complainant stated that the vehicle drove fine for a while and then started to pull again as time passed on. He took the vehicle to McRee for repair for the pulling issue on October 16, 2019. McRee's service advisor verified the concern and switched the vehicle's brake pads from one side to the other in order to resolve the issue.²⁰ In addition, the technician replaced the vehicle's right side brake hoses.²¹ The vehicle's mileage on this occasion was 19,138.²² The vehicle was at the dealer's location until November 13, 2019. Complainant received a loaner vehicle during this repair visit.

Complainant stated that the vehicle seemed to drive fine for a while and the issue arose again about a month later. As a result, Complainant took the vehicle to McRee for repair for the pulling issue on December 19, 2019. McRee's service technician recommended a wheel alignment for the vehicle, but Complainant refused the repair.²³ Complainant refused the repair because he would have to pay for the alignment out of pocket as it would not be covered under warranty. The vehicle's mileage on this occasion is unknown.²⁴ The vehicle was in McRee's possession until January 16, 2020. Complainant was provided a loaner vehicle while his vehicle was being repaired.

¹⁵ Respondent Ex. 2, Manufacturer's Response Form dated August 5, 2019, p. 3.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Complainant Ex. 4, Repair Invoices for 2019 Ford F-250, p. 1.

²¹ *Id.*

²² *Id.*

²³ *Id.*, p. 6.

²⁴ *Id.* The repair order indicates that the vehicle's mileage was 27,093. However, this cannot be correct as the vehicle's mileage at the time of the field service engineer's inspection on February 6, 2020, was 23,872.

Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department) on January 31, 2020.²⁵ Complainant also mailed a letter to Respondent advising them of his dissatisfaction with the vehicle.²⁶

Complainant stated that he wants a vehicle that drives safely. He stated that he has to hold the steering wheel straight and struggle with it when he applies the brakes at highway speeds.

C. Respondent's Evidence and Arguments

1. Anthony Gregory's Testimony

Anthony Gregory, Consumer Affairs Legal Analyst, testified for Respondent. Mr. Gregory testified that Respondent received Complainant's letter dated January 31, 2020, in which he indicated his dissatisfaction with the vehicle. Mr. Gregory stated that he attempted to contact Complainant after the complaint was assigned to him for response. Mr. Gregory stated that when he spoke to Complainant he was informed that the vehicle was at the McRee dealership for repair. Since the vehicle was at the dealership, Mr. Gregory scheduled an inspection of the vehicle to be performed by Respondent's field service engineer (FSE).

Mr. Gregory testified that the FSE's inspection of the vehicle revealed that the vehicle had been modified and that aftermarket parts had been added to the vehicle. The FSE felt that the modifications could be causing the problems with the vehicle that Complainant was complaining about. Mr. Gregory stated that the vehicle would have to be restored to its original configuration before repairs could be made under the manufacturer's warranty. Mr. Gregory cited the vehicle warranty which provides that the "[w]arranty does not cover any damage caused by alterations or modifications of the vehicle . . . after the vehicle leaves the control of Ford Motor Company."²⁷

Mr. Gregory testified that Complainant had requested that a modified truck package be installed on the vehicle by a third party, Classic Soft Trim.²⁸ The modifications to the vehicle were performed on January 25, 2019.²⁹

2. Brian Jay's Testimony

Brian Jay, Field Service Engineer, testified for Respondent. Mr. Jay has worked in the automotive industry for 26 years. He worked for Respondent's technical hotline from 1999

²⁵ Complainant Ex. 1, Lemon Law complaint dated January 31, 2020.

²⁶ Complainant Ex. 5, Letter to Ford Motor Company Customer Relationship Center dated January 31, 2020.

²⁷ Respondent Ex. 1, 2019-Ford-Car-LT-Truck Warranty Manual, p. 12.

²⁸ Respondent Ex. 2, Manufacturer's Response Form dated August 5, 2020, p. 3.

²⁹ *Id.*

through 2002. He was hired by Respondent for his current position in 2002. Mr. Jay is an Automotive Service Excellence (ASE) Certified Master Technician. He has also been certified as a Ford Senior Master Technician since 2008.

Mr. Jay testified that he inspected the vehicle on February 6, 2020, at the McRee dealership. The vehicle's mileage at the time was 23,872.³⁰ Mr. Jay performed a visual inspection of the vehicle at the time and test drove it. He drove the vehicle for approximately 19 miles during the test drive. Mr. Jay testified that he was able to recreate the issue of the vehicle pulling to the left or right when the brakes were applied at highway speeds. The direction of the pull varies depending on the road surface.

Mr. Jay also indicated that the vehicle had been modified by Complainant. Mr. Jay noted that the modifications included larger aftermarket tires and wheels, extended springs, radius arms, and brackets which alter the vehicle's factory ride height and steering geometry.³¹ Mr. Jay feels that the vehicle's caster angle is off due to the modifications. He also stated that the vehicle pulling to one side or another is common in vehicles which have been modified by raising them from factory specifications. Mr. Jay also stated that the vehicle could not be repaired in its present condition. It would have to be returned to factory specifications before a warranty repair could be performed to it to alleviate the vehicle pulling either direction when the brakes are applied.

Mr. Jay also testified that he does not feel that the vehicle is unsafe with the issue occurring if the driver is used to driving this type of vehicle.

3. 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 since 1999. 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 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 never seen the vehicle. Mr. Bashir testified that the manufacturer does not perform warranty repair work for vehicles. The repairs in such situations are performed by the dealer who submits a warranty claim to the manufacturer for reimbursement. Mr. Bashir also stated that a vehicle modification does not necessarily void or cancel a vehicle's warranty.

³⁰ Respondent Ex. 3, FSE Vehicle Inspection Report dated February 6, 2020.

³¹ *Id.*

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 a reasonable number of attempts have been undertaken to conform the vehicle to an applicable express warranty. Finally, Complainant is required to serve written notice of the 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, Complainant is entitled to have the vehicle repurchased or replaced.

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.

The evidence established that there is an issue with the vehicle pulling to the right or the left when applying the brakes at highway speeds. However, the evidence also shows that the vehicle has been modified, specifically included larger aftermarket tires, wheels, extended springs, radius arms and brackets altering the vehicle’s factory ride height and steering geometry and that the modifications could be the cause of the complained of issue. Since Respondent’s warranties allow for denial of warranty coverage for issues caused by an unapproved modification, the hearings examiner must hold that relief is not warranted under the present circumstances. Complainant is free to have the aftermarket items replaced to allow Respondent an opportunity to repair the issue at a later date. Therefore, the hearings examiner finds that there is no defect with the vehicle that is covered by the manufacturer’s warranty and, as such, repurchase or replacement relief for Complainant is not warranted.

Complainant’s request for repurchase or replacement relief is denied.

III. FINDINGS OF FACT

1. Oscar Tamez (Complainant) purchased a new 2019 Ford F-250 on January 5, 2019, from McRee Ford (McRee) located in Dickenson, Texas, with mileage of 378 at the time of delivery.
2. The manufacturer or distributor of the vehicle, Ford Motor Company (Respondent), issued a new vehicle limited warranty for the vehicle which provides bumper-to-bumper coverage for three (3) years or 36,000 miles, whichever occurs first. In addition,

Respondent provided a powertrain warranty which provides coverage for the vehicle's powertrain for five (5) years or 60,000 miles.

3. The vehicle warranty provides that it does not cover any damage caused by alterations or modifications of the vehicle after the vehicle leaves Respondent's control.
4. Soon after purchasing the vehicle in January, Complainant had the vehicle modified by installing a lift kit and larger aftermarket tires.
5. Complainant noticed in January and February of 2019 that the vehicle would pull to the left or the right whenever he was driving at highway speeds and applied the brakes.
6. Complainant took the vehicle to Respondent's authorized dealer, McRee, in order to address his concerns with the vehicle pulling to the left or right when applying the brakes at highway speeds on the following dates:
 - a. February 11, 2019, at 1,658 miles;
 - b. May 3, 2019, at 7,281 miles;
 - c. June 18, 2019, at 11,255 miles;
 - d. October 16, 2019, at 19,138 miles; and
 - e. December 19, 2019, at unknown miles.
7. On February 11, 2019, McRee's service technician checked the vehicle's alignment and determined that it was within the required manufacturer specifications. No repair was performed at the time.
8. On May 3, 2019, McRee's service technician replaced the vehicle's left front brake caliper and brake hose in order to resolve the issue of the vehicle pulling to the right when applying the brakes at highway speeds.
9. On June 18, 2019, McRee's service technician replaced the vehicle's right front brake caliper in order to resolve the issue of the vehicle pulling to the left when applying the brakes at highway speeds.
10. On October 16, 2019, McRee's service technician switched the vehicle's brake pads from one side to the other and replaced the right side brake hoses in order to resolve the issue of the vehicle pulling to the left when applying the brakes at highway speeds.

11. On December 19, 2019, McRee's service technician recommended that the vehicle's tires be aligned in order to resolve the issue. Complainant refused the repair, since it was not covered under warranty.
12. On January 31, 2020, Complainant sent an email to Respondent notifying them of his dissatisfaction with the vehicle.
13. On January 31, 2020, Complainant filed a Lemon Law complaint with the Texas Department of Motor Vehicles (Department).
14. On February 6, 2020, Brian Jay, Field Service Engineer, performed a final vehicle inspection at the McRee dealership. The vehicle's mileage was 23,872 at the time.
15. During the inspection described in Findings of Fact #14, Mr. Jay determined that the vehicle had been modified from factory specifications and that the modifications included larger aftermarket tires, wheels, extended springs, radius arms and brackets altering the vehicle's factory ride height and steering geometry.
16. Mr. Jay also determined that the vehicle could not be repaired under the vehicle warranty unless it was returned to its original condition, prior to the modifications.
17. On April 24, 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 and the hearing record closed on August 12, 2020, before Hearings Examiner Edward Sandoval. Oscar Tamez, Complainant, appeared and represented himself. Also appearing for Complainant was Fabiola Sierra, personal assistant. Respondent, Ford Motor Company, was represented by Anthony Gregory, Consumer Affairs Legal Analyst. Also appearing and testifying for Respondent was Sayyed Asad Bashir, Automotive Technical Consultant, and Brian Jay, Field Service Engineer. On October 9, 2020, the hearings examiner issued Order No. 3: Reopening Hearing Record and Scheduling Hearing in order to obtain additional evidence from the parties. The hearing record was reopened and further testimony was taken from the parties during a continuance held on November 3, 2020. The continuance was conducted telephonically by Hearings Examiner Edward Sandoval. Oscar Tamez, Complainant,

appeared and represented himself. Respondent was represented by Anthony Gregory, Consumer Affairs Legal Analyst. The hearing record was closed on November 3, 2020.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Motor Vehicles (Department) has jurisdiction over this matter. Tex. Occ. Code §§ 2301.601-.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.
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-.613 is hereby **DISMISSED**.

SIGNED January 7, 2021



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