

Court File No. CV-15-539855-00-CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**REBECCA ROMEO, JOE ROMEO, DIANE BÉLAND,
ELYSE CHOINIERE, LINDA GOODMAN, AND TRACY CORSI**

Plaintiffs

- and -

**FORD MOTOR COMPANY and
FORD MOTOR COMPANY OF CANADA, LIMITED**

Defendants

Proceeding under the *Class Proceedings Act, 1992*

AFFIDAVIT OF Bruce Lamb (Sworn March 28, 2017)

I, Bruce Lamb, of the Municipality of Delta, in the Province of British Columbia, make oath and say:

BACKGROUND

1. I am 66 years old and live in the community of Tswwassen in the Municipality of Delta, British Columbia.
2. I had been a British Columbia motor vehicle inspector until 2009. I am also a licensed journeyman mechanic.

3. I purchased a new blue 2013 Ford Fiesta Hatchback SE (the “Car”) on April 13, 2013, from Steve Marshall Ford, an authorized Ford dealership in Campbell River, British Columbia (the “Dealership”).
4. I had been living in Campbell River and working in Nanaimo at the time, which is why I needed a dependable car – as the commute was about 300 kilometers roundtrip. I am, however, now retired.
5. The total sales price for the Car was \$25,641.94, inclusive of taxes and fees. I also purchased a Ford Extended Service Plan, which cost an additional \$3,500.
6. I financed my purchase through Ford Credit.
7. When I purchased the Car, I test drove it through town as well as the highway. The sales associate from the Dealership was in the passenger seat during the test drive. I drove the Car for about 20 minutes, and it drove smoothly and handled well during the test drive.
8. During the test drive, the sales associate did not mention any of the transmission defects or associated performance and safety issues with the transmission.

TRANSMISSION PROBLEMS

9. I began to experience problems with my Car about three to four months after purchasing it. The Car would shudder when accelerating, which means that the Car would noticeably vibrate or shake.

10. When accelerating from a complete stop, the Car would lurch forward, such as at stop signs or stoplights. Other times, when I depressed the gas pedal, there would be hesitation or a pause before the Car started to accelerate.
11. In addition, the Car generally drove poorly. I could experience when the car shifted gears because it had a jerking sensation accompanied by a noticeable grinding noise.
12. I also experienced a lack of performance when driving up inclines. The Car did not seem to have enough power. It was always a struggle. I would have to push down harder on the gas pedal, but the Car did not respond the way I would expect climbing inclines even when I did press down on the gas. It was as if there was a disconnect between me pressing on the gas pedal and the engine responding.
13. At first, these transmission problems would occur sporadically, but over time increased in frequency.

UNSUCCESSFUL STEPS TAKEN TO FIX THE TRANSMISSION

14. Several months after purchasing the Car, I brought it into the Dealership, and explained the transmission problems I was having to the service centre staff. The staff told me that the transmission control module ("TCM") just needed to be re-programmed, which we could schedule for a later date. The Dealership performed no repairs, and I was not provided with any service invoice.
15. There were many other subsequent occasions where I brought the Car to the Dealership due to continuing transmission problems, but the Dealership did not perform any repairs or provide a service invoice. I was generally advised by the service centre staff that the

problems I was experiencing with the Car were either normal operations of the Car or not severe enough to warrant a repair.

16. In August, 2014, I received a letter from Ford Motor Company of Canada, Limited (“Ford Canada”), informing me that it is possible for the “PowerShift 6-speed Automatic Transmission to exhibit excessive transmission clutch shudder during light acceleration. The condition may be caused by fluid contamination of the clutch due to leaking transmission seals.” The letter stated that Ford was providing additional warranty coverage on the clutch, transmission input shaft seals, and transmission software calibration, and instructed me to have necessary repairs at my dealership if my Car experiences excessive transmission clutch shuddering. Attached hereto as **Exhibit “A”** is the letter from Ford Canada, dated August 29, 2014.
17. The transmission problems only worsened over time, in both severity and frequency. Finally, on February 19, 2015, when I brought the Car to the Dealership due to continuing issues as described above, the service centre staff inspected my Car and tested the transmission for shuddering. The shuddering test confirmed shuddering at 590 rpms, and consequently the Dealership replaced the clutch and seals, as noted in the service invoiced, attached hereto as **Exhibit “B”**. The work was performed under warranty, and as such I was not charged. My Car had 65,493 kilometers on the odometer at this time.
18. Following the repairs, the Car drove smoothly. I did not experience transmission problems for about six weeks to two months, when they began to occur occasionally. Within another two months, the transmission problems were occurring to the same level of severity and frequency as before the repairs.

19. Sometime during 2015, I also reported a safety defect complaint to Transport Canada, in which I described the transmission problems I was having with the Car, including the shuddering, lurching, and hesitation when accelerating.
20. In September, 2015, I received a letter from Ford Canada informing me that my TCM may experience “electrical circuit failures causing intermittent symptoms of loss of transmission engagement while driving, no-start, or a lack of power”. The letter instructed me to contact my dealer to update the TCM software as part of their Software Update Program 15B22. The letter also informed me that Ford was extending the warranty coverage on the TCM as part of a customer service program 15M02. The letter, dated September 18, 2015, is attached hereto as **Exhibit “C”**.
21. On January 20, 2016, I brought the Car back to the Dealership and described to the service centre staff the continued problems I was having with my Car, including shuddering, hesitation, and lurching when accelerating. I was also experiencing an oil leak. The Dealership tested the Car for shuddering, and released the Car back to me, since the shuddering was “within expected limits at the time of service”, as noted in the service invoice attached hereto as **Exhibit “D”**. The Dealership reprogrammed the TCM, as per Ford customer service recall # 15B22, also noted on the service invoice.
22. Given the severity of the shuddering I had been experiencing at this time, I could not believe the Dealership had told me that it was within the expected limits. I demanded that the service centre foreman drive the Car with me to experience the transmission problems first hand. He agreed, and I returned a few days later to do a test drive with the foreman. I

drove the Car, and he sat in the passenger seat. After the test drive, the foreman agreed that my transmission had problems and placed a rush order on a replacement clutch and seals.

23. At this time, I also submitted an online complaint to Ford Canada, in which I described the clutch shuddering, and my desire to “walk away from this mess”, meaning trade-in the Car. On January 28, 2016, I received an email response from “Diana S”, from Ford of Canada Customer Relationship Centre. In the email, Diana stated that the dealerships will “only update the appropriate modules” when the diagnosis of the “vehicle is within the parameters set by engineering”, and will “proceed with any repairs needed under the warranties or programs” only when the diagnosis of the vehicle “is outside those set parameters”. She also stated that I should speak with the sales department at my dealership about any trade options. Attached hereto as **Exhibit “E”** is the correspondence with Ford Canada.
24. After a week or so, I brought the Car back to the Dealership due to both the oil leak and the transmission problems. The Dealership again tested the Car for shuddering, and confirmed that a replacement clutch was necessary. The Dealership installed a new clutch and seals, as noted in the service invoice, dated February 18, 2016, attached hereto as **Exhibit “F”**. The Car had 71,424 kilometers on the odometer at this time.
25. I had to leave my Car with the Dealership to perform the repairs overnight, and asked for a complimentary rental car. The Dealership at first did not want to provide one, but eventually agreed to. On February 18, 2016, I picked up the Car following the repairs. The work was performed under warranty, and as such I was not charged.

26. Similarly to the previous occasion when I had a clutch replacement, the Car drove smoothly. I did not experience transmission problems for about six weeks to two months, when they began to occur occasionally. Again, within another two months, the transmission problems were occurring to the same level of severity and frequency as before the repairs.
27. In April, 2016, I brought my Car to Ocean Park Ford, an authorized Ford dealer, in Surrey, British Columbia. While my Car was being inspected for problems related to oil leaks and brakes, I also described to the service centre staff the continuing transmission problems I was having with my Car. I recall that the staff member told me that I will never be able to “get that fixed”, in relation to the transmission problems. He also told me that Ocean Park Ford had about fifty sets of replacement clutches on order for Ford Focus and Fiesta models equipped with the Dual Clutch Transmission. My service invoice, dated April 21, 2016, is attached hereto as **Exhibit “G”**.
28. I continued to be frustrated with the continuing transmission problems and inability for Ford or its dealerships to permanently fix the problems. In or around May, 2016, I had called Ford Canada’s national customer service and spoke to a person by the name of Kim. I described to Kim the transmission problems and the ineffective repairs to date. Ford Canada did not offer any remedy or help to me as a result of this call. In fact, I was told by Kim that if I lived in California, Ford would have bought back my Car because California has a lemon law.

CURRENT SITUATION

29. My Car was not safe to drive due to the transmission problems described above. I did not feel in control of the Car at all times, as the Car can unexpectedly lurch forward or hesitate when trying to accelerate.
30. The hesitation when accelerating is particularly concerning, as it can take longer to cross lanes of oncoming traffic when driving through an intersection. I am also worry about the lurching or lunging of the Car, as it poses a risk of hitting another car, object, or pedestrian.
31. I decided to trade in or sell my car because of these safety and performance problems.
32. In June 2016, I went to Ocean Park Ford to see what they could offer on a trade-in of my Car. They offered \$6,000, while Maddigan Chrysler Dodge Jeep Ram Ltd., a Chrysler dealership in Vegreville, Alberta, offered me \$8,000 on a trade-in toward a 2016 Dodge Ram 1500. I accepted the offer and traded in my Car. Attached hereto as **Exhibit "H"** is the purchase agreement, dated July 20, 2016.
33. I now drive the Dodge Ram on a daily basis, and have been very happy with its performance to date. Most importantly, I no longer have to worry about my safety or the safety of others on the road because of the transmission problems with the Car.

BREACH OF WARRANTY

34. I believe the Car is not fit for the purpose of being a reliable and safe form of transportation. It does not perform the way a car normally performs. There are chronic

transmission problems, discussed above, which pose very real safety issues. Multiple dealership have tried to fix the transmission problems, including replacing the clutches on at least two occasions. Despite these attempts, the transmission issues and safety issues continue. I do not believe that the defendants are capable of permanently fixing my Car so that it will be fit for its purpose.

35. Simply put, the Car is a lemon. I did not receive a Car that was fit for driving.


BREACH OF *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT*, S.B.C. 2004, C.2

36. When I began looking for a new car in early 2013, I was only interested in vehicles with automatic transmissions, as I find them much easier to drive and it has been many years since I have driven a car with a manual transmission.
37. I was looking for a vehicle with good gas mileage, as I would need to drive it about a 300 kilometer round trip for work. I had been living in Campbell River, British Columbia and was working as a Brinks security guard in Nanaimo, British Columbia at that time. I moved to Nanaimo a year later, so my commute became drastically shorter. I am now retired.
38. All of the Ford marketing material that I read prior to purchasing the Car indicated that my model of Ford Fiesta was available with either a manual transmission or an “automatic” PowerShift transmission. The Ford window sticker on the Car denotes that the Car had a “6-SPD AUTO TRANS GFT (DPS6)”. Attached hereto as **Exhibit “I”** is a copy of the window sticker.

39. Consequently, I believed that the “PowerShift” name was merely Ford branding, and that the Car’s Dual Clutch Transmission was a regular automatic transmission which would shift the gears of the Car in a manner similar to that of other vehicles equipped with regular automatic transmissions.
40. When I purchased the Car, the Ford marketing materials, including the window sticker, did not explain that the PowerShift automatic transmission is a Dual Clutch Transmission, which is, in fact, more akin to two manual transmissions that are shifted automatically.
41. Further, there was no mention in the Ford marketing materials of the transmission problems caused by the Dual Clutch Transmission.
42. I would never have purchased a car with a manual transmission. If I had known that the Dual Clutch transmission would not operate similar to traditional automatic transmissions and would cause the transmission issues, I would not have purchased the Car.
43. Assuming the transmission problems I have described are, as indicated by Ford, somehow normal for the Car, I would never have purchased the Car had I known about them. Ford did not disclose the transmission problems in its marketing material or manual.
44. I was an owner of a 2013 Ford Fiesta, a prospective Class Vehicle, and as such have personal knowledge of the facts deposed in this affidavit. Where my knowledge is based on information obtained from others, I have so indicated and believe that information to be true.

45. I swear this affidavit in support of the motion for certification of this action as a class action and for no other or improper purpose.

SWORN BEFORE ME at the)
)
Municipality of Delta, in the Province of)
)
British Columbia, via videoconference)
)
this 28 day of March, 2017.)



Bruce Lamb



(A Commissioner, etc.)
Glenn Brandy
LSUC # G76850