

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 ROSEMARIE ELIZABETH FERGUSON (Sworn April 6, 2017)**

I, Rosemarie Ferguson, of the City of Ottawa, in the Province of Ontario, make oath and say:

**BACKGROUND**

1. I live in Ottawa, Ontario and have been working since 2007 as a Developmental Services Counsellor for the Ottawa Carleton Association for Persons with Developmental Disabilities.
2. I purchased a magenta 2011 Ford Fiesta (the “Car”) on May 2, 2012 from Kanata Ford Sales Ltd. (“Kanata Ford”), an authorized Ford dealer in Kanata, Ontario. The Car had 12,688 km on the odometer at the time of purchase. Attached hereto as **Exhibit “A”** is the purchase agreement.

3. I paid \$16,700, exclusive of taxes, for the Car. As part of this purchase I also traded in a 2002 Dodge Neon, for which I received \$500 in trade-in allowance and bought a Ford Extended Service Plan. Altogether, my total amount payable was \$23,772.59, including a \$6,500 down deposit.
4. The Ford Extended Service Plan cost \$2,875.85, after taxes. Attached hereto as **Exhibit "B"** is the service plan contract, dated May 4, 2012.
5. The outstanding balance was financed through the Bank of Montreal. Attached hereto as **Exhibit "C"** is the financing agreement, dated May 4, 2012.

#### **TRANSMISSION PROBLEMS**

6. I began to experience problems with my Car within the first year of owning it. There were vibrations coming from the front and rear brakes, and there was a grinding or knocking noise when turning at low speeds.
7. It began lurching forward when I would accelerate from a complete stop, 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.
8. The Car would shudder when accelerating from either a complete stop or in low gears, which means that the Car would noticeably vibrate or shake.
9. At times, I also experienced a lack of performance when driving up inclines. The Car would roll backwards down the incline despite pressing the gas pedal. The Car did not seem to have sufficient power, and sometimes struggled up an incline. I would have to

push harder on the gas pedal, but the Car did not respond the way I would expect it to when I pressed down on the gas pedal.

10. On a few occasions, the Car lost power completely, including the engine – where it would no longer propel forward even when pressing the gas pedal.
11. At first, these transmission problems would occur sporadically, but over time increased in frequency.

#### **UNSUCCESSFUL ATTEMPTS TO FIX THE TRANSMISSION**

12. In October, 2013, I brought the Car to Kanata Ford due to transmission problems, including shuddering when accelerating in low gears. The dealership inspected the Car and reprogrammed the powertrain control module (“PCM”) and transmission control module (“TCM”), components of the Dual Clutch Transmission, as noted in the service invoice dated October 15, 2013, attached hereto as **Exhibit “D”**. The work was performed under warranty, and as such I was not charged.
13. The Car drove more smoothly for the first two months following the repair. After two months, I began to experience the transmission problems again, sporadically at first but increasing in frequency and severity over time.
14. In August, 2014, I received a letter from the Ford Motor Company of Canada (“Ford Canada”), which indicated that, as part of a Customer Satisfaction Program “14M01”, they are providing extended coverage on the clutch, transmission input shaft seals, and transmission software calibration. In the letter, it states that it may be possible for the Dual Clutch Transmission to “exhibit excessive transmission clutch shudder during light acceleration”, which “may be caused by fluid contamination of the clutch due to leaking

transmission seals.” Attached hereto as **Exhibit “E”** is the letter from Ford Canada, dated August 29, 2014.

15. I brought the Car back to Katana Ford on November 11, 2014, and described to the service centre staff the transmission problems that I continued to experience. The dealership performed a test that confirmed the transmission was shuddering. They told me that they had ordered replacement parts for the transmission, but that it could be many weeks before the parts were available, as noted on the service invoice: “VERIFY SHUDDER ON ACCCEL. PERFORM SLIP TST MONITOD PIDS. RPM SLIP 265. HO LEAKS. PARTS ON ORDER NO ETA”, attached hereto as **Exhibit “F”**. I was also told by the service centre staff that the transmission problems I was experiencing were common issues with the Ford Fiestas equipped with the Dual Clutch Transmission, and that due to the high demand, all customers were placed on a waiting list while Kanata Ford waited for the parts to arrive from Ford Canada.
16. On January 26, 2015, I brought the Car to Kanata Ford as the replacement parts were available to be installed. Kanata Ford replaced the clutch and seals, and reprogrammed the PCM and TCM, as noted in the service invoice, attached hereto as **Exhibit “G”**. As the work was performed under warranty, I was not charged.
17. Following these repairs, the Car drove more smoothly, After three to four months, I began to experience the transmission problems occasionally. Over time, they worsened in severity and occurred more frequently.
18. On September 25, 2015, I brought the Car back to Kanata Ford, and explained to the service centre staff that I was still experiencing transmission problems, including

shuddering when accelerating. Additionally, the transmission warning indicators were switched on. Kanata Ford again reprogrammed the TCM and PCM, as noted in the service invoice, attached hereto as **Exhibit "H"**.

19. The Car drove more smoothly for the first two months following the repair. After two months, I began to experience the transmission problems again, sporadically at first but increasing in frequency and severity over time.
20. On December 11, 2015, I called the service department at Kanata Ford to tell them that the transmission continued to shudder when accelerating from a stop and that the Car would lurch forward. When I brought the Car to the Dealership, they did not need to inspect or test it other than a short test drive. The service centre staff told me that they ordered another replacement clutch, and that I should book an appointment to bring the Car in after the parts had arrived. He also told me that it would be at least 12 weeks before they would have the new parts. I had expressed that the Car seemed to be getting less reliable over time and that I did not feel safe driving it, particularly because of the lurching of the Car. The service centre staff did not have any response to my concern other than to tell me that other Fiesta owners with the Dual Clutch Transmission were experiencing the same issues.
21. Toward the end of January, 2016, the Car had become increasingly difficult and unsafe to drive due to the transmission problems. I called Kanata Ford to follow up on the replacement clutch, and they told me that it was still not available. I told them that I needed to drive to Toronto for a conference, and they told me to rent a car, as they did not

have a loaner vehicle available. I expressed my dissatisfaction and the dealership provided me with Ford Canada's customer service number.

22. I called Ford Canada and expressed my concern about the transmission problems and safety concerns. The customer service agent was not responsive to my comments. I asked to speak with a supervisor, but was denied the opportunity to do so. I responded by saying that I may contact the Better Business Bureau if Ford Canada was not willing to take any steps to address my concern within a day.
23. The next afternoon, I received a voicemail from a woman named Sheila, who worked for Ford Canada's customer service centre. I called the number and described to Sheila the transmission problems and concern that I would be responsible for the frequent maintenance work once the warranty expired. I also expressed my frustration in the lengthy delays in getting replacement parts whenever Kanata Ford needed to replace the clutch.
24. Shortly after speaking with Ford Canada, I received a phone call from the service manager at Kanata Ford, letting me know that the replacement clutch was now available and that I should bring the Car in to have the repair. On February 2, 2016, I brought the Car to Kanata Ford, and they replaced the clutch and seals, and the TCM, as noted in the service invoice, attached hereto as **Exhibit "I"**.
25. Several days later, I received a call from Sheila to see if the repairs had been completed, and I let her know that they were. I also told Sheila that I hoped the transmission problems would not return after this latest repair. Sheila responded by telling me that, should the shuddering return, I should change my driving habits so as to depress the

accelerator more assertively, as the Car needed to learn how to drive the way that I did. I was surprised by this response, given the lengthy repair history and issues I had experienced with the Car to date, but was pleased that the repairs had occurred.

26. The Car drove more smoothly following these repairs, just as it had the prior time the clutch was replaced. Again, after three to four months, I began to experience the transmission problems again, including shuddering, hesitation when trying to accelerate, and lurching forward of the Car.
27. On April 8, 2016, I tried to start the Car, but it would not start. The lights in the Car and on the dashboard were working, but there was no clicking noise that I would usually hear when the Car was starting. There was a message on the dashboard that stated the traction control was off and there was a power assist error. I called a tow truck to bring my Car to Kanata Ford. The tow truck operator could not get the transmission to disengage so as to allow the wheels to turn, and as such, the Car had to be towed on a dolly to Kanata Ford. Attached hereto as **Exhibit "J"** is the service invoice, dated April 13, 2016, which notes a failure with a fuse and circuit related to the PCM module, which they consequently replaced.

## **ACCIDENT**

28. Toward the end of July, 2016, I was experiencing severe problems with the Car, including shuddering, lurching, and hesitation when trying to accelerate. Additionally, I was having problems with the electrical system, as all the interior lights below the dash had failed, not lighting up at all. While the headlights were working, the rear lights had been having issues as well.

29. On the morning of August 4, 2016, I contacted Kanata Ford, and informed them of the transmission problems and electrical issues I had been experiencing. I told the staff member on the phone that I believed the Car was not safe to drive due to the transmission problems, but they informed me that it would likely be 12 weeks before they could get replacement parts. Kanata Ford advised me that I could bring the Car in to have the electrical problems inspected, so I booked an appointment to visit the dealership for that afternoon.
30. On my way to Kanata Ford, I was involved in an accident. From what I can recall, I had been approaching a stop sign and was very focused on how poorly the Car was performing. While I cannot recall the exact details of the moment of impact, I was “t-boned” by a car crossing the intersection.
31. My Car was significantly damaged, and ended up being completely “written off” by my insurance company.
32. I suffered significant bruising from the seatbelt, a bleeding kidney, and bruising to my left shoulder. About a week after the accident, I also noticed a bump on the right side of my head with bruising around the bump. I am not aware what injuries, if any, the passenger of the other car in the accident suffered.
33. The insurance company found me at fault for the accident, as I had traveled through a stop sign. I have had several conversations with my insurer about the transmission problems with my Car, but there is nothing they are able to do and I remain at fault.
34. I also told the police officer that I had spoken to at the scene of the collision that I had been on my way to Kanata Ford to have the Car inspected because of the continuing



transmission problems. I provided the officer with copies of my service records the following day at his request. The same officer told me at the scene of the accident that he was not going to press charges, as they did not think the charges “would hold up in court”.

#### **CAR WAS NOT SAFE**

35. 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, fail to accelerate, and even lose propulsion.
36. Unfortunately, I experienced firsthand how the Car lunging forward can lead to an accident, as described above.

#### **COMPLAINT TO TRANSPORT CANADA**

37. Following the accident, I called Transport Canada and was told that there are currently two investigations involving Ford Fiesta models equipped with the Dual Clutch Transmission: one related to the transmission problems and the other to the electrics. The person I spoke with asked me questions about the Car, such as its VIN number and insurance information in order to see if they could track down the Car to inspect it as part of their investigations.
38. I was told by the lead investigator, Trevor Saunderson, that my Car exhibits the issues related to both investigations.

**BREACH OF WARRANTY**

39. I believe the Car was not fit for the purpose of being a reliable and safe form of transportation. It did not perform the way a car normally performs. There were chronic transmission problems, discussed above, which pose very real safety issues. The Dealership had tried to fix the transmission problems on at least the six occasions noted above, and despite these attempts, the transmission issues and safety issues continued. I do not believe that the defendants were capable of permanently fixing my Car so that it would have been fit for its purpose.
40. Simply put, the Car was a lemon. The Car was dangerous, and I did not receive a car that was fit for driving.

**BREACH OF *CONSUMER PROTECTION ACT*, S.O. 2002, C.30, SCHED. A**

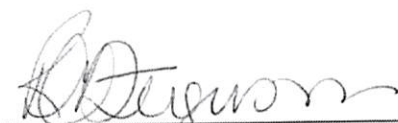
41. When I began looking for a new car in 2012, I only considered models with an automatic transmission. While I know how to drive a car with a manual transmission, I was only interested in buying a car with an automatic transmission because I wanted my daughter to be able to drive it, and she does not know how to drive a car with a manual transmission.
42. I had seen advertisements and marketing for the Ford Fiesta and consequently understood that it had a transmission that would operate like a traditional automatic transmission such that my daughter could drive it, while having good gas mileage and being high-performance or “sporty”.

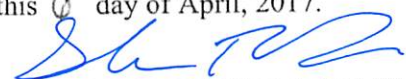
43. All of the Ford marketing material that I read prior to purchasing the Car indicated that my model of Ford Focus was available with either a manual transmission or an “automatic” PowerShift transmission. I therefore chose to purchase the Car in part because I believed it to be an automatic transmission vehicle.
44. I do not recall any of the Ford marketing material or advertisements that I had seen specifically explaining that the PowerShift automatic transmission is a Dual Clutch Transmission, which is, in fact, more akin to two manual transmissions that are shifted automatically.
45. Further, there was no mention in the Ford marketing materials or advertisements that I had seen of the transmission problems caused by the Dual Clutch Transmission.
46. I would never have purchased a car with a manual transmission as I needed a car that my daughter could drive, and she does not know how to drive 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.
47. 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.

48. I was an owner of a 2011 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.

49. 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 )  
 )  
City of Ottawa, in the Province of )  
 )  
Ontario, via videoconference )  
 )  
this 6 day of April, 2017. )

  
\_\_\_\_\_  
Rosemarie Elizabeth Ferguson

  
\_\_\_\_\_  
(A Commissioner, etc.)

Glenn Brandy  
LSUC #676850