

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 ELYSE CHOINIERE (Sworn April 3, 2017)

I, Elyse Choiniere, of the City of Saint-Hubert, in the Province of Quebec, make oath and say:

1. I have retained Charney Lawyers PC to represent me in this proposed class action. I am hoping to be a representative plaintiff.

BACKGROUND

2. I am 37 years old and live in St. Hubert, Quebec. I work as a production planner and marketing & sales coordinator for Trendium Pools in Lasalle, Quebec.
3. I am married and have two children. I currently own a 2013 Ford Fiesta SE (the "Car") which is equipped with a Dual Clutch Transmission.

4. I purchased the Car brand new on August 23, 2012 from Ostiguy Ford Inc., an authorized Ford dealership in Richelieu, Quebec (the “Dealership”). My husband, Daniel Schwartz (“Daniel”) is listed as a co-owner. Attached hereto as **Exhibit “A”** is a copy of my purchase agreement.
5. I paid \$20,583.98 for the Car, inclusive of taxes.
6. Included with my purchase was a new vehicle warranty.

TRANSMISSION PROBLEMS

7. I began to experience problems with my Car within a few days after purchasing it. When pressing the gas pedal to accelerate from a full stop, the Car would hesitate before finally accelerating. Other times, the Car would lurch forward unexpectedly.
8. The Car would shudder when accelerating, which means that the Car would noticeably vibrate or shake.
9. 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.
10. At first, these transmission problems would occur sporadically, but over time increased in frequency.

UNSUCCESSFUL ATTEMPTS TO FIX THE TRANSMISSION

11. I called the Dealership about a week after purchasing the Car, and I described to the service centre staff the transmission problems I was experiencing with the Car, including the shuddering, hesitation, and lurching. The person that I had spoken with told me that

these issues would go away as the transmission just needed “time to learn” how the driver drives the Car, and that both my husband and I driving the Car exacerbated this issue, as it made it more difficult for the transmission to complete its “learning” period.

12. On September 18, 2012, only a few weeks after purchasing it, I brought the Car back to the Dealership due to the transmission problems described above. The Dealership performed a road test with the Car, and re-programmed the adaptive learning process for the transmission. Attached hereto as **Exhibit “B”** is the service invoice, dated September 18, 2012.
13. Despite the repairs, I continued to experience the transmission problems the same as I had before bringing the Car back to the Dealership.
14. In February of 2013, my husband, Daniel Schwartz, was driving the Car and was involved in an accident. A young driver had run a red light making a left turn through an intersection and side-swiped the front of the Car, causing significant damage. As such, Daniel was found to be not at fault for the accident. Luckily, no one was hurt. The Dealership performed the repairs related to this accident, but I do not believe they performed any work related to the transmission.
15. Over the next year, I continued to experience the transmission problems when driving the Car. When I brought the Car to the Dealership for servicing, I would describe the transmission problems to the service centre staff. At first, I attributed these problems to the “learning” period that had been described to me by the Dealership shortly after buying the Car; however, the transmission problems only worsened in frequency and severity over time.

16. On February 4, 2014, I brought the Car to the Dealership as the transmission problems had gotten worse over time. The Dealership performed a test that confirmed the transmission was shuddering, with a reading of 372 RPMs, as noted in the service invoice, attached hereto as **Exhibit "C"**. The Dealership also performed a road test. Following these tests, they reprogrammed the powertrain control module ("PCM") and the transmission control module ("TCM"), and re-tested the transmission, noting that the shuddering was still present. As such, they ordered and installed a replacement clutch, as indicated in the service invoice. As the repairs were performed under warranty, I was not charged. My Car had 25,906 kilometers on the odometer, as noted in the service invoice.
17. While the Car performed better after these repairs, the transmission problems did not go away completely, and within a few months were similar to where they had been prior to the repairs.
18. On June 17, 2014, I brought the Car back to the Dealership for regularly scheduled maintenance. I noted to the service centre staff that I was still experiencing transmission problems despite the prior repairs, including grinding noises and shuddering when accelerating from a stop. The Dealership inspected the Car and noted in the service invoice, dated June 17, 2014 that the transmission performance was within acceptable parameters, attached hereto as **Exhibit "D"**. They performed no repairs.
19. While the Dealership told me that the Car was within acceptable parameters, I still experienced the transmission problems. On September 30, 2014, I brought the Car back to the Dealership. I again explained to the service centre staff the transmission problems that I continued to experience. The Dealership tested the transmission and confirmed it

was shuddering. The Dealership replaced the clutch, as noted in the service invoice, dated October 21, 2014, attached hereto as **Exhibit "E"**. As the repairs were performed under warranty, I was not charged. As I had to leave my Car at the dealership, they provided me with a rental car. My Car had 37,665 kilometers on the odometer at this time, as noted on the service invoice.

20. As with the prior clutch replacement, the Car drove better at first. After about two months, I began to experience the transmission problems occasionally at first, but they worsened in both frequency and severity over time.
21. On February 3, 2015, I brought the Car back to the Dealership due to a problem with the climate control system and continued transmission problems. The Dealership inspected the Car and reprogrammed the PCM, as noted in the service invoice, attached hereto as **Exhibit "F"**. As the repairs were performed under warranty, I was not charged.
22. I did not notice an improvement to the transmission problems following this service visit.
23. On May 5, 2015, I brought the Car back to the Dealership as the transmission problems only worsened since the last repair. In particular, I was concerned about the Car lunging forward when trying to accelerate. The Dealership tested the transmission and once again replaced the clutch - for a third time, as noted in the service invoice, dated May 27, 2015, attached as **Exhibit "G"**. As the repairs were performed under warranty, I was not charged. I had to leave my Car with the Dealership, and they provided me with a rental car. As noted on my service invoice, there were 49,811 kilometers on the odometer at this time.

24. Once again, the Car drove better for about two months before I began to experience the transmission problems. Over time, they occurred more frequently, and similarly in severity as before the clutch replacement.
25. Around this time, I had contacted the Canadian Motor Vehicle Arbitration Plan (“CAMVAP”) hoping to initiate a case file to have Ford or the Dealership buy back the Car. CAMVAP informed us that we were not eligible for arbitration, and suggested we contact Ford Canada customer care.
26. On September 30, 2015, I contacted Ford Canada, and opened a formal complaint, assigned case number CAS-791042. I never received any offer of remedy; instead the Ford customer service agent recommended I bring the Car to the Dealership to repair any ongoing problems, citing the extension to certain components in the Dual Clutch Transmission. I asked whether I could contact Ford Canada directly next time I had an issue with the Car, as the transmission problems have been re-occurring, and the Ford customer service agent advised that the proper recourse would be to contact the Dealership, and they could help facilitate any repairs through the Dealership as necessary. In the end, neither of these two avenues provided any remedy.
27. On November 17, 2015, I brought the Car back to the Dealership as the transmission problems continued even after the third clutch replacement, including the shuddering during acceleration. The Dealership again replaced the clutch, as noted in the service invoice attached hereto as **Exhibit “H”**. The service invoice notes that the Car only had 60,419 kilometers on the odometer at the time the fourth replacement clutch was installed. As the repairs were performed under warranty, I was not charged.

28. When the Car began to experience issues following this repair, Daniel and I decided to stop bringing it back to the Dealership, as it was clear none of these repairs would permanently fix the transmission problems.
29. A year later, on November 14, 2016, I finally brought the Car back to the Dealership in response to a letter I had received about a Ford-initiated recall concerning the door latches. I asked the service technician to test the transmission as well. The Dealership confirmed shuddering in the transmission and ordered a new clutch, as noted in the service invoice attached hereto as **Exhibit "I"**. The service centre employee said it may take up to two months for the replacement parts to be received, as there is a shortage of parts.
30. On November 30, 2016, the Dealership called me to let me know that the replacement clutch was ready to be installed. I brought the Car to the Dealership on December 2, 2016, and they replaced the clutch for the fifth time. Attached as **Exhibit "J"** is the service invoice. As the repairs were performed under warranty, I was not charged. I was again provided with a rental car while they performed the repairs. As noted in the service invoice, the Car had only 83,458 kilometers on the odometer when they replaced the clutch for the fifth time.
31. As with prior repairs, the Car drove better for about two months following the clutch being replaced. In this February, 2017, I have begun to experience problems again, including harsh gear changes and shuddering when accelerating.

CURRENT SITUATION

32. My Car is not safe to drive due to the transmission problems described above. I do not feel safe when driving the Car because I do not feel in control of the Car when it lurches forward or hesitates to accelerate.
33. 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 worried about the lurching or lunging of the Car, as it poses a risk of hitting another car, object, or pedestrian.
34. I reluctantly still drive the Car because I have not been able to sell or trade it in at a price I can afford.
35. In September, 2015, my husband and I began corresponding through e-mail with the Dealership about trading in the Car. Attached hereto as **Exhibit “K”** are the email correspondence with Stephanie Ostiguy, the general manager at the Dealership.
36. On September 25, 2015, Ms. Ostiguy emailed a trade-in offer for a 2015 Ford Fiesta (which was also equipped with a Dual Clutch Transmission). The offer would have provided \$7,300 in trade-in allowance plus other discounts against a total purchase price of \$17,461 plus taxes for the 2015 Fiesta. The interest rate on monthly payments was listed at 4.390%. Also included with the email were sample forms from Ford Canada regarding warranty extensions for components of the Dual Clutch Transmission, as part of Ford Customer Satisfaction Programs “14M01” and “14M02”. Attached as **Exhibits “L” and “M”** are the trade-in offer and warranty extension sample letters, respectively.

37. Ultimately, I did not accept the offer, as it would have been too expensive, particularly with the offered interest rate. I also had reservations about buying another Ford Fiesta based on my issues with the Car.
38. As such, I try to avoid driving the Car for long periods of time and avoid using the Car other than getting to and from work and performing routine errands.

BREACH OF WARRANTY

39. 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. The Dealership has tried to fix the transmission problems on many occasions, including replacing the clutch five times, as noted above. Despite these attempts, the transmission problems 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.
40. Simply put, the Car is a lemon. I did not receive a Car that was fit for driving.

BREACH OF *CONSUMER PROTECTION ACT*, CQLR C P-40.1

41. When I began looking to buy a new car in August 2012, I only considered ones with automatic transmissions, for both the convenience in city driving and the comfort level with driving a vehicle with an automatic transmission. I had not driven a car with a manual transmission since I first learned how to drive, and am simply not comfortable driving one.

42. All of the Ford marketing material that I had seen when purchasing the Car indicated that the Ford Fiesta was available with either a manual transmission or an “automatic” PowerShift transmission. I believe the window sticker simply indicated that the Car had an automatic transmission.
43. 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.
44. 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.
45. Further, there was no mention in the Ford marketing materials of the transmission problems caused by the Dual Clutch Transmission.
46. As noted above, 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 problems, 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.

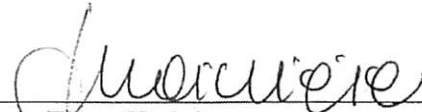
I AM PREPARED TO ACT AS A REPRESENTATIVE PLAINTIFF

48. As stated above, I have retained Charney Lawyers and have provided instructions to seek to have me appointed as a representative plaintiff on behalf of the Class.
49. I am motivated to act as a representative plaintiff because I want to ensure that the Class Members are compensated properly and that the defendants are held accountable for their conduct.
50. I hope that at the end of the litigation, I and each Class Member will ultimately be compensated for the harm we have suffered due to our ownership or leasing of the Class Vehicles.
51. I understand that, in agreeing to seek and accept an appointment by the court as a representative plaintiff, it is my responsibility, among other things, to:
 - a. assist my lawyers in making decisions in the litigation that are in the best interest of the class members;
 - b. to represent the class members as a whole and consider what is best for the class members;
 - c. become familiar with the issues to be decided by the court;
 - d. assist in the preparation and execution of this affidavit in support of the motion for certification;

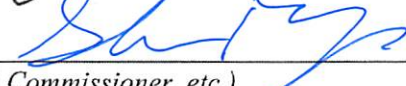
- e. attend with my lawyers for my cross-examination on this affidavit, discovery and testify at trial;
 - f. participate in mediation;
 - g. express, in some circumstances, my opinions on strategy to my lawyers; and,
 - h. to communicate with members of the Class, as required.
52. To date, the following are some of the steps I have taken to fairly and adequately represent the class members:
- a. retained and instructed lawyers from Charney Lawyers;
 - b. provided documents and other information to my lawyers;
 - c. reviewed and became familiar with the issues to be decided by the Court;
 - d. aided in drafting this affidavit; and,
 - e. spoken over the phone and met with my lawyers on several occasions.
53. I believe that I can fairly and adequately represent the interests of the Class, and I am committed to fulfilling my responsibilities if the court appoints me a representative plaintiff. I do not believe I have any conflict of interest with the other Class Members.
54. My lawyers have developed a plan for advancing the proceeding on behalf of the Class and of notifying Class Members of the proceeding (the "Litigation Plan"), which is attached as Exhibit "O" to the Affidavit of Rebecca Romeo. I have been advised by my lawyers that the plan is subject to review by the court.
55. I have knowledge of the facts in this affidavit. Where my knowledge is based on information obtained from others, I have so indicated and believe that information to be true.

56. 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 Saint-Hubert, in the Province of)
)
Quebec, via videoconference)
)
this 3rd day of April, 2017.)



Elyse Choiniere



(A Commissioner, etc.)

Glenn Brandy
LSUC #676850