

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 JO-LYNN BUTT (Sworn April 7, 2017)**

I, Jo-Lynn Butt, of the City of Conception Bay South, in the Province of Newfoundland and Labrador, make oath and say:

**BACKGROUND**

1. I live in Conception Bay South and work as a document control clerk with Newfoundland and Labrador Hydro.
2. I currently own a blue 2012 Ford Focus (the “Car”) which is equipped with a Dual Clutch Transmission.

3. I purchased the Car new from Avalon Ford Sales 1996 Limited, an authorized Ford dealer, in St. John's (the "Dealership"). Attached hereto as **Exhibit "A"** is a copy of the purchase agreement.
4. I paid around 35,047.98, inclusive of taxes, fees, and a service plan.
5. I test drove the Car when I bought it for about ten minutes. The sales associate brought the Car to my place of work, and we drove it a couple blocks around where my office is located. I did not drive it on the highway. The Car drove smoothly, and I did not experience any issues.
6. Included with my purchase was a new vehicle warranty.

#### **TRANSMISSION PROBLEMS**

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

10. 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.
11. At first, these transmission problems would occur sporadically, but over time increased in frequency.

#### **UNSUCCESSFUL STEPS TO FIX THE TRANSMISSION**

12. On July 30, 2012, I brought the Car to the Dealership for servicing. The Car had already begun to experience the transmission problems, described above, which I mentioned to the service centre staff at the Dealership. The Dealership reprogrammed the powertrain control module (“PCM”), transmission control module (“TCM”), and anti-lock brake system module (“ABS”), in response to a Ford Customer Satisfaction Program with the label “12B37”, as noted in my service invoice, attached hereto as **Exhibit “B”**. As the repairs were performed under warranty, I was not charged.
13. The Car drove more smoothly following the repair. After about one month, the transmission problems began to occur again, including the shuddering, hesitation when accelerating, and harsh or jerky gear changes.
14. On October 30, 2012, I brought the Car back to the Dealership due to continuing transmission problems. In particular, I noted to the service centre staff that there is hesitation when accelerating, and the Car will roll back when placed in park. The Dealership performed a road test, tested the transmission, and performed a “relearn” related to the transmission shifting gears. The service invoice notes that it will take several days for the car to “FULLYRELEARN SHIFT STRATEGY”. Attached hereto as

**Exhibit "C"** is the service invoice, dated November 19, 2012. As the repairs were performed under warranty, I was not charged.

15. Again, the Car drove more smoothly for about three weeks to a month, until the transmission problems began to re-occur. I experienced the problems occasionally at first, but they occurred more frequently and were more severe over time.
16. In November, 2012, I brought the Car back to the Dealership, as there was a rattling noise when the Car was accelerating, and it continued to experience the transmission problems described above. The transmission and oil lights also had lit up on the dashboard, making me concerned. The service centre staff found that there was a transmission fluid leak. They ordered and installed a new clutch and replaced the seals, as noted in the service invoice, attached hereto as **Exhibit "D"**. I had to leave the Car at the Dealership, and they provided me with a rental car. As the repairs were performed under warranty, I was not charged.
17. The Car drove better following these repairs, but still experienced transmission problems. After a few months, the problems were just as severe and frequent as before I had brought the Car in to be repaired.
18. On October 17, 2013, I brought the Car back to the Dealership. I described to the service centre staff the transmission problems that I continued to experience, including a grinding noise coming from the Car when accelerating and shuddering when driving at low speeds. The Dealership reprogrammed the PCM and TCM, and then tested the transmission. They found that no further repairs were needed. Attached hereto as **Exhibit**

- “E” is the service invoice. As the repairs were performed under warranty, I was not charged.
19. As with prior repairs, the Car drove more smoothly for a short period of time – about one month. Afterwards, the transmission problems began to occur again, including the shuddering and hesitation when accelerating.
  20. On July 23, 2014, I brought the Car back to the Dealership. I described to the service centre staff the transmission problems that I continued to experience, including hesitation when accelerating. The Dealership performed a road test, and determined that no repairs related to the transmission were necessary. Attached hereto as **Exhibit “F”** is the service invoice.
  21. I continued to experience transmission problems over the next year, but I did not bring the Car back to the Dealership to have the transmission inspected because the Dealership told me that if they did inspect my Car but did not find anything was wrong with the transmission, I would be charged a fee to have the Car inspected. As such, I was reluctant to bring the Car in despite the transmission problems.
  22. On July 6, 2015, I finally brought the Car back to the Dealership as the problems only worsened with the Car. The Dealership found that the clutch was contaminated from an oil leak, and that the clutch and seals would need to be replaced. As such, they ordered the replacement parts. Attached hereto as **Exhibit “G”** is the service invoice.
  23. Prior to getting my clutch replaced, I had received two letters from Ford Motor Company of Canada, Limited (“Ford Canada”). The first letter, dated March 31, 2015, informed me that Ford Canada would be extending the warranty on the TCM due to issues with its

circuit which could fail causing intermittent loss of transmission engagement, no-start, or lack of power. I received a second letter, dated August 31, 2015, informing me of Software Update Program 15B22, which would update the TCM software to monitor the TCM and provide a notification if the TCM is not operating properly. The letter stated that that I should contact my dealership to have the TCM software updated. Attached hereto as **Exhibit "H"** are the letters from Ford Canada, dated March 31, 2015 and August 31, 2015, respectively.

24. On September 22, 2015, I brought the Car back to the Dealership to get the replacement clutch and seals installed. The Dealership tested the transmission and found shuddering of 574 RPMs and 662 RPMS, as noted in the service invoice. The Dealership installed the new clutch and seals, and then reprogrammed the PCM and TCM. Attached hereto as **Exhibit "I"** is the service invoice. As the repairs were performed under warranty, I was not charged. I had to leave my Car at the Dealership while they performed these repairs, and the Dealership provided a rental car.
25. While at the Dealership getting the replacement clutch installed, the Dealership also performed the software update related to the Software Update Program 15B22, as noted in the service invoice.
26. The Car drove more smoothly for about one month following these repairs. Similar to prior repairs, I began to experience the occasional transmission problem, and they worsened and occurred more frequently over time.
27. On December 3, 2015, the Dealership provided me a rental car from Enterprise Rent-A-Car, as my Car was being serviced. The rental car was a Ford Focus, and I believe it was

a 2013 model. Attached hereto as **Exhibit "J"** is the invoice for the rental car, dated December 8, 2015.

28. On December 4, 2015, I was driving in the rental car when it broke down, I believe due to the same transmission problems that I was used to experiencing in my Car.
29. I had to call Enterprise Rent-A-Car roadside assistance, as I was left stranded in a parking lot. The agent I spoke with advised me that, as it was after hours, to leave the rental car in a parking lot – and that someone would come by and pick it up the next day. I had a friend pick me up, and I left the car as advised.
30. In December, 2015, I had called Ford Canada customer service. I described the transmission problems that I had been experiencing and the inability of the repairs to permanently fix the problem. Ford Canada never offered me any help.
31. Despite all of the above noted repairs and other visits to the Dealership, I continue to experience transmission problems. Doug Lester, the manager at the Dealership, explained to me that the transmission problems I was experiencing were quite common with other Ford Focus' equipped with the Dual Clutch Transmission. During one of my visits to the Dealership for repairs, I was also advised by a service centre staff that I might have to bring my Car back periodically for further repairs, which certainly has turned out to be the case.

#### **CURRENT SITUATION**

32. My Car is not safe to drive due to the transmission problems described above. I do not feel in control of the Car at all times, as the Car can unexpectedly lurch or fail to accelerate. The Ford Focus rental car also completely lost power.

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. While I do not believe the Car is safe to drive, I am reluctantly still driving it today because I cannot afford to buy another car. I do not believe the money I could generate from the sale of my Car would allow me replace it because the low resale value of my Car.
35. I have tried to sell my Car. On April 21, 2016, the Dealership provided a price quote on two potential new vehicles, a 2014 Ford Escape SE and a 2016 Ford F150 4X4 Supercrew. The Dealership was willing to give me \$8,937 in trade-in allowance for my Car. Attached hereto as **Exhibit "K"** is the price quote from the Dealership.
36. I did not accept this offer or subsequent ones from the Dealership because the trade-in value of the Car was over \$3,000 less than what I still owed on it. I was not comfortable to have to pay off my outstanding balance on the Car while also paying for the new car.

#### **BREACH OF WARRANTY**

37. 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 at least the five occasions noted above, and 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.

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

**BREACH OF *CONSUMER PROTECTION AND BUSINESS PRACTICES ACT*, SNL 2009,  
C-31.1**

39. When I began looking for a new car, I was only interested in vehicles with automatic transmissions, as I am not comfortable driving a Car with a manual transmission. I purchased the Car to both drive to and from work each day, but also to take my son to his youth hockey games, which take place all over the province. I wanted a car that was easy to drive and got good gas mileage.

40. 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.

41. 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.

42. When I purchased the Car, the Ford marketing materials 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.

43. Further, there was no mention in the Ford marketing materials of the transmission problems caused by the Dual Clutch Transmission.

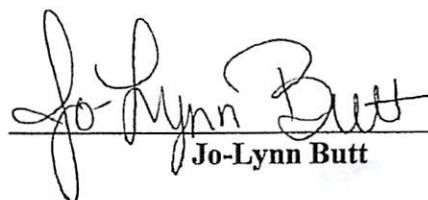
44. I would never have purchased a car with a manual transmission. If I had known that the Dual Clutch transmission would not operate similar to traditional automatic transmissions and would cause the transmission issues, I would not have purchased the Car.


45. Assuming the transmission problems I have described are 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.

46. I am the owner of a 2012 Ford Focus, a prospective Class Vehicle, and as such have personal 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.

47. I swear this affidavit in support of the motion for certification of this action as a class action, for the consolidation of several actions, and for no other or improper purpose.

SWORN BEFORE ME at the )  
 )  
City of Conception Bay South, in the )  
 )  
Province of Newfoundland and Labrador, )  
 )  
via videoconference this 7<sup>th</sup> day of )  
April, 2017 )

  
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Jo-Lynn Butt

  
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(A Commissioner, etc.)  
Glenn Brandy  
LSUC #676850