

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 JOYCE GERVAIS (Sworn March 30, 2017)

I, Joyce Gervais, of the City of Winnipeg, in the Province of Manitoba, make oath and say:

BACKGROUND

1. I am 73 years old and live in Winnipeg, Manitoba.
2. On June 26, 2012, I purchased a Silver 2012 Ford Focus SE (the “Car”) from Mid-Town Ford Sales Limited, an authorized Ford dealer in Winnipeg (the “Dealership”). Attached hereto as **Exhibit “A”** is the purchase agreement.
3. I paid \$22,312.09, inclusive of taxes and fees.
4. Included with my purchase was a new vehicle warranty.

TRANSMISSION PROBLEMS

5. Within one month after purchasing the Car, I began to experience transmission problems when driving it. The Car was driving poorly for being new. I could experience when the Car shifted gears because it had a jerking sensation accompanied by a noticeable grinding noise. The engine's RPMs would erratically increase and decrease, seemingly based on the engagement of certain features like the air conditioning power or skid control.
6. 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.
7. The Car would shudder when accelerating, which means that the Car would noticeably vibrate or shake.
8. I also experienced a lack of performance when driving up inclines, as 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.
9. The transmission issues occurred infrequently at first, but increased in frequency over time.

ACCIDENT

10. On July 23, 2012, less than a month after purchasing the Car, I was in an accident.

11. I had pulled into the parking lot of the Riverview Health Centre in Winnipeg. I had slowed down to pull into a parking spot.
12. While entering the parking spot, the Car suddenly lurched forward while my foot was depressing the brake pedal.
13. The Car went over the curb in front of the parking spot and struck an electrical box before finally coming to a complete stop. I had to pull the steering wheel very hard to my left in order to make the Car completely stop.
14. There was only minor damage to my Car, and luckily no one was hurt.
15. I was able to park the Car, and later drove it home.
16. I believe that the accident was caused by the transmission issues described above.
17. I brought the Car to the Dealership for repairs, which totaled \$1,562.25.
18. My insurer, the Manitoba Public Insurance Company wrote me on September 15, 2012, to note that because I had been assessed 50 percent or more responsible for the accident, my Driver Safety Rating would be affected as well as my insurance policies. Attached hereto as **Exhibit "B"** is the letter from the Manitoba Public Insurance Company, dated September 15, 2012.
19. In April, I received a letter from Ford Motor Company of Canada, Limited ("Ford Canada"), which informed me that the warranty for the transmission control module ("TCM), a component of the Dual Clutch Transmission, was being extended because the TCM "may experience electrical circuit failures causing intermittent symptoms of loss of

transmission engagement while driving, no-start, or a lack of power.” Attached hereto as **Exhibit “C”** is the letter from Ford Canada, dated March 31, 2015.

20. After receiving this letter, I decided to write to my insurer as Ford Canada was recognizing that there were defective parts in the transmission of my Car, which I had always thought was responsible for my accident. I enclosed a copy of the letter and explained that I have had been experiencing the transmission problems, including where the Car has lurched forward as it had done when causing the accident. Attached hereto as **Exhibit “D”** is the letter to Manitoba Public Insurance, dated April 9, 2015.
21. My insurer asked me to provide a written statement regarding the circumstances of my accident. On April 27, 2015, I sent them a written statement in which I described the accident, and why I believe the defects in the Dual Clutch Transmission were responsible for the accident. Attached hereto as **Exhibit “E”** is the personal statement, dated April 27, 2015.
22. On July 3, 2015, I received a notice from my insurer informing me that they had reassessed my Driver Safety Rating and were crediting my account to reverse increases to my premium based on the accident. Attached hereto as **Exhibit “F”** is the notice from Manitoba Public Insurance, dated July 3, 2015.
23. On November 30, 2015, my insurer wrote a letter to Ford Canada and copied me on the correspondence. The letter requested that Ford Canada pay my deductible from the accident as the circumstances of the accident were consistent with the transmission defects described in the letter they had sent me on March 31, 2015:

Our insured has presented us with a claim for damages which occurred when her vehicle suddenly lurched forward, striking a curb and post. (See enclosed)

The incident is consistent with the circumstances outlined in the Ford Customer Satisfaction Program 14M02.

I have enclosed a copy of the final repairs to the vehicle which were completed at Mid Town Ford in Winnipeg in the amount of \$1562.25. The amount includes our insured's \$500.00 deductible which they were required to pay as part of the claim.

We are requesting Ford Motor Company of Canada Ltd. Resolve this issue directly with our insured.

Payment of our insured's \$500.00 deductible can be made payable to:

Joyce Gervais...

Attached hereto as **Exhibit "G"** is the letter from Manitoba Public Insurance to Ford Canada, dated November 30, 2015.

24. Ford Canada did not pay my deductible despite receiving the letter from my insurer. On January 13, 2016, I wrote to Ford Canada to ask whether or not they would fulfill the request from my insurer to pay the deductible. Attached hereto as **Exhibit "H"** is the letter to Ford Canada, dated January 13, 2016.
25. On January 29, 2016, I received a letter from a representative of Ford Customer Relations Centre informing me that I need to write instead to the Product Liability Department. Attached hereto as **Exhibit "I"** is the letter from Amy Raszpovits of Ford Canada Customer Relations Department, dated January 29, 2016.
26. On February 5, 2016, I wrote to Ford Canada's Product Liability Department, attaching my initial letter regarding the payment of my deductible. Attached hereto as **Exhibit "J"** is the letter to Ford Canada Product Liability Department, dated February 5, 2016.

27. On February 29, 2016, I received a letter from Gilles Barriere, a Product Liability specialist with Ford Canada. The letter informed me that Ford Canada would not be paying my insurance deductible and denied that my accident was related to the transmission issues noted in the letter they had sent me. Attached hereto as **Exhibit "K"** is the letter from Gilles Barriere, dated February 29, 2016,
28. To date, Ford Canada has not paid my deductible despite my insurer requesting that they do so.

UNSUCCESSFUL STEPS TAKEN TO ATTEMPT TO FIX THE TRANSMISSION

29. Following the accident, my Car continued to experience the transmission problems. On August 14, 2012, I brought the Car to the Dealership due to the motor having high r.p.m.'s while still idling. The Dealership tested the Car but could not identify any problem, as noted in the service invoice, dated August 15, 2012.
30. Over the next couple years, I continued to drive the Car and bring it to the Dealership for occasional servicing. The transmission problems had not gone away, but the Dealership would dismiss my complaints as being part of the normal operation of the Car.
31. On May 4, 2015, I brought the Car to the Dealership and described the continued transmission problems, including the Car lurching forward as it had done when I was in the accident, and shuddering when accelerating. On this occasion, the Dealership inspected my Car, including performing a test to determine if the transmission is shuddering. The Dealership reprogrammed the PCM. They found that the "clutch rpm variant is under 250 rpm and is within normal operating parameters", and as such

performed no further repairs, as noted in the service invoice, attached hereto as **Exhibit “L”**. The work was performed under warranty, and as such I was not charged.

32. I did not notice any performance improvement in the Car following these repairs, and I continued to experience the transmission problems.
33. In September, 2015, I received a letter from Ford Canada informing me that I should bring my Car to my dealership to do “Software Update Program 15B22”, related to the TCM. Attached hereto as **Exhibit “M”** is the letter from Ford Canada, dated August 31, 2015.
34. In response to this letter, I brought the Car to the Dealership on December 22, 2015. The Dealership reprogrammed the TCM, as noted in the service invoice, attached hereto as **Exhibit “N”**. The work was performed under warranty, and as such I was not charged. My Car only had 15,321 kilometers on the odometer at this time, as also noted on the service invoice.
35. My Car drove more smoothly following the repairs. After about two months, I began to experience the transmission problems, including the shuddering, lurching forward, or hesitation when accelerating. While I continue to bring my Car in for servicing, the Dealership has not done any further repairs on my transmission. The Car still has only been driven less than 20,000 kilometers as of the swearing of this affidavit.

CURRENT SITUATION

36. 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 due to the shuddering, hesitation when accelerating, and lurching forward of the Car.

37. In fact, as described above, I had been in an accident due to these issues. Luckily no one was hurt in the accident.
38. I rarely drive my Car, even for short distances. I have also given up delivering meals for Meals on Wheels because I do not feel safe driving the Car.
39. I do not believe the money I could generate from the sale of my Car would allow me to replace it because of the low resale value of my Car. I have seen a very large number of complaints online about the transmission issues with the Ford Focus models equipped with the Dual Clutch Transmission, and as such I do not believe anyone would be willing to pay much for the Car.

BREACH OF WARRANTY

40. 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 issues, discussed above, which pose very real safety issues. The Dealership has tried to fix the transmission problems, and 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.
41. Simply put, the Car is a lemon. I did not receive a Car that was fit for driving.

BREACH OF *BUSINESS PRACTICES ACT*, C.C.S.M. C. B120

42. When I began looking to purchase a new car in 2012, I only considered purchasing a car with an automatic transmission. While I no longer work, I was looking for a new car to

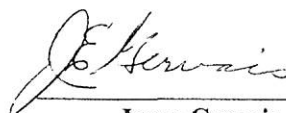
drive for daily errands, including my volunteering activities – I had been delivering meals for the Meals on Wheels charity.

43. I did not consider purchasing a car with a manual transmission, as I am more comfortable driving a car with an automatic transmission, particularly in the city.
44. 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. The Ford window sticker on the Car denotes that it has a 6-speed automatic transmission: “6-SPD AUTO TRANSMISSION”. Attached as **Exhibit “O”** is a copy of the window sticker.
45. The Dealership had given me a Ford brochure for the 2012 Ford Focus, attached hereto as **Exhibit “P”**. In the brochure, it refers to the transmission as an automatic transmission:
 - a) on page 8, in a footnote regarding fuel economy, it refers to the transmission as a “6-speed automatic with SFE Package”;
 - b) on page 9, it states “With the available PowerShift 6-speed transmission in Focus, you get the performance of a manual. From an automatic. It delivers seamless gear changes for amazing responsiveness...” and
 - c) on page 13 and 14, in the bullet points for each of the four models (S, SE, SEL, and Titanium), The word PowerShift is always followed by “6-speed automatic transmission”.
46. I therefore chose to purchase the Car in part because I believed it to be an automatic transmission vehicle.

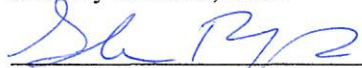
47. Consequently, I also believed that the “PowerShift” name was merely Ford branding, and that the Car’s Dual Clutch Transmission was a regular automatic transmission which would shift the gears of the Car in a manner similar to that of other vehicles equipped with regular automatic transmissions.
48. Further, there was no mention in the Ford marketing materials of the transmission problems caused by the Dual Clutch Transmission.
49. 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.
50. 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.
51. 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.

52. 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 Winnipeg, in the Province of)
)
Manitoba, via videoconference)
)
this ^{30th} day of March, 2017.)



Joyce Gervais



(A Commissioner, etc.)

Glen Brandys
LSUC # 676850