

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 DIANE BÉLAND (Sworn March 31, 2017)

I, Diane Béland, of the City of Laval, 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 51 years old and live in Laval, Quebec. I am employed as a graphic designer with BG Beauté, a beauty supply store headquartered in Terrebonne, Quebec.
3. I am married and live with my husband and his two children.

4. I currently own a red 2012 Ford Focus SE sedan (the "Car"), which is equipped with a Dual Clutch Transmission.
5. I purchased the Car brand new on December 30, 2011, from Les Ventes Ford Brunelle Ltée ("Brunelle Ford"), an authorized Ford dealership in Saint-Eustache, Quebec. Attached as **Exhibit "A"** is a copy of my purchase agreement.
6. I paid \$23,254.84 for the Car, inclusive of taxes, which I financed through Ford Credit. Attached as **Exhibit "B"** is the Ford Credit agreement, dated January 10, 2012.
7. I did not test drive the Car because I had owned two Ford Focus' prior to purchasing this Car and believed that this Car would perform in line with my two prior Ford Focus'.
8. Included with my purchase was a new vehicle warranty.

TRANSMISSION PROBLEMS

9. I began to experience problems with my Car about two months after purchasing it. 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.
10. The Car would shudder when accelerating, which means that the Car would noticeably vibrate or shake.
11. 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.

12. 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.
13. At first, these transmission problems would occur sporadically, but over time increased in frequency.
14. Approximately two to four months after buying the Car, I called Brunelle Ford to ask about the problems I was experiencing. I spoke with a service representative, Lynda Gauthier, and told her about experiencing the lurching forward, hesitation and shuddering when accelerating, as well as the jerking gear shifts and problems when on inclines. When I raised the possibility that the Dual Clutch Transmission was defective, she said that the problems I had described were “normal” and to be expected. I was also informed that Brunelle Ford would inspect my Car the next time I was scheduled for a regular service, such as an oil change or rotating the tires.

UNSUCCESSFUL ATTEMPTS TO FIX THE TRANSMISSION

15. In a letter dated May 23, 2012, Ford Motor Company of Canada, Limited (“Ford Canada”), notified me of a Ford Customer Satisfaction Program “12B37” related to transmission components, attached as **Exhibit “C”**. The letter states, in part:

“What is the issue?”

You may experience rough or jerky automatic transmission shifts. In addition, the vehicle may experience roll back when the driver is transitioning from the brake pedal to the accelerator pedal while on a slight incline. Ford has developed calibration improvements to the Powertrain

Control Module, Transmission Control Module, and the Anti-Lock Brake module to address these concerns.

What will Ford and your dealer do?

In the interest of customer satisfaction, Ford has authorized your dealer to reprogram the Powertrain Control Module, Transmission Control Module, and the Anti-Lock Brake System module free of charge (parts and labour) under the terms of this program...”

16. In response to this letter, I brought the car into the dealership on June 21, 2012. I was advised by the service centre staff that they reprogrammed the powertrain control module (“PCM”), transmission control module (“TCM”), and the anti-lock brake module (“ABM”), as per the Ford Customer Service Program. On the corresponding service invoice, it states “EFFECTUER RAPPEL 12B37” and notes that these repairs were performed under warranty at no charge. Attached as **Exhibit “D”** is the service invoice, dated June 29, 2012. While my Car was at the dealership, they provided me with a rental to car to drive at no cost.
17. After the June 21, 2012 repairs, I was hopeful that the transmission problems were over. So far it had been a nightmare. I could not believe that a brand new car could have these kinds of problems and was very disappointed.
18. After the repairs I began to feel better. The Car was driving more smoothly. Unfortunately the improvements only lasted for a month or two. Over several weeks, I began to experience the same problems, with hesitation or lurching forward when accelerating, shuddering, jerky gear shifts, and struggles when driving on inclines, and over the next couple months they progressively became worse and more frequent.

19. The problems became so severe that by the fall of 2013, I decided I better bring the Car back to the Dealership. In November, 2013, I returned to Brunelle Ford and informed the service department of the ongoing problems I was experiencing. The service department worked on my Car and informed me that they performed a road test and once again the TCM and PCM were reprogrammed, similar to the repairs which had previously been done on June 21, 2012. On the service invoice, dated November 29, 2013, it notes in French “REPROGRAMMER PCM TCM ET FAITE ROAD TEST ADAPTAT IF” (which, in English, means “reprogrammed PCM and TCM, and performed road test”), attached as **Exhibit “E”**. The work was done under warranty, and as such I was not charged. While my Car was at the dealership, they provided me with a rental to car to drive at no cost.
20. Similar to the earlier repair, the Car drove more smoothly at first, but after a month or two, the transmission issues were re-occurring with the severity they had before I brought the Car in to the dealership. I was upset, as it was clear my Car was a lemon but I kept driving it because it seemed to me that Brunelle Ford was unable to permanently repair it.
21. However, in September, 2014, I once again brought the Car to Brunelle Ford after the jerking and lurching had increased in severity and frequency back to the point where I had the feeling the engine could stall anytime I was stopped at a traffic light. The service centre tested the transmission, and found a shudder reading of 464 rpms. They also performed a road test, which confirmed the transmission issues, and consequently ordered a new clutch as noted in the service invoice, dated November 26, 2014, attached as **Exhibit “F”**. The work was performed under warranty, and as such I was not charged.

22. It took over three months for the new clutch to arrive at the dealership. While my Car was at the dealership awaiting the replacement clutch, they provided me with a rental to car to drive at no cost. In January, 2015, I returned to Brunelle Ford, as the replacement clutch had been installed, as noted in an invoice dated January 14, 2015, attached hereto as **Exhibit "G"**. The work was done under warranty, and as such I was not charged.
23. Once again the Car drove more smoothly for two months or so, but (as with the previous repairs), the transmission issues returned and began to increase in frequency and severity over time. By this point in Spring 2015, I had owned the Car for a little over 3 years and concluded that the transmission could not be permanently fixed; however, I continued to own and drive the Car for reasons discussed under the heading Current Situation, below.
24. I received a letter from Ford Canada, dated August 31, 2015, regarding Software Update Program 15B22, attached as **Exhibit "H"**. The letter stated that I should bring my Car to my dealership to have the software updated for the TCM component of the Dual Clutch Transmission, as my Car could experience "intermittent symptoms of loss of transmission engagement while driving, no-start, or a lack of power".
25. On September 11, 2015, I brought my Car to Brunelle Ford in response to this letter. The service invoice, dated September 18, 2015, notes that they performed the software update per Ford Software Update Program 15B22, attached as **Exhibit "I"**. This work was done under warranty, and as such I was not charged. While my Car was at the dealership, they provided me with a rental to car to drive at no cost.
26. I did not notice any significant improvement following the software update.

27. On June 11, 2016, having become very frustrated with the failure of the dealership to permanently fix my Car, I submitted a customer complaint through an online form on Ford Canada's website. In the complaint form, I described the transmission issues with my Car and the failure of Brunelle Ford to repair it.
28. I have never received a response from Ford Canada, other than the automated response acknowledging submission of my complaint, attached hereto as **Exhibit "J"**.
29. On July 22, 2016, I was on my way to my mother's birthday dinner when the Car stalled on Highway 15 Southbound in Montreal. I was driving at approximately 80 km/hour, keeping pace with traffic, when the Car lost power, but I was able to pull over to the side of the highway. I was very concerned and scared, as I was on the highway with no control of the Car and traffic was driving quickly by me. I turned on the hazard lights and tried to pull over as far to the side of the road as I could with a car with no power to the engine. I called Ford Assistance, and they arranged for a tow truck approximately thirty minutes after I placed the call. I was towed to what I believe was the nearest Ford dealership, Gabriel Ford in Montreal. I believe Gabriel Ford installed a new TCM and PCM as noted in the service invoice, dated July 22, 2016, attached as **Exhibit "K"**.
30. The Car drove better for a couple months. By November, 2016, I began to feel the jerky gear shift, shuddering and hesitation when trying to accelerate. I also began hearing the grinding noise when the Car shifts during acceleration, such as from gear one up to gear two.

CURRENT SITUATION

31. 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, fail to accelerate, and even lose propulsion.
32. 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.
33. My biggest safety concern is that the transmission will fail completely and the Car will fully lose propulsion again on the highway. The first time this happened, described above, was extremely scary, with other cars driving by so quickly on the highway.
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 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

35. 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 six 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.

36. 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

37. When I began looking for a new car toward the end of 2011, 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.

38. 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 in French that it has a 6-speed automatic transmission: “BOITE AUTOMATIQUE 6 VITESSE”. I therefore chose to purchase the Car in part because I believed it to be an automatic transmission vehicle. Attached as **Exhibit “L”** 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.

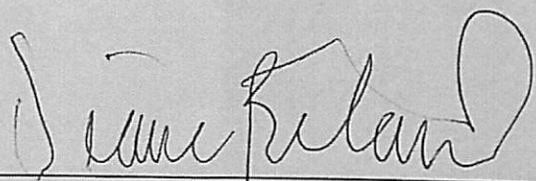
I AM PREPARED TO ACT AS A REPRESENTATIVE PLAINTIFF

44. 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.
45. 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.
46. 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.

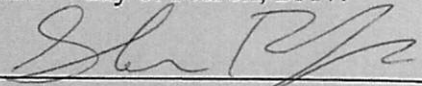
47. I understand that, in agreeing to seek and accept an appointment by the court as a representative plaintiff, it is my responsibility, among other things, to:
- a) assist my lawyers in making decisions in the litigation that are in the best interest of the class members;
 - b) to represent the class 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.
48. 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.

- 49. 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.
- 50. 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.
- 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 Laval, in the Province of)
)
 Quebec, via videoconference)
)
 this ^{31st} day of March, 2017.)



Diane Béland



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