

**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*

NOTICE OF MOTION FOR CERTIFICATION

THE PLAINTIFFS will make a motion to the Honourable Justice Belobaba, on November 14-15, 2017 at 10:00 a.m. at Osgoode Hall, 130 Queen St. W., Toronto, Ontario.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR ORDERS:

1. Certifying this action as a class proceeding;

2. Defining the “Class” as collectively:
 - a) All persons in Canada who purchased or leased Ford Fiesta motor vehicles for the model years 2011 to date and ongoing and all persons in Canada who purchased or leased Ford Focus motor vehicles for the model years 2012 to date and ongoing manufactured by **Ford** and/or **Ford Canada**, with a **Dual Clutch Transmission**;
3. Appointing Rebecca Romeo, Joseph Romeo, Diane Béland, Elyse Choiniere, Linda Goodman, and Tracy Corsi as representative plaintiffs of the Class;
4. Stating that the nature of the claims asserted on behalf of the Class to be breach of warranty, negligence, breach of statute, unjust enrichment, and waiver of tort;
5. Stating the relief sought by the Class is as set out in paragraph 2 of the statement of claim;
6. Stating the common issues to be the following list of common issues, with terms as defined in the Fresh as Amended Statement of Claim:

Breach of New Vehicle Limited Warranty

- (1) Did Ford Motor Company of Canada, Limited (“Ford Canada”) enter into a New Vehicle Limited Warranty agreement with the Class Members who purchased and/or leased Class Vehicles within the warranty period (“Warranty”)?
- (2) Did the “Warranty” contain any express or implied warranty or condition as to the merchantability or fitness of the Class Vehicles?

- (3) Did the Warranty include an express warranty whereby Ford Canada warranted that its dealers would repair, replace, or adjust those parts on the Class Vehicles found to be defective in materials or workmanship?
- (4) If the answer to common issue 3 is Yes, is the dual clutch transmission defective? If so, how?
- (5) If the answer to common issues 3 and 4 is Yes, has Ford Canada breached the terms of the Warranty requiring Ford Canada to warrant that its dealers will repair, replace, or adjust defects in the Dual Clutch Transmission?
- (6) Are the defects in the Dual Clutch Transmission capable of being repaired within the meaning of the Warranty?

Negligence

- (7) Did the defendants owe the Class Members a duty of care to design, manufacture, and distribute Class Vehicles that were free of defects in the design, manufacture or functioning of the Class Vehicles that affects or is likely to affect the safety of any persons?
- (8) If so, did the defendants breach the standard of care reasonably expected of them in the circumstances? If so, how?
- (9) If the answer to common issue 4 is Yes, did the defendants owe the Class Members a duty to warn about defects in the Dual Clutch Transmission or any defect in the design, manufacture or functioning of the Class Vehicles caused by the Dual Clutch Transmission? If so, when?

Applicable Consumer Protection Legislation claims

- (10) Did the defendants make, approve, and/or authorize Representations that constituted an unfair practice under the *Consumer Protection Act*, 2002, S.O. 2002, c.30 (“*Consumer Protection Act*”), and counterpart provisions in the other Applicable Consumer Protection Legislation?
- (11) If the answer to common issue 10 is Yes, what are the Representations and how were they conveyed to Class Members?
- (12) If the answer to common issue 10 is Yes, then are the Class Members entitled to rescission of the purchase agreements and any other remedy available at law for rescission, including damages?
- (13) If the answer to common issue 12 is No, then are Class Members entitled to recover the amount by which the Class Members overpaid for the Class Vehicles or damages, or both?
- (14) Did the defendants make, approve, and/or authorize Representations that constituted an unconscionable representation under the *Consumer Protection Act* and counterpart provisions in the other Applicable Consumer Protection Legislation?
- (15) If the answer to common issue 14 is Yes, what are the Representations and how were they conveyed to Class Members?
- (16) If the answer to common issue 14 is Yes, then are the Class Members entitled to rescission of the purchase agreements and any other remedy available at law for rescission, including damages?

- (17) If the answer to common issue 16 is No, then are Class Members entitled to recover the amount by which the Class Members overpaid for the Class Vehicles or damages, or both?
- (18) Were the Representations made on or before the Class Members entered into agreements to purchase and/or lease the Class Vehicles?
- (19) Are the Class Members entitled, to the extent necessary, a waiver of any notice requirements under the *Consumer Protection Act* and any counterpart provisions in the other Applicable Consumer Protection Legislation?

Waiver of Tort

- (20) Are any or all of the defendants liable to the Class Members in waiver of tort?

Unjust Enrichment

- (21) Were the defendants unjustly enriched by the payment or overpayment by the Class Members for the Class Vehicles?
- (22) Did the Class Members suffer a deprivation corresponding to the defendants' enrichment?
- (23) Was there no juristic reason for the defendants' enrichment and the Class Members' corresponding deprivation?
- (24) If the answer to common issues 21, 22, and 23 are Yes, then are the Class Members entitled to restitution for the defendants' unjust enrichment?

Quebec Class claims

- (25) For the Quebec Class Members, did the defendants warrant pursuant to Article 1726, and as applicable to manufacturers pursuant to Article 1730, of the *Civil Code of Quebec*, C.Q.L.R. c C-1991 (*Civil Code of Quebec*), either impliedly or expressly, that the Class Vehicles were free of latent defects which render them unfit for the use for which they were intended or which diminished their usefulness at the time of sale?
- (26) If so, did the defendants' sale or lease of the Class Vehicles breach this implied or express warranty?
- (27) Are the defendants civilly liable to the Quebec Class Members pursuant to provisions 1457-1469 of the *Civil Code of Quebec*.

Damages

- (28) Is this an appropriate case for any or all of the defendants to disgorge profits?
- (29) Are the defendants liable to pay punitive damages having regard to the nature of the established breaches?
- (30) Can any or all of the claims be assessed on an aggregate basis?
- (31) Should the defendants pay prejudgment and postjudgment interest, and at what annual interest rate?
- (32) Should the defendants pay the cost of administering and distributing any monetary judgment and/or the costs of determining eligibility and/or the individual issues? If Yes, who should pay what costs, why, and in what amount?

7. Approving the form and content of the notice to be published and the manner of publication to notify the Class that this action has been certified as a class proceeding;
8. Requiring the defendants to identify the size of the Class, the names and last known residential home addresses for all of the Class Members;
9. Specifying that:
 - (1) a Class Member may opt out of this proceeding by sending a written election by email or regular mail before a date fixed by the court to a person designated by the court;
 - (2) no Class Member may opt out of this proceeding after the fixed date; and
 - (3) by a fixed date, the person appointed by the court shall report to the court the names of the persons who have opted out of this class proceeding;
10. Requiring the defendants to forthwith pay the costs of the notice program and the costs of the person appointed by the court to accept the elections to opt out;
11. Awarding costs of this motion to the plaintiffs on a partial indemnity basis, including any applicable taxes;
12. Such further and other relief and directions as counsel may request and this Honourable Court permit.

THE GROUNDS FOR THE MOTION ARE:

1. Rebecca Romeo, Joseph Romeo, Diane Béland, Elyse Choiniere, Linda Goodman, and Tracy Corsi are willing and able to act as representative plaintiffs in this action;
2. The claims made in this action raise common questions of law and fact and arise out of the same series of events;
3. The court should certify this action as a class proceeding because the section 5(1) criteria of the *Class Proceedings Act, 1992*, are met;
4. The notice program for the certification of this action is a reasonable method of notifying members of the putative Class;
5. It is fair, just, and reasonable that the defendants should pay the costs of the notice program for the certification of this action and the costs associated with collecting the opt outs and reporting to the court;
6. The directions as to the conduct of the class proceeding are sought to ensure a fair and expeditious determination of this action;
7. The *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, including sections 1, 2, 5, 6, 8(1), 9, 12, 13, 17, 19, 20, 21, 22, 34(1) and 35;

8. The *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended, including Rules 1, 2, 6, 12, 20, 26, and 57; and,
9. Such further and other grounds as counsel may advise and this Honourable Court permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the pleadings herein;
2. the affidavit of Rebecca Romeo, sworn March 30, 2017;
3. the affidavit of Joseph Romeo, sworn March 30, 2017;
4. the affidavit of Diane Béland, sworn March 31, 2017;
5. the affidavit of Elyse Choiniere, sworn April 3, 2017;
6. the affidavit of Linda Goodman, sworn April 3, 2017;
7. the affidavit of Tracy Corsi, sworn March 29, 2017;
8. the affidavit of Rosemarie Ferguson, sworn April 6, 2017;
9. the affidavit of Lee A. Dowdell, sworn April 6, 2017;
10. the affidavit of George Brazeau, sworn March 31, 2017;
11. the affidavit of Joyce Gervais, sworn March 30, 2017;
12. the affidavit of Jo-Lynn Butt, sworn April 7, 2017;
13. the affidavit of Bruce Lamb, sworn March 28, 2017;
14. the affidavit of Elizabeth Magee, sworn April 7, 2017;
15. the Roar Engineering Report, dated November 29, 2016;

16. the Roar Engineering Addendum Letter, dated April 7, 2017;
17. the Bigelow Accident Reconstruction Inc. Report, dated March 31, 2017;
18. the affidavit of Edward M. Stockton, sworn April 7, 2017;
19. the Berkeley Research Group Report;
20. the affidavit of Glenn Brandys, sworn April 13, 2017; and
21. Such further and other evidence as counsel may advise and this Honourable Court permits.

April 13, 2017

CHARNEY LAWYERS PC
151 Bloor St. West, Suite 890
Toronto ON M5S 1P7

Theodore P. Charney
LSUC #26853E

Tel: 416.964.7950

Fax: 416.964.7416

Lawyers for the Plaintiffs

TO: Blake, Cassels & Graydon LLP

199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Hugh M. DesBrisay

Tele: 416.863.2426

Fax: 416.863.2653

Lawyers for the Defendants

ROMEO et al.

-and- FORD MOTOR COMPANY et al.

Plaintiffs

Defendants

Court File No.: CV-15-539855-00CP

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Proceedings commenced in TORONTO

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CHARNEY LAWYERS

151 Bloor St. West, Suite 602
Toronto, Ontario, M5S 1S4

Theodore P. Charney LSUC# 26853 E

Tel: (416) 964-7950

Fax: (416) 964-7416

Lawyers for the Plaintiffs