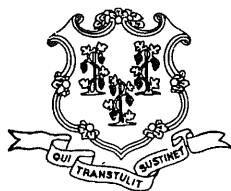


In the matter of arbitration entitled:

Bisson vs. Ford Motor Company

Case Number: 2016-2419



**STATE OF CONNECTICUT
DEPARTMENT OF CONSUMER PROTECTION
Automobile Dispute Settlement Program**



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrator, Jerry P. Padula, Esq., having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decides the following in regard to the above captioned matter:

I. FINDINGS OF FACT

Marie Bisson (the "Consumer") purchased a **2017 Ford Fusion** (the "Vehicle") from **Hoffman Ford Lincoln** located at **600 Connecticut Boulevard** in **East Hartford, Connecticut, 06108** (the "Dealer"). The Consumer took delivery of this Vehicle on **September 15, 2016**. The registration is "passenger," "combination," or "motorcycle," as defined in section 14-1 of the Connecticut General Statutes.

After reviewing the allegations, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The manufacturer of the subject Vehicle, Ford Motor Company (the "Manufacturer"), did not contest the initial eligibility of the Vehicle in this case. Said hearing was held on **Tuesday, January 31, 2017**, during which Curtis Berglund, Esq. represented the Manufacturer and Mr. Tim Clark served as the State's Technical Expert.

II. VEHICLE COMPLAINT & ELIGIBILITY

The Consumer's Request for Arbitration set forth a complaint that she had found the Vehicle to have no electrical power on three occasions. This condition prevented the Consumer from being able to open the doors with the remote key-fob, and required a jump-start by roadside assistance in order to move the Vehicle. All three episodes occurred within the first six weeks and first four hundred fifty miles of ownership.

As a result of the complaint, the Consumer made three visits to the Dealer for diagnosis, testing, and repair. In her Request for Arbitration, the Consumer set forth her claims for a loss of use and a loss of safety. The Vehicle concern met the statutory presumption for eligibility for a safety-related issue, as it was subject to three repair attempts during the first year of ownership. Eligibility for a loss of use is also set forth due to the reasonable number of repair attempts within the very short time period. A listing of the visits to the Dealer for this complaint follows below:

<u>Repair Date</u>	<u>Miles</u>	<u>Complaint</u>
09-26-2016	265	Vehicle found with no electrical power; power door locks inoperable.
10-10-2016	406	Vehicle found with no electrical power; power door locks inoperable.
10-26-2016	431	Vehicle found with no electrical power; power door locks inoperable.

Given the facts presented, the Consumer's concern that a defect existed was reasonable. This is indicated by the three roadside assistance visits and the documented Dealer efforts to repair the problem of no electrical power. I note that the Manufacturer did not contest the initial eligibility of the Vehicle in this case. The Consumer was therefore found to have met the eligibility requirements of the statute in order to initiate an arbitration hearing in accordance with Chapter 743b of the Connecticut General Statutes for both a loss of use of the Vehicle and for a safety-related concern.

III. DECISION

The arbitrator **finds adversely to the Consumer** and orders that **no action** be taken by the Manufacturer.

IV. REASONING

The documents in the record and the testimony presented at the arbitration hearing do not indicate a violation of Connecticut General Statutes Chapter 743b. In analyzing the facts in this matter, this arbitrator carefully reviewed and considered the Consumer's Request for Arbitration, the Manufacturer's Statement, the written repair records, the State Technical Expert's comments, and the oral testimony and closing statements that the parties provided at the hearing. The Consumer represented herself at the hearing, accompanied by a witness, Ms. Jean Zito.

The record revealed that the Consumer experienced three episodes whereby she walked to the Vehicle and the key-fob would not open the doors, due to the Vehicle having no electrical power. She claimed that this condition caused a substantial impairment to the use and safety of the Vehicle, in that the Vehicle could not be moved during those episodes, leaving her stranded at home. Said condition was unpredictable, leaving the Consumer to be fearful of driving the Vehicle and becoming stranded. The arbitrator construed all of the Consumer's claims in her favor, including all claims made within the Request for Arbitration, together with all statements at the hearing. However, even in giving heightened deference to all of the Consumer's assertions and arguments, there is no actionable claim for relief pursuant to Chapter 743b.

In this case, the subject model Ford Fusion vehicle was subject to two Special Service Messages ("SSMs") by the Manufacturer, for two different, unrelated excessive battery draw issues, as stated by Mr. Clark at the hearing. Either or both of the issues subject to these SSMs could have been the cause of the battery being drained to the point of lacking the power to open the doors remotely. Mr. Clark noted that the remote key-fob for this Vehicle does incorporate a type of built-in key to open the doors manually, but that most consumers are unaware of this feature. In the Consumer's case, the Vehicle had lost battery power on all three occasions, so being able to access the interior of the Vehicle would not have helped her to start and drive the Vehicle.

The first repair visit occurred on September 26, 2016, when the Vehicle had been driven just 265 miles. The Consumer found the Vehicle to be without electrical power, as the electric door locks were inoperable, preventing her from entering the Vehicle through use of the key-fob. The Dealer replaced the factory-supplied battery with a new one. I note that the Consumer was inconvenienced during this repair visit by having to spend five hours at the Dealer for this simple repair procedure.

The second repair order in the record resulted from the same set of facts as the first repair visit occurring two weeks before. On October 10, 2016, the Consumer again could not open the Vehicle's doors with the remote key-fob and the Vehicle had lost all battery power. Repair Order 958659 revealed that a technician noticed that a specific interior light was on while the Vehicle was in a dark garage, leading the Dealer to contact the Manufacturer for assistance at this time. The Manufacturer referred to SSM #46015, related to the Gearshift Control Module ("GSM") as a possible cause of excessive electrical draw. Mr. Clark stated that this module is a retained accessory module, meaning that it requires a small, constant draw of electrical power. The Dealer performed some re-programming per the Manufacturer's instructions. The Dealer also performed an electrical draw test. After attempting to charge up the battery, the Dealer replaced the battery for a second time (this is the third new battery in the Vehicle, including the factory-supplied battery).

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Again, the Consumer found the Vehicle to have lost all electrical power. The third repair visit, which occurred on October 26, 2016, included another electrical draw test. The Dealer performed a search of the Manufacturer's database known as OASIS and found another SSM, #46128, related to a possible excessive battery draw. Said SSM impacted the vehicle's Driver Door Module ("DDM"). The Dealer performed a reprogramming of the DDM as per the Manufacturer's instructions. At the conclusion of this repair attempt, the Vehicle had just 432 miles on the odometer.

In reviewing the facts, the Manufacturer had the opportunity to address the concern raised by the Consumer on three occasions within the first two months of ownership. The Manufacturer claimed during the hearing that the Vehicle was repaired and was performing as designed. The Manufacturer provided a transcript of the written correspondence between members of the Manufacturer's Technical Hotline and between Hotline members and the Dealer, which revealed the Manufacturer's confidence that the Vehicle's electrical draw issue had been fully repaired (see the correspondence from October 28, 2016 through November 2, 2016).

Given the two very specific repairs performed as a result of two unrelated SSMs, one to the GSM and the second to the DDM, which were each meant to correct an excessive electrical draw, the facts reveal that the Vehicle has been repaired. From the date of the last repair through the date of the hearing, the Vehicle has not exhibited a loss of electrical power. The Consumer estimated that the Vehicle had been driven just over 800 miles as of the date of the hearing.

The Consumer's Request for Arbitration included a summary of correspondence with the Dealer whereby the Consumer asked for a "guarantee" that the car would not die again (see, for example, the timeline document provided by the Consumer, at November 11, 2016). The Vehicle remains covered under the Manufacturer's new vehicle factory warranty, so the lack of any additional guarantees by the Dealer regarding repairs are not a reason for labeling the Vehicle a "lemon."

After the third repair attempt, the Consumer had refused to pick up the Vehicle from the Dealer. From the point of view of the Consumer, said action was understandable at the time, given the Consumer's safety concerns, but the Vehicle has not had any episodes of being found without electrical power since the third repair attempt was completed at 432 miles. The possibility of future problems cannot be the basis for relief pursuant to the statute.

Given the ample testimony of the Manufacturer that the Consumer's Vehicle is operating as designed, I find that the subject Vehicle is not deemed to be "substantially impaired" in any way under the definition provided Chapter 743b of the Connecticut General Statutes. The Vehicle was repaired within a reasonable period of time and within a reasonable number of repair attempts.

Therefore, convincing evidence that the claimed defect caused a substantial impairment to the use, value, or safety of the Vehicle was not presented. Relief pursuant to Chapter 743b is not warranted in this case. I remind the parties that the Vehicle remains under warranty in the circumstance that any issue arises that may cause a substantial loss of use, value, or safety.

It was obvious that the Consumer was inconvenienced because of her having to call roadside assistance, coupled with the number of visits to the Dealer for repair attempts during the first few hundred miles of ownership and the multiple hours spent at the Dealer. However, the inconveniences experienced by the Consumer cannot be the basis for relief pursuant to the statute.

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V. CONCLUSION

Given the above facts, the Consumer did not present substantial evidence that the claimed defect caused a substantial impairment to the Vehicle's use, value, or safety. Based upon the evidence, I do not find a violation of Chapter 743b. I agree with the Manufacturer's assessment of the Vehicle, as presented during the arbitration hearing and as listed in their Manufacturer's Statement, and hold that the Consumer's application will not allow relief pursuant to Chapter 743b. Accordingly, no action is being ordered on this application.

The decision of this arbitrator does not replace any other remedies available under the applicable warranties, Connecticut General Statutes Chapter 743b, or the Magnuson-Moss Warranty Federal Trade Commission Improvement Act, 88 Stat.2183 (1975), U.S.C. 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to Connecticut Superior Court within 30 days of receiving this decision to have the decision vacated, modified, or corrected, or within one year to have it confirmed as provided in Sections 42-181, 52-417, 52-418, 52-419, and 52-420 of the Connecticut General Statutes.



Jerry P. Padula, Esq. - Arbitrator

Feb. 24, 2017

Date