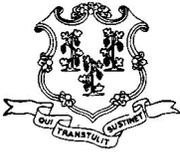


**In the matter of arbitration entitled:**

**Gould v. Ford**

**2017-2064**



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



Pursuant to Connecticut General Statutes Chapter 743b, the undersigned arbitrators, Jeremy Aron-Dine, Blake Neal, and YuChen Xue having been duly sworn and having given due consideration to the proofs and allegations of the parties, hereby decide the following in regard to the above captioned matter:

## **I. FINDINGS OF FACT**

**Jeremy Gould and Jessica Gould** (collectively, the “Consumers”) purchased a **2016 Ford F350 King Ranch** (the “Vehicle”) from **Ford of Branford** located at 301 East Main Street in Branford, Connecticut, 06405 (the “Dealer”). The Consumers took delivery of this Vehicle on December 30, 2016. The registration is “passenger,” “combination,” or “motorcycle,” as defined in section 14-1 of the Connecticut General Statutes, or the equivalent.

After reviewing the allegations, we deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. Ford Motor Company (the “Manufacturer”) did not contest the initial eligibility of the Vehicle in this case. The arbitration was held on Thursday, November 9, 2017. Mr. Tim Clark served as the State’s Technical Expert. Also appearing at the hearing were the Consumers and Ms. Lindsay C. Smith, Attorney for the Manufacturer.

The Vehicle has been out of service by reason of repair for a cumulative total of 76 days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven). The Consumers initially dropped off the Vehicle for repair on June 3, 2017 and did not receive the Vehicle back until August 17, 2017. This exceeds the 30-day maximum set by Connecticut General Statutes § 42-179(e)(2).

## **II. REASONING**

### **Nonconformity**

The Consumers complained of the following nonconformities: rust above the rear window, fender flares, rocker panel and running boards; defects in paint on the driver’s door and above the right tail-light; an unsealed (and later incorrectly sealed) pinch weld on the front passenger door. These defects were covered by the warranty offered by Ford.<sup>1</sup> These defects were said to continue to exist as of the date of the hearing.

### **Eligibility and Reasonable Repair Attempts**

The Request for Arbitration revealed that the Vehicle experienced severe paint defects which substantially impaired the Vehicle’s value, necessitating multiple visits to a certified auto-shop for diagnosis and

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<sup>1</sup> Ford, General Service Bulletin: Paint Defects / Damage (Warrantable / Non-Warrantable) 14 (Aug. 2015).

repair. While only two repair attempts were made to the Vehicle, we nevertheless find that the defects met the statutory presumption for eligibility, as the Vehicle was out of service for repair for a combined 76 days during the first two years or 24,000 miles of ownership. Given these documented repairs during the statutory period, we find that the Consumers meet the eligibility requirements set forth in Connecticut General Statutes Chapter 743b.

### **Substantial Impairment and Factual Discussion**

In the present matter, we hold that a substantial impairment to value exists in the form of defects which meet the requirements of Connecticut General Statutes Section 42-179. Both the documents in the record and the testimony presented at the arbitration hearing indicate that the Consumers merit relief under Connecticut General Statutes Chapter 743b.

The Consumers appeared and testified at the arbitration hearing. The Request for Arbitration, the written repair records, and the oral testimony and photographic evidence provided at the hearing detailed the Vehicle defects experienced by the Consumers and the multiple repair attempts made by the Dealer.

The State's Technical Expert testified that the nonconformity could not have been caused by the Consumers but was instead the result of contamination in the painting process by the Manufacturer. He explained that contamination likely prevented the paint from adhering properly to the Vehicle, causing bleed-through and rusting in different areas on the Vehicle. He suggested that there may have been chemicals left on the surface of the Vehicle before it was painted, and that these chemicals eventually ate through the paint and started to "pop." The State's Technical Expert further testified that climate alone – without an issue at the factory – could not have been responsible for the rust observed on the Vehicle.

Because the rust areas were found over the entire Vehicle and resulted from improper factory preparation, the State's Technical Expert predicted that the only possible repair would be to completely repaint the Vehicle. There was no way of knowing the extent of the contamination in the painting process. The State's Technical Expert also noted that a full repainting would substantially decrease the value of the truck, especially because it would mean the paint would no longer be covered under the Manufacturer's warranty.

The State's Technical Expert also drew our attention to a General Service Bulletin (GSB) issued by the Manufacturer for the F350 King Ranch, which showed that paint defects such as chemical popping and surface corrosion are covered under warranty.<sup>2</sup> The images in the GSB closely matched the photographic evidence presented by the Consumers, and so we conclude that the defects in the paint complained of by the Consumers were warrantable. Counsel for the Manufacturer argued that the warranty does not cover "surface rust [or] deterioration and damage of paint," but this limitation on the warranty only applies to defects "that result from use and/or exposure to the elements."<sup>3</sup> Based on the testimony of the State's Technical Expert and Ford's own GSB, we conclude that the defects in this case do not fall within this limitation of the warranty.

### **III. CONCLUSION**

Because the Consumers presented substantial evidence that the Vehicle's value has been significantly

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<sup>2</sup> *Id.* at 14, 17

<sup>3</sup> Ford, 2016 Warranty Guide 13.



## **IV. REFUND AWARD**

We find that the Consumers are entitled to a refund of the contract price, including charges for any undercoating, dealer preparation and transportation, and dealer installed options, if applicable. The total vehicle price, as delivered, was **\$56,982.00**.

### **Allowance for use**

- The contract price shall not be reduced by taking into account the mileage on the Vehicle.
- The contract price shall be reduced by an allowance for the Consumers' use of the Vehicle. It shall be calculated using the total mileage driven at the time of the refund, minus the mileage at the time of delivery (32 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$56,982.00 \times 14,968 \text{ miles (15,000 miles - 32 miles)}}{120,000 \text{ miles}}$$

Based on an odometer reading of 15,000 miles, the allowance (reduction from the contract price) for the Consumers' use of the Vehicle would be: **\$7,107.55**. The actual value of the allowance shall be calculated based on the odometer reading when the Vehicle is returned to the dealer.

### **Finance Charges to be Reimbursed by Manufacturer**

- The Consumers shall be reimbursed for finance charges incurred on the following dates:
- The Consumers shall be reimbursed for finance charges incurred from: \_\_\_\_\_ to \_\_\_\_\_.
- The Consumers shall be reimbursed for all finance charges incurred.
- The Consumers shall not be reimbursed for finance charges.

### **Additional Expenses to be Reimbursed by Manufacturer**

**Conn. State Sales Tax: \$3,137.28**  
**Title & Regis. Fees: \$104.58**  
**Dealer Conveyance Fee: \$499.00**  
**Lemon Law Filing Fee: \$50.00**  
**Extended Service Agreement: \$2,992.00**

### **Total Refund Award and Conditions**

The total refund amount is **\$56,657.31** (subject to adjustment based on the mileage at the time the Vehicle is returned). If the Vehicle is inoperable for any time after the hearing up through the time of the Vehicle exchange due to the named defects, a rental Vehicle shall be provided by the Manufacturer, at the Manufacturer's sole cost.

Because the Vehicle is financed and the loan has an outstanding balance, the Manufacturer shall prepare one check payable to the lien holder as its interest may appear, and one check payable to the Consumers in the amount of the balance of the refund. The Consumers shall sign an authorization that will assign the Consumers' right, title, and interest of the Vehicle to the Manufacturer upon receipt of the refund. The Consumers shall surrender the Vehicle at the time of the refund.

The Manufacturer shall provide the total refund to the Consumers within 30 days of the Manufacturer's receipt of this arbitration decision. The Consumers shall surrender the Vehicle to the manufacturer upon receipt of the refund, but if the Vehicle is in the possession of the Manufacturer or their agent, the Vehicle title shall be so surrendered when the refund is provided. The exchange shall occur at: **Ford of Branford, 301 East Main Street, Branford, Connecticut, 06405**, OR at the local manufacturer-authorized dealership of the Consumers' choice.