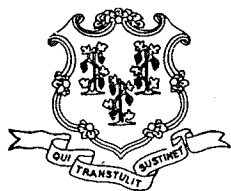


In the matter of arbitration entitled:

Welch vs. Ford

Case Number: 2016-696



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

Brian and Kimberly Welch (collectively, the "Consumers") purchased a 2014 Ford Focus (the "vehicle") from Crest Ford located at 218 Flanders Road in Niantic, Connecticut 06357 (the "Dealer"). The Consumer took delivery of this vehicle on May 30, 2014. 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, this arbitrator deemed this case eligible for an arbitration hearing pursuant to Connecticut General Statutes Chapter 743b. The Manufacturer did not contest the initial eligibility of the vehicle in this case. Said hearing was held on Tuesday June 28, 2016. Mr. Tim Clark served as the State's Technical Expert. Ford Motor Company (the "Manufacturer") was represented by Jacob Lantry.

- A. The Consumer first reported to the manufacturer, its authorized dealer, or its agent a defect pertaining to transmission shudder and unpredictability during acceleration on November 29, 2014 with 8,900 miles on the vehicle's odometer. Subsequent repair attempts for this defect and others occurred on:

Table with 3 columns: Repair Date, Miles, Defect. Rows include dates 2015, 2015, 01-25-2016, 02-26-2016 and corresponding mileages and defect descriptions.

The above defect or defects continue to exist.

- B. The vehicle has been out of service by reason of repair for a cumulative total of ___ days during the statutory eligibility period (the earlier of: two years from the date of purchase or 24,000 miles driven).

- C. Two repair attempts during the first 12 months and the defect still exists that is life threatening or likely to cause serious bodily injury, if the vehicle is driven. The defects occurred as follows:

Table with 3 columns: Date, Miles, Defect. Row contains: transmission shudder and unpredictability during acceleration (as listed above)

II. REASONING

Nonconformity

The Consumers complained of the following nonconformities with the subject vehicle: a severe transmission shudder and unpredictable, impaired acceleration. Said defects were said to continue to exist.

Eligibility and Reasonable Repair Attempts

The Consumers' Request for Arbitration revealed that the vehicle experienced a severe transmission shudder and unpredictable or impaired acceleration while being driven on the roadway. The Consumers made one visit to an authorized Dealer for diagnosis, testing, and repair during the statutory period, and made a claim of refused service regarding other times they desired to have the vehicle repaired by the Dealer. The record confirmed that the subject vehicle was subject to just one repair attempt during this period. However, two additional repairs occurred after the statutory period, as detailed in Part 1 of this decision, and the defect was said to continue during that entire time period, up through the date of the hearing. On at least two other times during 2015, listed in Part 1 with no specific mileage listed, the Consumers attempted to have the vehicle repaired, but were not able to obtain a repair. They listed these occurrences as refusals of service on Page 6 of their Request for Arbitration (refer to Question 3). Two reasons prevented the Consumers from obtaining additional repairs during the year 2015.

One factor which prevented the Consumers from bringing the vehicle in for additional repairs during the statutory eligibility period was revealed at the hearing. The Consumers testified that the Dealer told them during the first repair attempt that this Ford Focus vehicle has an "adaptive" transmission which learns the driving style and habits of the driver, and that the transmission would be reprogrammed to erase the transmission tuning caused by the driving style and habits, thereby improving the transmission shift quality. Said representation by the Dealer is directly responsible for the Consumer failing to bring the vehicle back for a second repair until January 25, 2016, when the vehicle had been driven 33,413 miles, as listed in Part 1 of this decision. The Consumers had been experiencing the same severe transmission defects throughout this time (and through the date of the hearing), but had believed in the comments made by the Dealer representative.

A second factor which prevented the Consumers from having the Dealer repair the vehicle on other occasions during the statutory period, was that the Dealer could only offer another reprogramming, because the clutches needed to repair the vehicle have been on backorder, and were said to remain on backorder for "months to years." The Consumers' characterization of this situation as multiple "refusals of service" as described in Chapter 743b was accurate. Their failure to bring the vehicle to any authorized Dealer was therefore excused by their belief that further reprogramming would not have solved the noted transmission problem. One repair during the statutory period is a reasonable number of repairs in this case, so the Consumers were therefore found to have met the eligibility requirements of the statute.

Due to the continual and severe transmission shuddering and impaired acceleration, a safety concern was also proven by substantial evidence to exist. Said concern was subject to one repair attempt during the first year of ownership, and although the statutory presumption is for two repairs during that first year of ownership, the above-cited representations of the Dealer prevented the Consumers from bringing the vehicle back for additional repairs during the first year. The statutory presumption for eligibility based upon a safety-related concern, as set forth in Chapter 743b, was therefore also met.

Substantial Impairment and Factual Discussion

In the present matter, this arbitrator holds that both a substantial impairment to use and a substantial impairment to safety exist in the form of a defect or defects which meet the requirements of Connecticut General Statutes Section 42-179. The documents in the record and the testimony presented at the arbitration hearing indicate a violation of Connecticut General Statutes Chapter 743b.

The Consumer's Request for Arbitration, the written repair records, and the oral testimony provided at the hearing detailed the vehicle defects experienced by the Consumers and the repair attempts by the Dealer. The Consumers appeared and testified at the arbitration hearing. In addition, Mr. Clark described the mechanical operation of the novel Automatically Controlled Manual Transmission present in the Consumers' vehicle.

The Consumers first experienced serious transmission issues including a severe shudder and a lack of acceleration when the vehicle had been driven 8,900 miles, as shown in Part I of this decision. At that time, just five months since the vehicle's delivery date, the vehicle was first brought back to the Dealer for diagnosis and repair. The transmission issues have remained complaints since that time, and up through the date of the hearing. The Consumers testified as to their apprehension with driving the vehicle, and detailed the fear they experience when the transmission shudders and does not respond to driver request for acceleration. The delay in acceleration from a stop or while in "stop and go" traffic was described as a major safety concern in the Consumers' Request for Arbitration (see pages 8 and 9). In addition, what was to be a safe mode of transportation for two teenage sons became too "unpredictable" in the words of the Consumers (see Page 9 of their Request for Arbitration) to allow their inexperienced young drivers to use. The Consumers' intended use of the subject vehicle was thwarted after the transmission issues revealed themselves at 8,900 miles, thereby substantially impacting their use of the vehicle.

The written repair records and the oral testimony of both parties verified that the Dealer had performed diagnostic tests and had attempted to duplicate the Consumer's concerns. A Transmission Control Module software update was performed during the first repair attempt, to no avail. After that first repair, when the Consumers contacted the Dealer about repairing the vehicle, the Dealer offered to perform the same software update again. The Consumers found this to be unacceptable, as the software update did not remedy the problem.

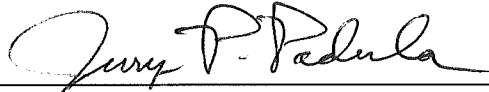
The Consumers felt that they did not have the full use of the vehicle, and given the continual severe transmission issues experienced during daily driving they are justified in their concerns. Based on the ongoing defects, which impact the Consumers' normal, everyday use of the vehicle, I find a substantial loss of use in this case. A substantial loss of safety due to the transmission's lack of performance and unpredictable acceleration has also been proven by convincing evidence. A refund and exchange is appropriate in this case.

Beginning early on in the Consumers' ownership (just two months from the date of delivery to them), the subject vehicle suffered from severe transmission defects while being driven upon the road under normal conditions. The Consumers also demonstrated that their intended use of the vehicle could not be satisfied by the vehicle (see, for example, page 5 of their Request for Arbitration). Balancing the grave safety concerns presented due to the unpredictable acceleration, which impacted the Consumers' ability to use the vehicle confidently, with the fact that the vehicle did not suffer from any defect until the first repair attempt at 8,900 miles, a mileage deduction in favor of the Manufacturer is appropriate given the facts presented. The Consumers consented to a mileage deduction at the hearing, based upon their initial 8,900 miles of trouble-free driving. Finance charges will be awarded to the Consumers in full. I am also including a \$5.34 reimbursement as the postage cost that the Consumers had to bear in order to notify the Manufacturer of his decision to avail himself of Chapter 743b, said mailing being a requirement of the statute.

III. CONCLUSION

Given that the Consumer presented substantial evidence that the vehicle is not able to function normally, I hold for the Consumer in this case. A refund and exchange, as noted in Part IV of this decision, is appropriate given the facts presented.

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), 15 USC 2301 et seq., as in effect on October 1, 1982. Either party to the dispute may apply to the Superior Court within 30 days 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, and 52-420 of the Connecticut General Statutes.



Arbitrator - Jerry P. Padula, Esq.

07-25-2016

Date

(See Section IV of this decision, entitled "Refund Award," on the following page.)

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IV. REFUND AWARD

The arbitrator finds 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 contract price is less the \$0.00 credit/rebate given to the Consumers.) The total vehicle price, as delivered, was \$19,502.27.

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 first repair (at 8,900 miles), minus the mileage at the time of delivery (38 miles) and during the repair visit of November 29, 2015 (49 miles) yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$19,502.27 \times 8,813 \text{ miles (8,900 miles - 38 miles - 49 miles)}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumer's use of the vehicle shall be: **\$1,432.28**.

Finance Charges to be Reimbursed by Manufacturer:

- The Consumer shall be reimbursed for finance charges incurred on the following dates:

- The Consumer shall be reimbursed for finance charges incurred from:
_____ to _____
- The Consumer shall be reimbursed for **all finance charges incurred**.
- The Consumer shall not be reimbursed for finance charges.

Additional Expenses to be Reimbursed by Manufacturer:

Conn. State Sales Tax: \$1,263.73 Title & Regis. Fees: \$185.00 Lemon Law Filing Fee: \$50.00
 Dealer Conveyance Fee: \$399.00 Certified Mail Costs: \$5.34

Total Refund Award and Conditions:

The total refund amount is **\$19,973.06** (nineteen thousand nine hundred seventy three dollars and six cents). **In addition to the total refund amount indicated, the finance charges indicated above are to be paid by the manufacturer.** A rental vehicle shall be provided by the Manufacturer if the vehicle is inoperable for any time after the hearing up through the time of the vehicle exchange.

If 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 Consumer(s) in the amount of the balance of the refund. The Consumer(s) shall sign an authorization that will assign the Consumer's right, title, and interest of the vehicle to the Manufacturer upon receipt of the refund. The Consumer(s) shall surrender the vehicle at the time of the refund.

If the vehicle is not financed, the Consumer(s) shall surrender the vehicle's title to the Manufacturer at the time of receipt of the refund set forth in this decision.

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The Manufacturer shall provide the total refund to the Consumer(s) within 25 days of the manufacturer's receipt of this arbitration decision. The Consumer(s) 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 (Consumers' choice): **Crest Ford** located at **218 Flanders Road in Niantic, Connecticut 06357**, OR at **the Consumers' home**.