

In the matter of arbitration entitled:

Belmont vs. Ford

Case Number: 2017-2497



**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

Steven and Samantha Belmont (collectively, the "Consumers") purchased a 2017 Ford Explorer (the "Vehicle") from Stamford Ford Lincoln, located at 212 Magee Avenue in Stamford, Connecticut, 06902 (the "Dealer"). The Consumers purchased the Vehicle on June 1, 2017 but took delivery of the Vehicle on June 7, 2017. 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 (the "hearing") pursuant to Connecticut General Statutes Chapter 743b. Said hearing was held on Monday, January 22, 2017. Ford Motor Company (the "Manufacturer") stipulated in a notarized letter to the Department of Consumer Protection (the "Department") dated January 19, 2017 that it did not contest eligibility or liability. This case therefore proceeded as an arbitration hearing in damages. Mr. Tim Clark served as the State's Technical Expert. The Consumers appeared at the hearing. The Manufacturer did not appear, in conformance with its notarized letter dated January 19, 2017.

A. The Consumers reported to the Manufacturer, its authorized dealer, or its agent a defect pertaining to a paint defect at the following times:

<u>Repair Date</u>	<u>Miles</u>	<u>Defect</u>
06-01-2017	3,148	factory paint defects
06-12-2017	3,148	factory paint defects; repainted
07-13-2017	4,445	paint defects on hood caused during previous repainting repair

The above defect or defects was said to continue to exist as of the date of the hearing.

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:

<u>Date</u>	<u>Miles</u>	<u>Defect</u>

II. REASONING

Nonconformity

The Consumers complained of the following nonconformity or defect with the subject Vehicle: defects in the factory paint. This defect was claimed by the Consumers to continue to exist as of the time of the hearing.

Eligibility and Reasonable Repair Attempts

The Request for Arbitration revealed that the Vehicle experienced paint defects upon purchase, necessitating visits to the Dealer for diagnosis, testing, and repair. The Manufacturer did not contest the Vehicle's initial eligibility, and additionally conceded liability regarding the paint defects. A reasonable number of repairs were attempted pursuant to Section I of this decision, therefore the Vehicle was found to meet the statutory presumption for eligibility. Also, the Consumers stated in their Request for Arbitration that the Dealer would not entertain future repairs, referring them to the factory paint warranty. Given the number of repairs, the refusal of service, and the Manufacturer conceding liability, the Vehicle was found to have met the eligibility requirements set forth in Connecticut General Statutes Chapter 743b. The arbitration then proceeded as a hearing in damages.

Substantial Impairment and Factual Discussion

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

The Consumers appeared and testified at the hearing. The 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 multiple repair attempts by the Dealer. The Vehicle was purchased new as a "demonstration" car, with 3,148 miles on the odometer. The Consumers first noticed the paint defects, including small holes, before their purchase was completed. The Dealer promised to have the paint defects repaired before the date of delivery, set for June 1, 2017. The first repair therefore occurred on June 1, 2017, when the Vehicle had just 3,148 miles on the odometer. The Dealer repair at that time included the use of a local auto body shop to repaint and touch-up areas of paint on the body. However, upon the Consumers noticing that the paint defects were not properly repaired when picking up the Vehicle on June 7, 2017, the Dealer kept the Vehicle for additional repairs.

The record revealed the second repair and third repair did not address the paint defects, and that newly-painted areas were also peeling. Said paint conditions still existed as of the date of the hearing. Mr. Clark testified that such a condition could be caused by the improper initial application of either or both of the base coats of primer or the paint at the factory, leading to the defects of the factory-applied finish as well as subsequent painting attempts. In addition, Mr. Clark testified that duplicating the factory painting process outside of the factory environment could be difficult to nearly impossible.

At one point in the discussions between the Consumers and the Dealer, the Dealer mentioned to the Consumers the possibility that an animal may have scratched some of the Vehicle's paint. However, this possibility is inconsistent with the factual record, especially given that the paint had been defective upon purchase and the extended periods when the Vehicle had been in the Dealer's exclusive possession and control to effectuate repair attempts. This arbitrator also reviewed the Ford Warranty Booklet provided as part of the Manufacturer's Statement, and the warranty exclusions for paint that has been damaged due to environmental factors and vehicle use that are listed on page thirteen are not found to apply in this case.

In the matter of arbitration entitled:

Belmont vs. Ford

Case Number: 2017-2497

The Consumers did not subject the Vehicle to any of the listed concerns that would deny coverage pursuant to the warranty.

The record revealed that the Consumers discovered the paint defects before the time of purchase from the Dealer, that the Vehicle was out of service for paint-related repairs for three individual repair periods, and that the paint defects remained unresolved up through the date of the hearing. These facts are to be balanced against the severity of the named defect, the inconvenience to the Consumers, and the number of miles on the odometer as of the date of the hearing (twelve thousand miles, as testified by the Consumers). A mileage deduction shall be awarded in favor of the Manufacturer, as set forth in Part IV. of this Arbitration Decision. Given the facts presented, finance charges shall be awarded in full to the Consumers in this case. Any warranty purchased through the Dealer may be cancelled by the Consumers and a pro-rated refund timely provided to the Consumers. If any such warranty contract cannot be so cancelled, the entire purchase price of the warranty shall be reimbursed by the Manufacturer.

III. CONCLUSION

Given that the Consumers presented substantial evidence that the Vehicle had a continuing defect that was unable to be repaired, I hold for the Consumers 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. 02-02-2018
Date

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

In the matter of arbitration entitled:

Belmont vs. Ford

Case Number: 2017-2497

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 purchaser.) The total Vehicle price, as delivered, was **\$36,500.00**.

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 mileage driven from the date of purchase (06-01-2017 at 3,148 miles) to the time of the third repair on 07-12-2017 (4,445 miles), yielding a mileage credit as follows:

$$\frac{\text{Contract Price } \$36,500.00 \quad \times \quad 1,297 \text{ miles (4,445 miles - 3,148 miles)}}{120,000 \text{ miles}}$$

The allowance (reduction from the contract price) for the Consumers' use of the Vehicle shall be:
\$394.50

Finance Charges to be Reimbursed by Manufacturer:

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

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

Additional Expenses to be Reimbursed by Manufacturer:

Conn. State Sales Tax: \$2,145.86 Title & Regis. Fees: \$188.00 Dealer Conveyance: \$399.00
Lemon Law Filing Fee: \$50.00 "Auto Armor" package: \$739.14 Trunk liner & window visors: \$200.99
VIN etching fee: \$199.00

Total Refund Award and Conditions:

The total refund amount is **\$40,027.49** (forty thousand twenty-seven dollars and forty-nine 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 or Consumers' 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.

In the matter of arbitration entitled:

Belmont vs. Ford

Case Number: 2017-2497

The Manufacturer shall provide the total refund to the Consumer(s) within 30 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 the **Dealer**, or at another Manufacturer-authorized dealership of the Consumers' choice in Connecticut.