

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT IN AND FOR
FLAGLER COUNTY, FLORIDA

PAUL S. COOK,

Plaintiff,

vs.

CASE NO.: 2016 CA 000561

FORD MOTOR COMPANY,

Manufacturer.

_____ /

**PAUL S. COOK'S PETITION TO THE CIRCUIT COURT
FOR TRIAL DE NOVO PURSUANT TO FLORIDA STATUTE 681**

COMES NOW the Plaintiff, PAUL S. COOK, (hereinafter "Consumer"), by and through the undersigned counsel and hereby files his Petition for Trial *De Novo* against Defendant, FORD MOTOR COMPANY (hereinafter "Manufacturer"), and alleges and affirmatively states as follows:

1. Consumer is a resident of Flagler County, Florida.
2. Manufacturer is a corporation authorized to do business in the State of Florida.

JURISDICTION

3. This is an action seeking damages in excess of \$15,000.00, inclusive of attorneys' fees and costs.

BACKGROUND

4. On or about August 24, 2015, Consumer leased a 2015 Ford F-150 motor vehicle, Vehicle Identification Number: 1FTEX1CF4FFC03910, for valuable consideration. The Manufacturer received a copy of the lease agreement during the Lemon Law Arbitration process and a copy of said lease is attached to the complaint as Exhibit A.
5. The price of the motor vehicle, including registration charges, document fees and sales tax, but excluding other collateral charges, such as bank and finance charge, totaled at least \$37,000.
6. Consumer avers that as a result of the ineffective repair attempts made by Manufacturer, through its authorized dealership network, the motor vehicle cannot be utilized for personal and family use as intended by Consumer at the time of acquisition.
7. Manufacturer engaged in an aggressive advertising and marketing campaign in order to induce Consumer and other consumers to purchase its vehicles from a dealership that was authorized by Manufacturer to sell its vehicles and issue its written warranties to consumers.
8. Manufacturer was in direct privity with Consumer based upon its role in the sale, distribution, and repair of the subject vehicle through its authorized sales and servicing agents including Seller as evidenced by the following:

- a. Manufacturer enter into sales and servicing agreements with its authorized dealers that are located in numerous counties of this state including the county wherein this lawsuit is filed.
- b. Manufacturer requires its authorized dealers to display Manufacturer's logos on each authorized dealers' sign outside the dealer.
- c. Manufacturer requires its authorized dealers to display Manufacturer's logos on the uniforms of authorized dealers' service personnel.
- d. Manufacturer requires its authorized dealers to display Manufacturer's logo on the repair records that are given to authorized dealers' customers as receipts for service to their vehicles.
- e. Manufacturer, requires its authorized dealers to seek authorization for performing repairs as covered by Manufacturer's warranty.
- f. Manufacturer makes the final decision as to whether or not repairs made to a vehicle are to be covered by Manufacturer's warranty.
- g. Manufacturer reimburses its authorized dealers for repairs covered by each Manufacturer's respective warranty.
- h. Manufacturer requires its authorized dealers to document repairs on repair invoices in a method prescribed by Manufacturer.

- i. Manufacturer provides its authorized dealers with specific institutions on the amount of time its dealers seek reimbursement for specific warranty repairs to a vehicle.
 - j. Manufacturer requires its authorized dealers to provide its customers with Manufacturer's written warranty when a new vehicle is sold by Manufacturer's authorized dealer.
 - k. Manufacturer supervises each and every authorized dealer through a system of zone offices that is set up to monitor dealerships located within each respective county of the State of Florida.
 - l. Manufacturer provides its authorized dealers with repair manuals and service bulletins to repair vehicles manufactured and/or distributed by each respective Manufacturer.
9. Consumer was obligated to purchase a vehicle and obtain Manufacturer's warranty from one of the Manufacturer's authorized dealers.
10. In consideration for the purchase of the motor vehicle, Manufacturer issued and supplied to Consumer its written warranty, Manufacturer's warranty. The Manufacturer has a copy of its warranty.
11. The Manufacturer's remedy contained within its warranty was the repair and replacement of parts defective in materials or workmanship, amongst other things.
12. Based on the issuance of its written warranty and its contacts with Consumer as detailed in paragraphs eight (8) through eleven (11) above, the Manufacturer was in contractual privity with the Consumer.

13. On or about August 24, 2015, after Consumer took possession of the motor vehicle, it experienced various defects listed below that substantially impair the use, value and/or safety of the motor vehicle.
14. Consumer delivered the motor vehicle to the Manufacturer for repair, at least 3 times for the same defect or condition, through its authorized dealership network, the motor vehicle sat at the dealership for over 30 days, and the defect remains uncorrected.
15. Consumer brought the motor vehicle to Seller and/or an authorized service dealer of the Manufacturer for various defects and nonconformities, including but not limited to:
 - a. transmission;
 - b. engine;
 - c. any additional complaints made by our clients contained in the repair receipts of Defendant's authorized dealer records or in the Defendant's internal repair documents for the subject vehicle.
16. Consumer gave the Manufacturer notice of the defects pursuant to Florida Statute 681. The Manufacturer was unable and/or failed to repair the defects in Consumer's motor vehicle as provided in each Manufacturer's warranty, and as such breached the express terms of its written warranty.
17. The limited repair or replacement remedy contained with the Manufacturer's warranty failed of its essential purpose pursuant to F.S.A.

§672.719(2) due to the Manufacturer's failure to repair the motor vehicle within a reasonable time.

18. The Manufacturer was unable and/or failed to repair the defects in the motor vehicle as provided in the Manufacturer's warranty after being afforded a reasonable opportunity to cure pursuant to 15 U.S.C. §2319(e), which as it pertains to both full and limited warranties and states in pertinent part with emphasis added:

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) of this section applies) may be brought under subsection (d) of this section for failure to comply with any obligation under *any written* or implied warranty or service contract, and a class of consumers may not proceed in a class action under subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named Consumers, unless the person obligated under the warranty or service contract is afforded *a reasonable opportunity to cure* such failure to comply.

19. Consumer justifiably lost confidence in the motor vehicle's safety and/or reliability, and said defects substantially impaired the use, value, and safety of the motor vehicle to Consumer.
20. Said defects could not have been reasonably discovered by the Consumer prior to Consumer's acceptance of the motor vehicle.

COUNT I
Petition for Trial De Novo

21. Consumer realleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this Petition for Trial De Novo.

22. Consumer appeals the Decision of the Florida New Motor Vehicle Arbitration Board (“Decision”), Case Number 2016-0166/JAX, VIN No. 1FTEX1CF4FFC03910, in favor of the Manufacturer.
23. This is a Petition for Trial de Novo and review by the circuit court of the Decision, signed on or about August 17, 2016, and received by the Consumer thereafter. Such Decision was rendered in favor of Manufacturer and against the Consumer. This appeal is brought pursuant to section 681.1095 (10), (12), Florida Statutes (2016) which allows the Consumer 30 days to file his appeal in circuit court. A copy of the Decision is attached hereto as Exhibit “B.”
24. The instant action was timely filed within 30 days of Consumer’s receipt of the final written Decision.
25. Venue is proper in Flagler County, Florida, since the Consumer resides there.
26. The Consumer’s request that this Court review the Decision in Case Number 2016-0166/JAX and grant a Trial *de Novo* pursuant to section 681.1095 (10), (12), on the issues and grounds set forth below:
 - a. The Decision departs from the requirements of Chapter 681, Florida Statutes, and the essential requirements of law.
 - b. The factual findings of the Board are not supported by the substantial evidence in the record and Consumer’s rights have been prejudiced substantially.

COUNT II
BREACH OF WRITTEN WARRANTY PURSUANT TO THE
MAGNUSON-MOSS WARRANTY ENFORCEMENT ACT

27. Consumer realleges and incorporates by reference as though fully set forth herein, paragraphs 1-20 of this Petition for Trial De Novo.
28. Consumers are purchasers of a consumer product. Consumers received the motor vehicle during the duration of a written warranty period applicable to the motor vehicle and who is entitled by the terms of the written warranty to enforce against the Manufacturer the obligation of its respective warranty.
29. Manufacturer is a entity engaged in the business of making a consumer product directly available to Consumer.
30. The Magnuson-Moss Warranty Act, Chapter 15 U.S.C.A., Section 2301, et. seq. ("Warranty Act") is applicable to Consumer's Complaint in that the motor vehicle was manufactured, sold and purchased after July 4, 1975, and costs in excess of ten dollars (\$10.00).
31. Consumer's purchase of the motor vehicle was accompanied by a written factory warranty for any defects in material or workmanship, comprising an undertaking in writing in connection with the purchase of the motor vehicle to repair or replace defective parts, or take other remedial action free of charge to Consumers with respect to the motor vehicle in the event that the motor vehicle failed to meet the specifications set forth in the Manufacturer's warranty.

32. The Manufacturer's warranty was the basis of the bargain of the contract between the Consumer and Manufacturer for the sale of the motor vehicle to Consumer.
33. Said purchase of Consumer's motor vehicle was induced by, and Consumer relied upon the Manufacturer's written warranty.
34. Consumer met all of its obligations and preconditions as provided in the written warranties.
35. As a direct and proximate result of Manufacturer's failure to comply with its written warranty by failing to repair the motor vehicle, Consumer has suffered damages and, in accordance with 15 U.S.C. §2310(d)(1), Consumer is entitled to bring suit for such damages and other legal and equitable relief.
36. Consumer avers that upon successfully prevailing upon the Magnuson-Moss Warranty Act claim herein, all attorneys' fees are recoverable and are demanded against the Manufacturer.

WHEREFORE, Consumer prays for judgment against Manufacturer as follows:

- a. Diminution in value of the vehicle, and incurred and/or needed costs of repair;
- b. All repair incidental and consequential damages incurred;
- c. Reasonable attorneys' fees, witness fees and all court costs and other fees incurred; and
- d. Such other and further relief that the Court deems just and appropriate.

COUNT III
FLORIDA STATUTE 681

37. Consumer realleges and incorporates by reference as though fully set forth herein, paragraphs 1-23 of this Petition for Trial De Novo.
38. Pursuant to §681.1095(4), before filing a civil action on a matter subject to §681.104, the consumer must first submit the dispute to the Division of Consumer Services of the Department of Agriculture and Consumer Services and to the Florida New Motor Vehicle Arbitration Board (“Board”) if such dispute is deemed eligible for arbitration.
39. Consumer has met all prerequisites of Florida Statutes 681 prior to filing this lawsuit. Consumer has been damaged by the Defendant because Defendant’s vehicle is a lemon pursuant to Florida Statute 681.
40. Consumer is entitled to all remedies articulated in Florida Statute 681.112 and all other remedies Chapter 681 provides.

WHEREFORE, Consumer prays for judgment against the Manufacturer, including:

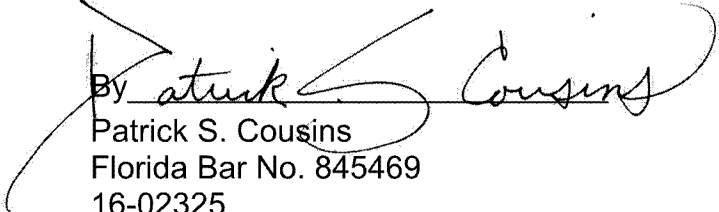
- A. Monetary damages, including incidental and consequential damages commensurate with proof at trial for the acts complained of herein.
- B. For an award of all damages including attorney fees pursuant to Fla. Stat. 681 et seq.;
- C. For an award of costs;

- D. For pre-judgment and post-judgment interest on any amounts awarded;
and
- E. All other relief the Court deems just and proper.

CONSUMERS DEMAND A TRIAL BY JURY.

DATED this 15th day of September, 2016.

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