

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE) May 3, 2005
)
JUSTICE E. MacDONALD)

B E T W E E N:

1344882 ONTARIO INC. o/a ROYAL FINE CARS,
REUBEN COVELLO and JUSTIN LAURIA

Plaintiffs

- and -

FORD MOTOR COMPANY, FORD MOTOR COMPANY
OF CANADA, LIMITED/FORD DU CANADA LIMITEE

Defendants

Proceedings commenced pursuant to the *Class Proceedings Act, 1992*,
S.O. 1992, c. 6.

ORDER

THIS MOTION, made by the plaintiffs, for an order that this action be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 and certain other relief was heard on May 3, 2005, at Toronto.

ON READING the affidavits of various affiants and other evidence filed on behalf of the parties, and on hearing the submissions of counsel, and upon being advised of the consent of the parties,

1. THIS COURT ORDERS that the within proceeding be and is hereby certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6.

2. THIS COURT ORDERS that the class is defined as:

“all persons resident in Canada other than in British Columbia (the “Class”) who:

- (a) currently own or lease a 1983 through 1995 model year Ford, Lincoln or Mercury vehicle with a distributor mounted thick film ignition (“TFI”) module (“Class Vehicle”);
- (b) owned or leased a Class Vehicle and paid or were charged for the cost of replacing or repairing a TFI module in such vehicle; or
- (c) purchased or leased a Class Vehicle when that vehicle was new and paid or were charged for the cost of replacing or repairing a TFI module in such vehicle.”

3. THIS COURT ORDERS that Reuben Covello and Justin Lauria be and are hereby appointed as the representative plaintiffs for the Class.

4. THIS COURT ORDERS that the action will proceed on the basis of the following common issues:

- (a) Were Ford Motor Company of Canada, Limited /Ford du Canada Limitee (“Ford Canada”) and Ford Motor Company (“Ford USA”), through Ford Canada, the only manufacturers of Class Vehicles for sale or lease through Canadian dealerships?
- (b) Were the Class Vehicles originally made commercially available by Ford Canada and Ford USA?
- (c) Prior to the manufacture of the Class Vehicles, and to present, did the Defendants know, or alternatively, should they have known that mounting the TFI modules on the distributor of the Class Vehicles would:
 - (i) subject the TFI modules to temperatures in excess of what are safe operating limits during normal vehicle operation; and
 - (ii) cause the TFI modules to fail?
- (d) Prior to the manufacture of the Class Vehicles, and to present, did the Defendants know, or alternatively, should they have known that the failure of the TFI modules could cause the Class Vehicles to stumble or stall suddenly and without warning during normal operations? Did this place their

occupants and others at risk of personal injury and death from loss of vehicle control and collisions?

- (e) Did the Defendants owe a duty of care to the Plaintiffs and Class Members?
- (f) Did the Defendants breach the standard of care in the design, manufacture and placement of the TFI modules?
- (g) Did the Defendants breach the standard of care in failing to recall the Class Vehicles?
- (h) Did the Defendants fail to provide a proper warning about the operation of the TFI modules?
- (i) Did the Defendants engage in an unfair practice within the meaning of Section 3 of the *Business Practices Act* and/or section 52 of the *Competition Act*, by:
 - (i) failing to disclose the TFI Defect to the Class Members; and
 - (ii) actively concealing the TFI Defect.
- (j) Are the Defendants liable to pay punitive damages having regard to the nature of the established breaches?

5. THIS COURT ORDERS that the notice of certification as a class proceeding attached as Schedule "A" to this order be approved.

6. THIS COURT ORDERS that the notice of certification be given to the Class by publishing the notice once in each of the *Globe and Mail* in Toronto, *The Calgary Herald* in Calgary, Alberta, and *The Montreal Gazette* in Québec.

7. THIS COURT ORDERS that members of the Class may opt out of the class proceeding by serving a written notice of their desire to opt out of the proceeding by forwarding same to the addresses as set out in the notice. Notice of the decision to opt out must be received by the solicitors as set out in the notice within 30 days of the date of this notice.

8. THIS COURT ORDERS that the costs of the notice will be paid by the plaintiffs.

9. THIS COURT ORDERS that the plaintiffs and their counsel and the defendants and their counsel are entitled to share, exchange and use all evidence and information from this action for any purposes related to the action in B.C. between Barbara Reid and these defendants (action number SO23572 (Vancouver Registry) and that rule 30.1.01(3) does not apply to said evidence and information.

SCHEDULE "A"

**NOTICE OF CLASS CERTIFICATION
LEGAL NOTICE PURSUANT TO THE *CLASS PROCEEDINGS ACT, 1992*,
S.O. 1992, C. 6**

THE NATURE OF THE LAWSUIT

A class action has been commenced in the Superior Court of Justice against Ford Motor Company, Ford Motor Company of Canada, Limited/Ford du Canada Limitee (the "defendants"). The proceedings have been brought by Reuben Covello and Justin Lauria as representative plaintiffs, by their solicitors, Teplitsky, Colson and Stevensons Professional Corporation.

The representative plaintiffs claim damages against the defendants for their negligence in the design, testing, manufacturing and marketing in the 1983 through 1995 model-years Ford, Lincoln or Mercury motor vehicles of a distributor mounted thick film ignition ("TFI") module (the "TFI module"). It is alleged that the defendants knew of the defect and breached their duty of care to their customers by manufacturing said defect, failing to warn their customers of the defect and failing to remedy said defect. The plaintiffs are seeking general and special damages.

The defendants deny the plaintiffs' allegations and have stated that they will defend the action and will deny any wrongdoing and liability for damages.

This notice does not mean that the court has taken a position as to the likelihood of recovery on the part of any plaintiffs, or as to the merits of the claims or defences asserted by either side. This notice is being provided because you may be a member of the Class whose rights may be affected by the lawsuit.

THE CLASS

By court order, the Class to which this lawsuit applies has been defined as follows:

"all persons resident in Canada other than in British Columbia (the "Class") who:

- (a) currently own or lease a 1983 through 1995 model year Ford, Lincoln or Mercury vehicle with a distributor mounted thick film ignition ("TFI") module ("Class Vehicle");
- (b) owned or leased a Class Vehicle and paid or were charged for the cost of replacing or repairing a TFI module in such vehicle; or

- (c) purchased or leased a Class Vehicle when that vehicle was new and paid or were charged for the cost of replacing or repairing a TFI module in such vehicle.”

THE COMMON ISSUES

At present, the class action will determine the following issues:

- (a) Were Ford Motor Company of Canada, Limited /Ford du Canada Limitee (“Ford Canada”) and Ford Motor Company (“Ford USA”), through Ford Canada, the only manufacturers of Class Vehicles for sale or lease through Canadian dealerships?
- (b) Were the Class Vehicles originally made commercially available by Ford Canada and Ford USA?
- (c) Prior to the manufacture of the Class Vehicles, and to present, did the Defendants know, or alternatively, should they have known that mounting the TFI modules on the distributor of the Class Vehicles would:
 - (i) subject the TFI modules to temperatures in excess of what are safe operating limits during normal vehicle operation; and
 - (ii) cause the TFI modules to fail?
- (d) Prior to the manufacture of the Class Vehicles, and to present, did the Defendants know, or alternatively, should they have known that the failure of the TFI modules could cause the Class Vehicles to stumble or stall suddenly and without warning during normal operations? Did this place their occupants and others at risk of personal injury and death from loss of vehicle control and collisions?
- (e) Did the Defendants owe a duty of care to the Plaintiffs and Class Members?
- (f) Did the Defendants breach the standard of care in the design, manufacture and placement of the TFI modules?
- (g) Did the Defendants breach the standard of care in failing to recall the Class Vehicles?
- (h) Did the Defendants fail to provide a proper warning about the operation of the TFI modules?
- (i) Did the Defendants engage in an unfair practice within the meaning of Section 3 of the *Business Practices Act* and/or section 52 of the *Competition Act*, by:
 - (i) failing to disclose the TFI Defect to the Class Members; and

- (ii) actively concealing the TFI Defect.
- (j) Are the Defendants liable to pay punitive damages having regard to the nature of the established breaches?

Following a determination of the common issues, further stages of litigation may be required. Stage 2, only if necessary, will involve determining the issue of liability on an individual basis. Stage 3, again, only if necessary, will involve the assessment of damages on an individual basis unless damages are assessed on an aggregate basis when the common issues are determined.

PARTICIPATION AND EXCLUSION FROM THE CLASS

If you wish to remain a member of the Class, you do not have to do anything at this time. If you wish to obtain more information about your rights as a Class member, you may contact the solicitors for the representative plaintiffs, Teplitsky, Colson, in writing, at the address below.

IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS PROCEEDING (“opt out”) you must deliver a written notice to one of the solicitors for the parties (at the address listed below) specifying your desire to opt out of the class proceedings. Notice of your decision to opt out must be received by either one of the solicitors below within 60 days of the date of this notice.

To opt out of the proceeding please write to one of the following:

Harvin D. Pitch
Teplitsky, Colson
70 Bond Street
Suite 200
Toronto, Ontario
M5B 1X3
(t) 416-865-5310
e-mail: hpitch@teplitskycolson.com

one of the solicitors for the plaintiffs;

OR

James A. Hodgson
Hodgson Shields DesBrisay O'Donnell Llp
48 Yonge Street
11th Floor

Toronto, Ontario
M5E 1G6

solicitors for the defendants .

ANY JUDGMENT OBTAINED ON THE COMMON ISSUES IN THIS ACTION, WHETHER FAVOURABLE OR NOT, WILL BIND ALL CLASS MEMBERS WHO DO NOT OPT OUT OF THIS ACTION.

FINANCIAL CONSEQUENCES

The class proceeding shall deal with the common issues, as outlined above. No Class member, other than the representative plaintiffs, will be liable for costs with respect to the determination of these common issues. However, once the court has determined the common issues, it may be necessary that the individual members of the Class participate in individual proceedings to determine issues which are not common to the Class in order to establish their claim. If this is necessary, each member of the Class may have to bear costs of such individual proceedings and, if unsuccessful, could be liable to pay a portion of the defendants' costs incurred with respect to such individual proceedings.

Class members may be entitled to receive financial compensation from the defendants if the class action is successful.

The representative plaintiffs have entered into an agreement with their solicitors whereby fees and disbursements related to the trial of the common issues will be payable only in the event of success in the class action. Any fees charged by the solicitors for the representative plaintiffs must be approved by the court.

For further information please contact Harvin D. Pitch, either by phone or in writing to:

Harvin D. Pitch
Teplitsky, Colson
70 Bond Street
Suite 200
Toronto, Ontario
M5B 1X3
(t) 416-865-5310
e-mail: hpitch@teplitskycolson.com

In addition, information may be obtained from the website www.classproceedings.ca under "Current Cases".

1344882 Ontario Inc. o/a Royal Fine Cars et
al
Plaintiff

and
Ford Motor Company of Canada, Limited et
al
Defendants

Court File No: 02-CV-235950CM2

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

O R D E R

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Ford Motor Company of Canada, Limited/Ford
Du Canada Limitee

Served on Fax: 416-365-7702