

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Bowie v. Kemp-Car Ltd, 2007 NSSM 86

Between:

PAUL JAMES BOWIE

CLAIMANT

-and -

KEMP-CAR LIMITED

DEFENDANT

DECISION AND ORDER

Adjudicator: David T.R. Parker

Heard: December 19, 2006

Decision: January 22, 2007

The Claimant and Defendant appeared.

The correct name of the Defendant is Kemp-Car Limited which is carrying on business as Major Discount Complete Auto Services and the amendment to the Defendant's name was made at the beginning of the hearing.

The facts of this case are as follows:

- (1) The Claimant's daughter took the vehicle into the Defendant for a motor vehicle inspection.

(2) The front wheels were removed from the vehicle by the Defendant's employees in doing the inspection and then put back on the vehicle. The work was completed on October 3, 2006, at a cost of \$462.30 plus HST.

(3) On October 12, 2006, while the Claimant's daughter was driving the Claimant's vehicle the driver's side front wheel fell off resulting in damage to the Claimant's vehicle.

Analysis

Shannon Bowie's testimony was forthright and she answered questions without hesitation and described what happened from the time the vehicle, was taken in to the Defendant, until the time the wheel fell off.

Ms. Bowie had driven from her home in Dartmouth to Wentworth on a couple of occasions, to the city of Halifax a couple of times, and was returning from Lawrencetown when the wheel fell off the vehicle. She estimated about 900 km had been put on the vehicle since it was in the Defendant's garage.

She said she was going down the highway when she noticed a noise that progressively got louder. She said it started as a clunking noise for about ten minutes. She said she phoned her dad, the Claimant, on the cell phone and he told her to take it in to the garage to have it looked at. She said she heard the noise for quite a few kilometers. She stated that when she phoned her dad he said, "If it's a clunking noise and you feel there is something wrong, take it in." She said, "There was sufficient noise to give me an alarm."

She said when the wheel did come off the car slid about 200 meters down the road.

The person who did the work on the vehicle was not in court to give evidence. The Defendant's witness indicated he was "home for his wife. I did not think it was necessary."

The wheels were not re-torqued a few kilometers after they were put back on. The Defendant's technician said, "Maybe there will be a sign at my shop to re-torque them."

I have considered all the elements of negligence including duty, standard of care, breach of standard of care, proximate cause and foreseeability, and there is no question a duty exists between the parties. The standard of care, in my view, is slightly higher than a reasonable person's standard as we are dealing with a professional defendant that is doing work on a vehicle for value received (i.e. it is paid for its work). The only conclusion for the wheel coming off is that the wheel was not secured properly by the Defendant and /or not having the wheels re-torque. The Defendant was negligent. However, the Claimant and driver are also negligent. At no time did the Claimant or driver decide to stop the vehicle notwithstanding the noise was becoming progressively worse. I would apportion liability at fifty/fifty (50/50) pursuant to the Contributory Negligence Act. Therefore I would reduce speedy's invoice for repairs and towing in the amount of \$449.91 by one-half or \$224.96 plus HST of \$33.75 a total of \$258.71 and reduce the bill for the front fender from Boutilier's Autobody of \$625.00 by one-half, that is \$312.50 plus HST of \$46.87 a total of \$359.37

IT IS THEREFORE ORDERED that the Defendant pay to the Claimant the following sums:

\$258.71
 \$359.37
\$ 80.00 Court Costs
 \$698.08

Dated at Dartmouth, this 22nd day of January, A.D., 2007.

David T.R. Parker
 Adjudicator of the Small Claims
 Court of Nova Scotia