

Claim No: 315741

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**

Cite as: Newcombe v. Kia O'Regan, 2009 NSSM 46

BETWEEN:

JAMES NEWCOMBE and LESLIE NEWCOMBE

Claimants

- and -

KIA O'REGAN

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on September 29, 2009

Decision rendered on September 30, 2009

**APPEARANCES**

For the Claimants            self-represented

For the Defendant        Ian Breneman, articled clerk

**BY THE COURT:**

- [1] The Claimants seek damages of \$654.21 from the Kia dealership which serviced their 2007 Kia Magenta.
- [2] They blame the dealership for the fact that in June 2009, they had to replace a set of tires because the existing ones on the car had developed a so-called “scalping” condition which made for a noisy and bumpy ride.
- [3] Mr. Newcombe testified and presented a sequence of events that was significantly at odds with the documentary record. I do not believe that he was being dishonest, but his grasp of the facts was tenuous, perhaps because it was his spouse who had dealt primarily with the dealership. I noted that Ms. Newcombe chose not to testify.
- [4] Mr. Newcombe was convinced that the dealership had supplied a new set of tires in April 2009, and yet within weeks the scalping had begun and was not rectified by a wheel alignment in May 2009. The Claimants eventually had another dealership supply new tires and perform a wheel alignment. The damages that they seek consists of the cost of the new tires.
- [5] The flaw in this narrative is that the dealership records show that new tires were installed in October 2008, a full eight months earlier than Mr. Newcombe stated. By April 2009, the scalping had occurred and it is not possible to find what caused it. I accept the evidence that poor road conditions (as we sometimes experience in Nova Scotia) can be a significant factor. The dealership records noted that an alignment should

be performed which would, at least, slow down the abnormal wear. That was done in May.

- [6] The evidence before me was to the effect that the tires were safe to drive on, but that they would emit a noise at high speeds which might have been disconcerting.
- [7] In the end, I cannot find that the dealership failed in the performance of its duties. There is no evidence that the tires were improperly installed or that any alignment was improperly done. There are many possible reasons for abnormal tire wear. Apart from road conditions, as noted, there could be a defect in the vehicle that the Defendant would not necessarily have been aware of, and which might have been a warranty issue.
- [8] But all of this is speculation. The onus is on the Claimants to prove their case, and I cannot find that they have done so. As such the claim must be dismissed.

**Eric K. Slone, Adjudicator**