

Claim No: 338746

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

Cite as: Bundy v. MacPhee Chevrolet Buick GMC Cadillac Ltd., 2010 NSSM 71

BETWEEN:

JUAN STACY BUNDY

Claimant

- and -

MacPHEE CHEVROLET BUICK GMC CADILLAC LTD.  
(Incorrectly described as MacPHEE PONTIAC)

Defendant

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**REASONS FOR DECISION**

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**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Dartmouth, Nova Scotia on December 14, 2010

Decision rendered on December 21, 2010

**APPEARANCES**

For the Claimant            self-represented

For the Defendant        Andrew Wolfson, QC  
   Counsel

**BY THE COURT:**

[1] The Claimant brought his 2004 GMC Sierra into the Defendant's shop for some servicing earlier this fall, which work required the rear wheels to be removed in order to gain access to the axles. The wheels are chrome after-market rims which the Claimant purchased several years ago from someone other than a GM dealer.

[2] Between leaving the Defendant's premises and driving to a friend's house several kilometres away, one of the two rear wheels lost a centre cap. That cap is a small, just slightly larger than a compact disk, silver-coloured piece of moulded plastic which attaches to the rim with one bolt. The bolt is loosened or tightened with a supplied allen key.

[3] The Claimant's theory is that the mechanic must have over-tightened the bolt, causing the plastic to crack and break off once the vehicle was being driven. His evidence was that the other rear cap showed a small stress fracture which was consistent with having been over-tightened.

[4] Normally, this would not have been a big deal since the centre cap is a twenty or thirty dollar part, and the Defendant would have paid for it as a courtesy. Unfortunately, however, this type of wheel has been discontinued and the part simply is unavailable. The Claimant has the choice either of driving without a matching cap, or purchasing a whole new set of chrome wheels at a considerable expense. According to the one estimate that he filed, the cost of an equivalent set of wheels is \$1,400.00 plus installation, plus HST, for a total of slightly more than \$1,700.00.

[5] To succeed in his claim, the Claimant first has to establish that the Defendant's improper handling of his wheel cap was the reason that it broke off. This is admittedly a difficult thing to prove, because he was not there to observe the mechanic at work, and does not even have the broken cap to allow for an inspection that might reveal why it failed. Essentially, he is asking me to infer that this is the best explanation possible.

[6] I am not able to agree with the Claimant. First of all, in the case of a bolt that can only be tightened or loosened by hand, it is difficult to accept that an experienced mechanic would have used more force than was necessary just to make it fit tightly. This theory asks me to infer that the mechanic reached this point and pressed on pushing the allen key with his hand, to the extent that the plastic would break. This seems unlikely.

[7] Also, there is no evidence as to how many times the cap may have been removed in the past. Any one of those other occasions could as easily have led to a crack that finally gave way.

[8] Also, there is no way of telling whether something on the road that day flew up and broke the cap.

[9] In the end, since we are engaging in a degree of speculation and inference, I am of the view that there are at least as many alternative explanations that are equally, if not more, probable than the theory that the Defendant's mechanic over-tightened or otherwise mishandled the cap.

[10] Given that finding, it is unnecessary for me to explain in great length the other hurdle that the Claimant would have, namely proving substantial damage.

For damages to be recoverable, they must be a foreseeable consequence of the action. I would not view it as reasonably foreseeable that a \$1,700.00 expense could result from the over-tightening of a bolt on this small, decorative wheel cap. The fact that the manufacturer has discontinued this part, essentially orphaning its existing customers, would not be reasonably foreseeable to the Defendant. Had I found fault, damages, if allowed, would have been significantly less than claimed.

[11] In the result the claim is dismissed.

**Eric K. Slone, Adjudicator**