

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Citation: *Bates v. O'Regan's Automotive Group*, 2018 NSSM 88**

Claim No: SCCH 471432

**BETWEEN:**

DONALD ARMSTRONG BATES

**Claimant**

-and –

O'REGAN'S AUTOMOTIVE GROUP

**Defendant**

Donald Bates appeared on his own behalf.

Jeff Waugh appeared for the Defendant.

***Editorial Note: The electronic version of this judgment has been edited for grammar, punctuation and like errors, and addresses and phone numbers have been removed.***

**DECISION**

(1) Donald Bates is a retired RCMP officer and since 1969, he has enjoyed purchasing used Mercedes-Benz vehicles, both for driving and doing some of the more straightforward mechanical work.

(2) On June 30, 2016, he purchased a used 2012 Mercedes-Benz GL350 BT 4Matic from O'Regan's Mercedes-Benz. Mr. Bates testified he has taken his sales and service business to O'Regan's for some time. The parties seem to enjoy a cordial relationship. Nevertheless, they disagree on the cause of the problem which prompted this case.

(3) When Mr. Bates' took delivery of his vehicle, he identified a noise and vibration to the salesperson, who indicated it would be addressed by the service team. He took the vehicle in for servicing where, after a series of diagnostic tests, the staff attributed the cause of the noise to tires and wheels. Once the wheels were corrected and tires replaced, the mechanics advised Mr. Bates they no longer heard the noise. When Mr. Bates picked up the vehicle, he still heard noise and felt vibrations, so he returned the vehicle to the shop. The mechanics tried other tests and could not find anything wrong. Eventually, they replaced all of the tires at no cost to Mr. Bates. O'Regan's claims the noise and vibrations are gone. Mr. Bates disagrees. He attributes the problem to one of the CV joints, which are located on either side of an axle. This problem was discovered in his most recent visit to the shop. No repair work has been done to the CV joint. He

seeks \$4995.

(4) After consideration of the evidence, I find the matter should be dismissed.

(5) Donald Armstrong Bates testified that he purchased the vehicle after his previous one was totaled in an accident. When he purchased this vehicle, he met with Ian Vincent, a salesperson with O'Regan's. He identified a vibration which Mr. Vincent indicated would be fixed as the vehicle was a "Mercedes Certified Vehicle", meaning it belongs to a warranty program with the manufacturer. He met with Bruce Gilmore and Ken Robinson, two employees in the service department at O'Regan's. They recommended, repaired rims, a new set of tires, wheel balancing and realignment.

(6) He was advised there was wear on the inside of a left-side tire. He indicated the vehicle was in for warranty work that was done but the problem was not fixed. They straightened three bent rims and balanced the wheels.

(7) Under cross-examination, he testified he was seeking the cost for failure to conduct the repairs promised. This included an estimate of \$2356 cost to supply and repair the CV joint on the axle shaft. The remaining amount is for costs of travel and loss of use. He described the initial problem as annoying and he now believes the vehicle is not safe since it has not been fixed. He noted the vehicle does not shake all the time but at certain times more than others. He testified that Mr. Gilmore indicated the truck was too heavy for the wheels and tires. He used the vehicle for street purposes only, and not off-roading.

(8) Marie Solange Pierette Richard is Mr. Bates' common law spouse. She confirmed Mr. Bates owned the vehicle for approximately seven or eight years. He had been involved in an accident sometime in 2000 or 2001.

(9) John Edward Smith has been a licensed mechanic for 65 years having obtained his mechanic's license when he was 19 years of age. He started working on cars when he was 12. Mr. Smith is 84. He estimates knowing Mr. Bates for 40 years or more. Mr. Smith described his personal education, training and experience. Most recently, he retired as a shop foreman having worked in two General Motors garages his whole working life. He does not work on Mercedes-Benz vehicles. He did not work on Mr. Bates' vehicle.

(10) He testified to what causes a vehicle to vibrate. He indicated vibrations could be the result of one or more things including the mileage on the vehicle, the weight on the tires or any problems with the tires themselves.

(11) James Elwood Hurst is a manufacturer's representative for Hunter Engineering. That company manufactured the Road Force machinery, the wheel balancing and tire testing machinery currently used by O'Regan's. Mr. Hurst attends to the testing and inspection of the machines at O'Regan's. He also ensures that all who work on that equipment are trained to use it and their training upgraded when necessary.

(12) He attended to O'Regan's in preparation for this hearing. He cannot comment on how well employees at O'Regan's use the machine. He testified the machine was calibrated and properly maintained. A machine needs recalibration when wear is

discovered. There was no evidence of recent wear. O'Regan's machine is 14 years old and described as a second generation machine, i.e. a newer model.

(13) He confirmed many things can cause vibrations including most often the wheel assembly area. Severe scalloping may cause issues of wearing in the tires. Further, a pothole or other type damage could throw the vehicle's alignment off, causing an unusual vibration. He indicated that it is possible for a car to be knocked out of alignment and then back, although the likelihood of that happening is very slim.

(14) Steven Clark Taylor owns an auto body repair shop in Bedford Nova Scotia. He specializes in the repair and maintenance of European vehicles, particularly German cars. He has worked in this business since 1993 when he received his first apprenticeship. He received his apprenticeship for BMW in 1995 and British auto-maker, Jaguar, in 2003.

(15) He described the air suspension system in Mercedes vehicles. Specifically he indicated they are adjustable and ensure a smoother ride. In looking at vibrations, the first point to address is wheels and tires. This is followed by determining if the brakes are sticking. He indicated that one would test a CV joint as part of a process of elimination to determine the cause. He looked at Mr. Bates' vehicle. He found the wheels were not calibrated. He attributed the cause to a problem with the axle.

(16) Under cross-examination, he testified that air suspension helps to insulate the body from the movement of the vehicle. If the car came out of alignment, it could result in vibration. He testified that he worked on Mr. Bates' vehicle three times, most recently in the summer of 2017. He suggested the wheels and tires should be balanced, but that had already been done. He did not review the documents prepared by O'Regan's following the various adjustments.

(17) He testified there was nothing to indicate that the car was knocked out of alignment. If it had been, it would vibrate. He testified suspension problems would cause more shakes and some tire wear.

(18) Gavin Bruce Gilmore is the service manager for O'Regan's Mercedes-Benz. He has worked with that company for 19 years. He has known Mr. Bates the whole time.

(19) He testified that he worked on the vehicle at least three times. The Defendant replaced the tires on it at least twice. He is unable to say how much the vehicle was out of alignment, if at all. He testified that he went on a test drive with Mr. Bates and experienced vibrations which he attributed to three bent wheels. The vehicle was given its 150 point inspection which he described as very detailed (although according to the documents in evidence, only a small fraction related to the issue in this matter) . He found there were vibrations from the brakes when they were applied. He does not believe the CV joint was the issue. However, he made a point of checking "anything that rotates", including the CV joint, and found nothing related to it.

(20) Under cross-examination, he indicated he would not believe Mercedes-Benz would make a car that was too heavy for its wheels and tires. The Defendant had Pirelli pay for new tires as a result of the wear on the others. He acknowledged the rims were bent and had been straightened. He took the vehicle for a test drive and felt no slipping or vibrations. He believes the car likely hit one or several potholes.

(21) He submitted into evidence documentation which confirms the tires were replaced in 2014.

(22) Ian Roger Vincent is a salesman at O'Regan's Kempt Road. He confirmed he attended to the purchase and sale of Mr. Bates vehicle on behalf of O'Regan's. He does not recall the vibration. He does not recall the sale specifically. When asked by Mr. Bates in cross-examination if he remembered telling Mr. Bates the vibration would be addressed as the vehicle was a Mercedes-Benz Certified Vehicle, he indicated that is consistent with what he would say. He recalls taking the vehicle with Mr. Bates on a test drive which ran along Joseph Howe Drive to Highway 102. He does not recall any vibrations. When they got off the highway at Bayers Lake, he recalls some vibrations as if a tire were flat.

(23) Kenneth William Robinson was called by the Claimant. He is the Fixed Operations Manager of O'Regan's. He referred to several of the work orders and invoices in evidence as he did not remember the specific meeting with Mr. Gilmore regarding Mr. Bates' vehicle. It is clear he recalls the work that was done and meeting numerous times with Mr. Bates. He recalls having the rims straightened and replacing the tires. The tires were also rebalanced.

(24) Mr. Robinson also testified on behalf of the Defendant. He described his duties as being in charge of service, parts, detailing and maintenance – essentially, everything but sales. He has worked in the automobile business since 1985, having worked for the O'Regan's group since 2006. He first met Mr. Bates in 2015. He recalls replacing the rims and tires in the vehicle. He also took the vehicle to O'Regan's Toyota dealership to test the balancing on the equipment in that shop and noted no difference, namely nothing unusual in the level of vibration. Mr. Bates made a subsequent visit noting further vibrations. Three of the four tires were out of balance. The tires were balanced. They conducted a road test where the car was run at 120 km/h and there were no problems.

(25) In the invoices, the vehicle was referred off-site to have the wheels and rims straightened. At no point was Mr. Bates charged for this or any subsequent problems.

(26) A further vibration was noted at 82,000 km. Further diagnostics were conducted to fix a vibration. In six weeks, Mr. Bates had put approximately 10,000 km on the vehicle.

(27) The vehicle was taken into the shop by Mr. Bates several times thereafter. His tires were tested when they were selected for summer tires. On May 13, the decision

was made to replace the summer tires, although the tires were only slightly more than half worn.

(28) On June 17, 2016, new tires were installed when Mr. Bates brought his car in for regularly scheduled maintenance.

(29) A subsequent visit to the shop showed a bent rim which was not on the vehicle in previous visits. The same set of new tires was installed and balanced.

(30) A further diagnostic test was done on the hoist in "Dyno Mode". Mr. Robinson indicated that such a test would identify a shake anywhere in the drive train. He observed no bent wheels or troubles with the drive train itself.

(31) The next invoices in October 2017 relate to the three bent rims which were straightened. They took the vehicle for a long drive to which Mr. Bates remarked that the car was better but the Defendants "did not get it all". Mr. Robinson did not feel any vibrations. He felt the ride was "really smooth".

(32) On November 1 and 2, 2017, the vehicle was taken in for oil and filter service. They took the vehicle to test to see if there was anything wrong. Mr. Robinson noted that the left front boot was torn on the CV joint causing a clicking noise. Mr. Robinson recommended replacing the drive axle shaft. Mr. Bates was given a quote of approximately \$2300 to replace CV joint on the transaxle shaft. Mr. Robinson confirmed the warranty was long expired. He does not believe the vibration was related to this issue.

(33) Thomas John Stenason is a technician at O'Regan's Mercedes-Benz. He has worked on Mr. Bates' vehicle. He has a red seal licensed mechanic having worked for Mercedes for most of his career.

(34) He is familiar with the Road Force testing equipment. He confirmed that vibrations and wheel alignment can cause tires to get out of balance. The rims being bent can also cause damage. A sudden or heavy jarring can bend the rim. He described the Dyno Mode process where the antilock brake system is taken off the vehicle and the vehicle is run at a high speed over the technicians head. The technician will check to see if anything vibrates in an unusual manner. When they did this, nothing was detected and consequently they recommended replacing the rims and tires.

(35) Under cross-examination, he testified the computer system is a closed area network. They tested some of the suspensions by micrometer. Intermittently, they check for vibrations.

## **Findings**

(36) In reviewing the evidence, I note the Defendant acknowledges there were vibrations and may be mechanical issues remaining to be addressed. I agree with this

finding. The evidence is clear.

(37) The Claimant has experienced vibrations in his vehicle from time to time, which was acknowledged by the Defendant's counsel. I find he was told by Ian Vincent they would be rectified. Numerous attempts were undertaken by the Defendant in an effort to eliminate vibrations. The Defendant claims they were successful, the Claimant asserts they were not.

(38) In reviewing the evidence, I am not satisfied the vibrations were caused solely by the wheels and tires. Something else is causing the vibration. The various employees of the Defendant blamed the bent rims on off-roading. I do not find the evidence sufficient to establish the vehicle has been used for off-roading.

(39) The Claimant now has a torn boot on the CV joint. Mr. Taylor's evidence is to the effect that by process of elimination, he has determined the cause of the vibrations to be damage to the CV joint. I believe the vibration existed. I do not believe the evidence supports either party's theory for its cause. It makes sense that bent rims would cause vibrations when being driven. Likewise, so too would faulty tires. There is no evidence to show that a faulty CV joint located on one wheel of a car would cause three rims to be bent or result in the degree of damage to the tires. No cause has been proven. Therefore, I am unable to determine if the vibrations were better or worse. I tend to believe they are different. I note that the bent rims and faulty tires were discovered after the vibrations were raised with the dealer. Therefore, I find the evidence inconclusive at best.

(40) I find the Claimant has not established any basis in fact that the CV joint was the problem affecting the vehicle. It is unclear what caused it or the degree to which it exists. I do not find the service department was negligent or breached their contract with Mr. Bates.

(41) Accordingly, I dismiss the claim with each party bearing their own costs.

### **Provisional Assessment of Damages**

(42) Had I found liability on the part of the Defendant, then the principle to be applied is that a court must put the parties in the same position as if the breach had not occurred. It would be impossible to determine the cost to repair the vehicle or an allowance for betterment. I would have awarded a modest amount representing diminution in value, or \$1000 together with general damages of \$100 and costs of \$99.70.

(43) In the absence of evidence of economic loss for loss of use, Mr. Bates' claim for that would form part of the claim for general damages. Travel costs for this hearing are items of costs. I would have awarded nothing further under either heading.

(44) The claim is dismissed. An order shall be issued accordingly.

Dated at Halifax, NS,  
on May 8, 2018;

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**Gregg W. Knudsen, Adjudicator**

Original:	Court File
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