



Civil Resolution Tribunal

Date Issued: July 30, 2018

File: SC-2017-005954

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Dalziel v. P & T Auto Body Ltd*, 2018 BCCRT 400

B E T W E E N :

Jordan Dalziel

APPLICANT

A N D :

P & T Auto Body Ltd

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a paint repair job the respondent P & T Auto Body Ltd, also known as Sopron Auto Body, completed on the applicant Jordan Dalziel's 1991 Porsche Carrera 911, in around January 2015. The applicant says the respondent's work was defective and caused other damage that now requires a

fresh paint job. The applicant seeks a total of \$5,000, although initially his claim totalled \$4,750. The applicant is self-represented and the respondent is represented by its principal Rishi Ram.

JURISDICTION AND PROCEDURE

2. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
4. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
5. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUES

6. The issues in this dispute are a) was the respondent's paint job and related work on the applicant's car defective or sub-standard, and b) if so, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

7. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Liability

8. The applicant says the respondent provided a defective paint job on his car, which was completed around March 2015. Apart from the \$300 insurance deductible issue discussed below, the applicant first discovered peeling and flaking paint in the spring of 2016. The applicant submits the respondent failed to follow the industry standard of “windows out” and so the respondent’s “masking line” was too far away from each window’s edge (seen when the windows’ and door trim is off). The applicant did not provide any expert evidence to support the claim that “windows out” is the industry standard. The respondent did not particularly dispute that this is the standard. In any event, based on the evidence before me, I accept that the respondent’s job was inadequate.
9. I agree with the applicant that the respondent’s paint job has peeled and flaked, with rust building underneath it, on top of the underlying factory paint. The applicant says this rust is due to the respondent’s alleged failure to re-seal the mouldings against water ingress. The respondent did not expressly address whether or how it re-sealed the mouldings. I accept the applicant’s position that it is not looking for compensation for the rust, which the respondent expressly stated it did not warranty. I accept the applicant’s argument that the rust is relevant because it is only underneath the respondent’s paint job and is not affecting the factory paint job. This suggests that the moisture causing the rust arose because of the respondent’s poor paint job.
10. The respondent does not submit that it is normal for paint to peel and flake after 2 or 3 years. The respondent also does not deny the paint has peeled and flaked. Instead, the respondent simply provides a general denial that there is any

evidence that the applicant's complaints are a result of poor workmanship by the respondent's technicians. I do not agree. On a balance of probabilities, I find the applicant has proved that the respondent failed to provide a reasonably durable paint job, which I find was an implicit condition in the parties' contract.

11. The respondent also says because the applicant dismantled his car in September 2017, before notifying the respondent of any defects, the respondent cannot be held responsible as it cannot be certain the defects were their responsibility. The respondent submits that the applicant failed to bring the car to his shop (which the applicant could not do as it was dismantled), and that the respondent is not a mobile company. I do not accept this argument.
12. I find the more likely scenario is as described by the applicant. In the spring of 2016, the applicant first noticed peeling and flaking around the door edges. In September 2017, he raised the lip of a quarter glass seal and noticed rust (which I agree is not dismantling). At that point, the applicant called the respondent who asked the applicant to document all the issues with details and photos. The respondent did not respond to this particular evidence that it made this request. The applicant then dismantled the car to document the concerns. I accept the applicant did so and that the evidence shown in the photos relates to the respondent's paint job, and not some other damage caused by someone or something else. In the circumstances, given the applicant was reasonably concerned about the respondent's work, the respondent could have attended at the applicant's home or relied upon the photos he sent. It was not reasonable for the respondent to deny any responsibility simply because the applicant was not able to drive the car into the respondent's shop.
13. I find the respondent is liable for providing a defective paint job. It is obligated to put the applicant in the position would have been had the respondent done the job correctly at the time.

Damages

14. The question now is how much must the respondent reimburse the applicant? The applicant's evidence of compensable damages is not entirely clear.
15. At the time the respondent did the paint job, it also did an insurance claim repair. On the face of the invoices in evidence, it is not clear which line items relate to the claim portion and which relate to the "private" portion.
16. The applicant's dispute is only about the "private" repair work, as referenced above. In particular, the applicant paid \$2,900 plus tax for the respondent "to completely paint, remove and install parts, and repair damaged panels (non-claim related), plus \$250 plus tax to remove and re-install the rear quarter glass. The applicant says the "private" job represented about 40 hours of the respondent's billable labour. The applicant says it will cost more to re-do the respondent's paint job, because another company will not have the incentive of doing the insurance claim work at the same time. The applicant says the respondent has said it never wants to work on the applicant's car again, and therefore seeks compensation to have the repairs done elsewhere. The respondent does not dispute that it does not want to do any further work on the applicant's car.
17. The applicant now says his total claim exceeds \$7,250, but that he abandons the excess over \$5,000, which is the tribunal's monetary limit under its small claims jurisdiction. Generally, the applicant claims the cost to repair, repaint and blend the paint on his car, along with labour costs to remove necessary parts, replacement of non-reusable parts, and re-installation of glass. Relying on the respondent's own non-discounted billing rates and estimate from 2015, the applicant says the cost to repaint and 'blend' will exceed \$5,000. However, the applicant has not broken down what portions of that invoice may not need to be re-done. In his Dispute Notice, the applicant's total claim for re-painting his car totaled \$4,450.00, and there is no explanation before me to explain the inconsistency between that figure and the \$7,250. On balance, I find the \$4,450 is reasonable, given that the

respondent did not dispute the particular amount and the invoice evidence before me.

18. The applicant also claims about \$800 USD, the amount he spent for additional components he supplied, and some of which will need to be re-purchased. However, applicant did not specify the dollar figures for the items he says will need to be replaced. I therefore find the applicant has not proved this claim.
19. The applicant also claims the \$300 insurance deductible he paid on December 12, 2015 for the car's rear glass repair, because the respondent's employee used a razor blade on it to remove paint, damaging the defrost mechanism. The respondent's submission is that it sub-contracts the glass work, but did not deny a razor blade was used. I agree with the applicant that the respondent is responsible for its sub-contractor's work. I find the respondent must reimburse the applicant the \$300 deductible.
20. In total, I find the respondent must pay the applicant a total of \$4,750 as compensation for the defective paint job that the applicant will have to have re-done and for the \$300 insurance deductible.
21. Given the applicant has not yet had the repair work done, I find he is entitled to pre-judgment interest only on the \$300 for the glass deductible (\$6.42, calculated from December 12, 2015) and on the \$2900 portion of the "private" bill that is effectively a refund (\$81.64, calculated from the date of the respondent's invoice, March 16, 2015).
22. The applicant was substantially successful. In accordance with the Act and the tribunal's rules, I find he is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

23. Within 14 days of this decision, I order the respondent to pay the applicant a total of \$5,013.06, broken down as follows:
 - a. \$4,750 in damages,

- b. \$88.06 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
24. The applicant is also entitled to post-judgment interest under the COIA.
25. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
26. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Shelley Lopez, Vice Chair