



# Civil Resolution Tribunal

Date Issued: March 12, 2021

File: SC-2020-007806

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Kulcheski v. Anderson*, 2021 BCCRT 283

BETWEEN:

CATHERINE KULCHESKI and RICK KULCHESKI

**APPLICANTS**

AND:

RICK ANDERSON and CRISTINA ANDERSON

**RESPONDENTS**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The applicants, Catherine Kulcheski and Rick Kulcheski, say the respondents, Rick Anderson and Cristina Anderson, did a poor job of painting their kitchen cabinets. The Kulcheskis say the cabinets need to be stripped and repainted. They claim a \$3,595 refund of the full contract price.

2. The Andersons deny that their work was substandard and say the problem is more likely due to spills on the cabinets before the paint cured. They say they did not guarantee their work and that the Kulcheskis did not allow them to remediate the work.
3. The Andersons also say that Ms. Anderson should not be a party to this dispute because she is not an owner or operator of the painting business.
4. Ms. Kulcheski represents herself and Mr. Kulcheski. Mr. Anderson and Ms. Anderson each represent themselves.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
6. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
7. Section 42 of the CRTA says the CRT 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 CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did the respondents provide the agreed upon quality of painting?
  - b. If not, what is the appropriate remedy and who is responsible for paying it?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this one the burden is on the Kulcheskis to prove their claims on a balance of probabilities. I have reviewed all evidence and submissions provided but only refer to that necessary to explain, and give context to, my decision.
11. Ms. Kulcheski provided emails between herself and Mr. Anderson from July 22 and 23, 2019 which, I find, set out the contract's terms in bullet points, summarized below:
  - a. Remove and replace all doors, drawers, hinges and knobs for \$395,
  - b. Clean, sand, prime with 2 coats of "oil Kilz" and 3 coats of "Benny Moore Cabinet Coat: satin sheen applied at shop for \$2,660 (\$70 per piece),
  - c. Paint the on-site fixed pieces for \$495, and
  - d. Provide materials for \$475.
12. Although the cost of the job was \$4,025 plus tax, Mr. Anderson offered to complete the work for a total of \$3,595 cash if Ms. Kulcheski booked the job within 3 weeks.
13. Ms. Kulcheski's banking records indicate that she e-transferred Mr. Anderson a \$295 deposit on July 24, 2019. By paying the deposit, I find Ms. Kulcheski accepted the terms offered in Mr. Anderson's email.

14. Both respondents removed the cabinet doors and drawer fronts on August 23, 2019. Ms. Anderson began painting the on-site fixed pieces on September 9, 2019. Ms. Kulcheski questioned the colour and Mr. Anderson acknowledged that he was using a different brand of paint as the Benjamin Moore paint had reacted with the cabinets. Mr. Anderson deducted \$300 from the overall cost. Mr. Anderson reinstalled the finished doors and drawers on September 16, 2019. None of this is disputed.
15. It is also undisputed that some of the paint started peeling around February 2020. Based on photographs provided by Ms. Kulcheski, I find paint was peeling off different drawer fronts or cabinet drawers so that the darker cabinet colour could be seen underneath. I disagree with Mr. Anderson that one of the photos shows that the paint failed to adhere to underlying metal as there is no metal in the photo.
16. Ms. Kulcheski says that the paint started to peel because Mr. Anderson allegedly failed to properly prepare and prime the cabinets before painting.
17. Ms. Kulcheski says that F, who worked at a paint supply store, tore a strip of paint off the cabinets and told Ms. Kulcheski the cabinets were not prepared before painting. There is no statement directly from F, or any indication how F is qualified to provide such a statement. I place no weight on this hearsay statement.
18. Ms. Kulcheski provided a June 9, 2020 emailed statement from D, a paint sales representative. D says she looked at the cabinet pieces on May 1, 2020 and found no primer on the back of the peeled paint, or on the cabinet under the paint. D opined that no primer had been applied. D did not describe how she was qualified to provide such an opinion. Although it is likely D has some experience with paint given her job, without further details I find D's statement does not meet the requirements for expert evidence set out in CRT rule 8.3. For this reason, I give her statement little weight.
19. Ms. Kulcheski submitted a November 24, 2020 report by Clayton Des Roches, who identifies himself as an MPI certified architectural coating inspector with the Master Painters and Decorators Association. According to Mr. Des Roches' resume, he has over 20 years of painting experience and 20 years of experience as a painting and

coating inspector and analyst. His resume lists education and courses attended as well as several designations within the painting and coating industry. I find Mr. Des Roches is qualified to provide expert evidence under CRT rule 8.3.

20. In his report Mr. Des Roches says that the applicants' cabinets were not cleaned, sanded, or primed before paint was applied. He says the paint was blistered and peeled easily which shows that it did not properly adhere to the cabinet. He says the peeling is because of a failure to properly prepare and prime the surface. Mr. Des Roches saw "fish eyeing", which he says is the result of contaminants on the surface and occurs when the surface is not cleaned prior to painting. Mr. Des Roches says he found no white primer on the back of the paint peelings, and no indication that the cabinets were sanded prior to being painted.
21. Mr. Anderson says he sanded with 300 grit sandpaper which allowed the first coat to "bite" into the wood and adhere. He says that Mr. Des Roches assumes that anything less than 120 grit sandpaper is insufficient and so his comment about lack of sanding should be interpreted to mean he saw no evidence of sanding with 120 grit sandpaper. I disagree because Mr. Des Roches specifically states "no evidence of sanding" without specifying paper grit. Although Mr. Des Roches says 240 grit sandpaper is ideal, he does not specify 120 grit sandpaper anywhere in his report. Further, Mr. Des Roches specifically says that the paint did not adhere properly to the cabinets which, I find, shows that Mr. Anderson did not sand the cabinets sufficiently for the first coat to "bite" into the wood and adhere to the cabinets. Given Mr. Des Roches' findings and opinion I find Mr. Anderson likely did not adequately sand the cabinets.
22. Mr. Anderson says Mr. Des Roches did not see white primer on the back of the peeled paint strips because Mr. Anderson did not use white primer. He says he used a 2-in-1 primer and paint product that was tinted the paint colour and so would not appear white on the back of any peeling paint. I accept that Mr. Des Roches did not address the possibility of a tinted 2-in-1 primer product. However, I find that Mr. Des Roches' opinion that the cabinets were not properly prepared was based on more than a

missing layer of white primer. Mr. Des Roches also considered that the paint blistered and fish-eyed, peeled off easily in long strips, and that the cabinets appeared not to be sanded beneath the paint. So, even if Mr. Anderson used a 2-in-1 primer product, I still find he did not adequately prepare and prime the cabinets, given the resulting paint peeling.

23. I also find that a 2-in-1 product was not what the parties agreed to in the July emails. I disagree with Mr. Anderson that the email outlines the process to be used for on-site pieces only and is silent on the process to be used at the shop. This is because the email specifically sets out the process to be used at the shop, with a price per piece and an overall price. In contrast, the on-site pieces have no described process, are priced separately, and are listed after the pieces to be painted at the shop.
24. I also do not accept Mr. Anderson's statement that 1 coat of spray primer is the same thickness as 2 coats of rolled on primer, which he says is actually thicker than 3 coats of primer. This is because the statement contradicts itself and because Mr. Anderson has provided no evidence supporting any part of that statement, such as application guides or industry standard expert evidence. Although I accept that Mr. Anderson has been painting for 37 years, I do not find that qualifies him as an expert under CRT rule 8.3, particularly because he is not a neutral party to this dispute.
25. I find Mr. Des Roches' investigation was thorough and well documented and included photographs of his observations. I accept Mr. Des Roches' opinion and find that Mr. Anderson likely failed to adequately clean, sand, and prime the cabinets before painting them. Given Mr. Anderson's submissions that he used 1 coat of a 2-in-1 product then 2 coats of paint on the cabinet doors and drawer fronts, I also find he failed to provide the 2 coats of primer and 3 coats of paint agreed to in the July 2019 email.
26. Mr. Anderson says that he saw the Kulcheskis' child spill scalding hot coffee over the newly re-installed cabinets which was not immediately cleaned up. Mr. Anderson says that the paint lifting from the cabinets is consistent with hot spilled liquid and so that spill is the more likely cause of the peeling paint. I disagree.

27. First, the Kulcheskis deny that their child spilled scalding liquid on the cabinets and Mr. Anderson has provided no supporting evidence of the event, such as a statement from Ms. Anderson. Given that Ms. Anderson is also a party in this dispute I see no reason why she could not provide such a statement.
28. Second, Mr. Anderson has not provided any explanation about which cabinets or drawers the coffee was allegedly spilled on, and whether those particular cabinets and drawers were included in the 4 pieces of peeling cabinetry the Kulcheskis asked Mr. Anderson to repaint.
29. Third, Mr. Anderson has not provided any supporting evidence, such as a product manual warning against spilling hot liquid on the paint. Further, Mr. Anderson does not explain why the paint would peel approximately 5 months after the spill.
30. On balance, I find it unlikely that the paint peeled due to a months' earlier hot liquid spill which the applicants deny even occurred. I find it more likely than not that the cabinet paint peeled due to a lack of adequate cleaning, sanding and priming, as opined by Mr. Des Roches. Overall, I find Mr. Anderson failed to provide the agreed upon standard of painting services.
31. Mr. Anderson says he did not guarantee his work. I infer he means he is not responsible for any problems with the paint job or any substandard work. I disagree. The lack of a guarantee does not absolve Mr. Anderson for any substandard work, or for breaching the terms of his agreement.
32. The parties agree that Ms. Kulcheski alerted Mr. Anderson to the peeling paint on March 15, 2020. Mr. Anderson agreed to repaint 4 pieces with peeling paint in April 2020. The parties disagree whether Mr. Anderson delayed in repainting the pieces and whether any such delay was reasonable. I find that I need not decide whether Mr. Anderson was provided with a reasonable opportunity to repaint those 4 pieces because I find that would not have fixed the underlying problem with the quality of the paint job on the other 36 cabinet doors and drawer fronts. Based on Mr. Des Roches'

report, I find all the cabinet doors and drawer fronts need to be stripped, properly prepared and primed, and repainted.

33. For clarity, I do not make the same findings about the on-site fixed pieces painted by Ms. Anderson. The parties agree that Ms. Anderson used a different method for the on-site pieces than Mr. Anderson used for the doors and drawers in his shop. They agree that Ms. Anderson prepared, primed, and painted the on-site pieces sufficiently. So, I find those pieces do not need to be stripped and repainted.

### ***Remedy***

34. The respondents say Ms. Anderson should not be a party to the dispute because she is not an owner or operator of Canada's Best Painters. Based on Mr. Anderson's registration document, I accept Canada's Best Painters is a sole proprietorship owned by Mr. Anderson. The Kulcheskis say Rick Anderson Painting is a registered company in which Ms. Anderson is a proprietor. Neither Canada's Best Painters nor Rick Anderson Painting is a party to this dispute. Mr. Anderson did not use either business name in any of his correspondence with Ms. Kulcheski or otherwise involve either business. So, I find Ms. Anderson's role in either company is irrelevant for the purposes of this dispute.
35. I find Ms. Kulcheski contracted with Mr. Anderson about the painting. She paid the deposit directly to Mr. Anderson. Although Ms. Kulcheski says the \$3,300 balance was paid to both respondents on September 16, 2019, Mr. Anderson says the money was paid directly to him. I find it more likely that cash would be handed to 1 person and not 2 people and find it likely that the money was handed to Mr. Anderson. Overall, I find Ms. Kulcheski's agreement was with Mr. Anderson only. For these reasons, I dismiss the claims against Ms. Anderson.
36. On the evidence before me I find Mr. Kulcheski was not a party to the painting agreement between Mr. Anderson and Ms. Kulcheski. He did not correspond with Mr. Anderson about the scope of work, the cost of the work, or the requested repairs. Although the applicants say Mr. Kulcheski withdrew \$3,000 cash from the bank to pay



the balance owed, there is no indication whether the funds were withdrawn from a sole or joint account. I find the cash withdrawal alone is insufficient to show that Mr. Kulcheski is a party to this agreement. I dismiss Mr. Kulcheski's claims.

37. Ms. Kulcheski asks for a refund of the \$3,595 she says she paid for the entire paint job. Based on the parties' July 2019 email, I find that is the overall price agreed upon. However, the parties agree that Mr. Anderson reduced the price by \$300 because he used a different type, and slightly different colour, of paint. So, I find the modified agreed upon price was \$3,295. After applying Ms. Kulcheski's e-transferred deposit, I find the remaining balance owing was \$3,000. This is supported by the Kulcheskis' banking records, which show a \$3,000 cash withdrawal on September 16, 2013 and no other cash withdrawals in the days leading up to that.
38. I do not accept Ms. Kulcheski's statement that she paid Mr. Anderson with that \$3,000 withdrawn cash plus an extra \$300 cash she already had because it is inconsistent with her earlier submissions about the reduced overall price. Mr. Anderson made no submissions on the amount claimed, or how much he was paid for the painting job. On balance, I find it more likely that Ms. Kulcheski paid Mr. Anderson a total of \$3,295 for the painting job.
39. I find Ms. Kulcheski is not entitled to a refund of the on-site painting as she agrees that the painting is sufficient. I find Ms. Kulcheski has not proven those pieces need to be repainted. Based on the July 2019 email that cost is \$495. So, I find Ms. Kulcheski is entitled to a refund of \$2,800.
40. the \$3,295 price she paid for painting, less the cost of the on-site painting which I find was \$495 as set out in the July 2019 email agreement. This is because Ms. Kulcheski has failed to show those pieces will need to be repainted. Overall, I find Mr. Anderson must refund Ms. Kulcheski \$3,100.
41. The *Court Order Interest Act* applies to the CRT. Ms. Kulcheski is entitled to pre-judgment interest on the \$2,800 from September 16, 2019, the date she paid it, to the date of this decision. This equals \$52.48.

42. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Ms. Kulcheski was substantially successful in her claims, I find she is entitled to reimbursement of \$175 in CRT fees. I also allow Ms. Kulcheski's claim for reimbursement of \$400 in dispute-related expenses for the cost of Mr. Des Roches' paint inspection and expert opinion. I find the opinion was necessary to decide whether Mr. Anderson's painting was adequate or below industry standard and I find the expense reasonable.

## **ORDERS**

43. Within 30 days of the date of this order, I order Mr. Anderson to pay Ms. Kulcheski a total of \$3,427.48, broken down as follows:

- a. \$2,800 in damages, as a refund of the painting cost,
- b. \$52.48 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$525, for \$125 in CRT fees and \$400 for dispute-related expenses.

44. Ms. Kulcheski is entitled to post-judgment interest, as applicable.

45. I dismiss Mr. Kulcheski's claims.

46. I dismiss the claims against Ms. Anderson.

47. Under section 48 of the CRTA, the CRT 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 CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020

ends, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

48. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Sherelle Goodwin, Tribunal Member