



# Civil Resolution Tribunal

Date Issued: July 30, 2021

File: SC-2021-001359

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *McMeeking v. Butler*, 2021 BCCRT 844

B E T W E E N :

MATT MCMEEKING

**APPLICANT**

A N D :

DILLAN BUTLER

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. The applicant, Matt McMeeking, says he hired the respondent, Dillan Butler, to do some automotive body work and have another person (M) paint his car for \$5,000. Mr. McMeeking says Mr. Butler failed to complete the job, that the work he did was deficient and that he misrepresented that M would paint the car. Mr. McMeeking says he paid Mr. Butler \$3,090 but only claims \$2,090 as damages in this dispute.

2. Mr. Butler says M refused to paint the car and Mr. McMeeking refused Mr. Butler's offer to paint the car so Mr. Butler considered the matter at an end. I infer Mr. Butler argues that he did the work Mr. McMeeking paid for.
3. Each party represents himself.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. 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.
6. 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.
7. 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.

8. As a preliminary matter, Mr. McMeeking initially also named M as a respondent in this dispute. However, Mr. McMeeking has since withdrawn his claim against M, leaving only Mr. Butler as a named respondent.

## **ISSUES**

9. The issues in this dispute are:
  - a. Did Mr. Butler misrepresent that M would paint the car, or otherwise breach the parties' agreement about painting?
  - b. Was Mr. Butler's work incomplete or deficient?
  - c. If either answer is "yes", what is the appropriate remedy?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim like this the applicant Mr. McMeeking must prove his claim on a balance of probabilities. I have reviewed Mr. McMeeking's submissions and his evidence, but only refer to that necessary to explain my decision. Mr. Butler provided no evidence or submissions beyond his Dispute Response filed at the outset of this proceeding, despite being given the opportunity to do so.
11. Mr. McMeeking says Mr. Butler and M viewed his car on August 12, 2020 and agreed to install a trunk spoiler, re-fit the rear roof spoiler, weld the front bumper, and prepare, prime and paint the car. Mr. Butler does not dispute this. Further, in an August 12, 2020 Facebook message between the parties, Mr. Butler refers to sanding down the "spray bombed parts", addressing the bumper and fixing the rear roof spoiler. So, I find that Mr. Butler agreed to do the body work Mr. McMeeking described as well as prepare and paint the car and that Mr. McMeeking agreed to pay Mr. Butler a total of \$5,000. The messages did not break down the costs any further. Mr. Butler estimated that the work would take approximately one month.

12. Mr. McMeeking left his car at Mr. Butler's house on August 22, 2020. Mr. McMeeking paid Mr. Butler a \$2,000 deposit on August 22, 2020, a further \$1,000 on November 17, 2020 and \$90 on December 15, 2020. Mr. McMeeking asked Mr. Butler about the car's status in Facebook messages several times, viewed Mr. Butler's progress on October 11, 2020, and picked up his car from Mr. Butler's house with a truck on December 20, 2020. The car had not been painted, was disassembled and was not drivable. None of this is disputed.
13. Mr. Butler's August 22, 2020 Facebook post shows Mr. McMeeking's car in one piece and completely black. Mr. Butler sent photos to Mr. McMeeking on December 15, 2020, which showed the car's bumpers, grill, gas cover, and lights removed. The black doors, hood and trunk appear to have been sanded while the front and rear quarter panels appear white. Mr. McMeeking's photos, taken in December 2020, show an uneven white compound or primer on the quarter panels with dents and bumps.
14. Based on the photos I find the agreed upon work was not completed, as the car was unpainted and substantially disassembled in December 2020. However, as Mr. McMeeking undisputedly did not pay the full estimated cost of the body work and painting, I find he is not necessarily entitled to any reimbursement just because the project was not completed. I must also consider what Mr. Butler provided for the price that Mr. McMeeking paid under the agreement.

### ***Misrepresentation or Breach of Agreement***

15. Mr. McMeeking says Mr. Butler misrepresented that M would be involved in the project and would paint the car. In his initial August 12, 2020 message, Mr. Butler referred to M in quoting a price and used the word "we" in discussing doing body work. Further, it is undisputed that both Mr. Butler and M viewed the car. So, I find Mr. Butler represented that he would work on the car with M. Further, in a November 17, 2020 message, Mr. Butler confirmed that M would paint the car. I agree with Mr. McMeeking that the parties' agreement was that M would paint the car, not Mr. Butler.

16. However, on December 13, 2020 Mr. Butler told Mr. McMeeking that M would not paint the car, because of cracks in the fiberglass. Whether Mr. Butler misrepresented M's involvement in the project from the beginning or whether M simply refused to complete the work for Mr. Butler, it is clear that Mr. Butler was unable to have the car painted by M. I find Mr. Butler breached his agreement with Mr. McMeeking by failing to ensure M painted the car. I find Mr. Butler's offer to paint the car does not remedy the breach and that Mr. McMeeking was entitled to refuse the offer. I will address Mr. McMeeking's remedy for Mr. Butler's breach below.

### ***Deficient Work***

17. Mr. McMeeking says Mr. Butler's body work was poorly done and that he did not properly prepare the car for paint. I find Mr. McMeeking essentially says Mr. Butler's work was deficient. In general, where an allegation of deficient work is based on a claim that the work fell below the required professional standard, and the subject matter is outside ordinary knowledge, expert evidence is required to prove the deficiency. Other times, a breach of the standard may be so obvious that it does not require expert evidence (see *Bergen v. Guliker*, 2015 BCCA 283). I find that automotive body work is outside ordinary knowledge and requires expert evidence.

18. Mr. McMeeking provided a March 27, 2021 estimate from Go Pro Shine Autobody Ltd. (Go Pro) for \$2,000 to "repair and refinish all around the body" plus a further \$2,000 to "refinish and paint complete". The estimate does not fault Mr. Butler's work or provide any opinion that the body work was faulty, or the paint preparation was shoddy. Even if it did, I would find the estimate is not expert evidence under the CRT rules because there is no indication who wrote the estimate or what their qualifications were. So, I find I cannot rely on the estimate to show Mr. Butler's work was deficient.

19. I also find that a March 30, 2021 email from the individual CG does not qualify as expert evidence under the CRT rules. This is because CG does not set out their qualifications to provide any opinion on automotive body work or painting. CG says the car looks to have "quite a bit of terrible work" and that they would have to strip the work down and "start from scratch". However, CG does not specify what that terrible

work was and whether it encompasses all the body work Mr. Butler did. So, I find I cannot rely on CG's email in considering whether Mr. Butler's work was deficient.

20. On balance, I find Mr. McMeeking has not provided any expert evidence that Mr. Butler's work fell below the expected standard of care in the automotive body work industry. Although the photos provided show uneven surfaces on the body of the vehicle, there is no explanation before me whether this is below the industry standard for automotive body work.
21. I agree with Mr. McMeeking that Mr. Butler incorrectly scuffed the inside of the door jams in preparation for painting. This is because the parties' messages clearly show that Mr. McMeeking said he did not want those areas painted, due to the extra cost. I find Mr. Butler was negligent in preparing the areas contrary to Mr. McMeeking's instructions. Based on the photos, I find it obvious that the inside door jams are obviously scuffed up and will require repainting. I will address the appropriate remedy for the scuffed door jams below.

### ***Remedy***

22. As noted, Mr. McMeeking claims \$2,090 to refinish and paint his car. Given that he paid Mr. Butler a total of \$3,090, and the lowest quote to complete the work is \$4,000, it is unclear how Mr. McMeeking calculated \$2,090 in damages.
23. As noted above, I find Mr. Butler breached the parties' agreement by failing to have M paint the car. Based on the parties' November 17, 2020 messages, I find Mr. McMeeking paid Mr. Butler \$1,000 to reserve a paint booth at an autobody shop. As Mr. Butler failed to provide the paint job agreed to, I find Mr. McMeeking is entitled to a refund of the \$1,000 paint booth fee.
24. I turn now to Mr. McMeeking's damages for the incorrectly prepared door jams. In his September 10, 2020 messages, Mr. Butler estimated a cost of \$400 each to prepare and paint the car's 2 door jams. As the door jams are prepared, but not painted, I find Mr. McMeeking is entitled to half this estimate, or \$400 total, to repair Mr. Butler's mistake in scuffing the door jams.

25. As I have found Mr. McMeeking has failed to prove that Mr. Butler's body work was generally deficient, I find he is not entitled to any further damages.
26. Mr. McMeeking provided several photos of water in the trunk of his car, scratches on a light, dust inside the car, and parts inside the car. I infer Mr. McMeeking argues Mr. Butler did not properly store or take care of the car while working on it. However, Mr. McMeeking did not explain whether there was any cost to fix the scratched light, wet trunk, or other issues with the car. So, I find he has not proven he is entitled to any damages for the condition of the car in December 2020.
27. In summary, I find Mr. Butler must reimburse Mr. McMeeking a total of \$1,400 as reimbursement for the incomplete paint job and the mistaken door jam scuffing.
28. The *Court Order Interest Act* (COIA) applies to the CRT. I find Mr. McMeeking is entitled to pre-judgment interest on the \$1,400 for paint booth fee and mistaken door jam scuffing from the date he retrieved his car on December 20, 2020 to the date of this decision. This equals \$3.85.
29. 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. As Mr. McMeeking was substantially successful in this dispute, I find he is entitled to reimbursement of \$125 in CRT fees. He did not claim dispute-related expenses.

## **ORDERS**

30. Within 30 days of the date of this order, I order Mr. Butler to pay Mr. McMeeking a total of \$1,528.85, broken down as follows:
  - a. \$1,400 in damages,
  - b. \$3.85 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.

31. Mr. McMeeking is entitled to post-judgment interest, as applicable.
32. 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 in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, 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.
33. 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