



# Civil Resolution Tribunal

Date Issued: February 24, 2022

File: SC-2021-004568

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Cornett v. Tesla Motors Canada ULC*, 2022 BCCRT 202

BETWEEN:

MARK CORNETT

**APPLICANT**

AND:

TESLA MOTORS CANADA ULC

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about alleged deficiencies in a new vehicle.
2. The applicant, Mark Cornett, purchased a Model Y vehicle from the respondent, Tesla Motors Canada ULC (Tesla). Mr. Cornett says the vehicle's paint is damaged on the side of the doors due to poor door alignment, and on the side panels due to lack of

protection from rock chips. Mr. Cornett says Tesla's poor design and poor assembly caused the paint damage. Mr. Cornett originally asked for an order that Tesla repair the paint damage and install paint protection on the Model Y, which he values at \$3,000. However, in his submissions Mr. Cornett says he had to reduce the resale price of the Model Y by \$2,000 due to the paint damage and so he now claims \$2,000 in damages.

3. Tesla denies any wrongdoing. It says the paint damage is not covered by its warranty and was not caused by any known defect.
4. Mr. Cornett represents himself. Tesla is represented by an employee or principal.

## **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.

## **ISSUE**

9. The issue in this dispute is whether the Model Y was defective and, if so, must Tesla reimburse Mr. Cornett \$2,000 for the vehicle's paint damage?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Cornett must prove his claims on a balance of probabilities because he is the applicant. I have read all the parties' submissions and weighed the evidence, but only refer to that necessary to explain my decision.
11. It is undisputed that Mr. Cornett purchased his brand new 2020 Model Y, which he received on July 29, 2020. None of this is disputed.
12. Based on photos submitted by both parties, I find the Model Y's front and rear doors have a gap between them and that the rear door sticks out slightly further than the front door when both doors are closed. I also find the paint along the edge of the rear door appears to have rubbed off. Mr. Cornett says the paint damage is caused by the misaligned doors rubbing against each other, however there is no photograph or video in evidence showing that the doors rub. Further, the photos do not show corresponding paint damage to the front door where the rear door allegedly rubs against it.
13. I find the rear door paint damage cause is not obvious here. I also find whether the paint damage is caused by the alleged door misalignment is beyond common knowledge and so requires expert evidence (see *Bergen v. Gulliker*, 2015 BCCA 283).
14. It is undisputed Mr. Cornett took the Model Y to Tesla on May 19, 2021. According to Tesla's invoice, Mr. Cornett reported that the rear door paint was worn, due to the

panel gap and rear doors sticking out further than the front doors. However, the invoice did not confirm the cause of the rear door paint damage. Rather, the service advisor Danny Martin said he would advise the body shop for door adjustment and repair. Given this, I accept the doors were misaligned. However, I find there is no evidence showing the misaligned doors caused the paint damage on the bottom edge of the rear door and Mr. Martin does not address the allegation in the invoice. So, although I find Mr. Cornett has proven the defect of misaligned doors, I find he has not proven that the misalignment caused the rear door edge paint damage. It is unclear whether Tesla realigned the doors but as Mr. Cornett claims no damages for realignment, I find I need not address that further in this dispute.

15. I next turn to Mr. Cornett's claim for rock chip damage to the vehicle's paint. Mr. Cornett says the damage is caused by rocks coming off the road, which Tesla does not dispute. As discussed below, Mr. Cornett says the car should have been sold with included mud flaps, paint protection film (PPF) or some other form of paint protection.
16. Based on the photos in evidence, I find the paint on the bottom of the vehicle's rear doors near the wheels has hundreds of small chips. In the May 19, 2021 invoice Mr. Martin noted that the bottom of both rear doors have "road damage". Mr. Martin also wrote that Mr. Cornett could purchase mud flaps and paint protection film (PPF) from Tesla to help protect the painted areas. Based on Mr. Martin's comments, I accept Mr. Cornett's undisputed statements that his Model Y did not have mud flaps to protect it from road debris and that the chipped paint was caused by road debris and rocks.
17. Tesla submitted a copy of its new vehicle warranty, which it provided to Mr. Cornett as part of the 2020 Model Y purchase. The warranty specifically excludes corrosion or paint defects including stone chips or scratches. So, I find Tesla is not obliged to repair the rock chipped paint damage under its new vehicle warranty.
18. Section 18 of the *Sale of Goods Act* (SGA) applies to Tesla as a supplier of goods. Section 18(a) implies a warranty that the good is fit to be used for its intended purpose, section 18(b) implies a warranty that the good sold by description will be of

merchantable quality and section 18(c) implies a warranty that the goods sold will be durable for a reasonable period of time under normal use.

19. Mr. Cornett says Tesla's design for the first model year of the Model Y, including his vehicle, did not include mud flaps or PPF. Tesla does not dispute this so I accept it, given Mr. Martin's notes that mudflaps and PPF could be purchased separately.
20. I find that Tesla did not breach any of the SGA implied warranties because it designed the 2020 Model Y without included mudflaps or PPF. There is no indication Tesla represented the Model Y would have mudflaps, so I find it did not breach SGA section 18(b). There is also no indication the lack of mudflaps or PPF made the vehicle unfit for its intended purpose which, I find, is to be driven from place to place. So, I find no breach of SGA section 18(a). Finally, I find no breach of SGA section 18(c) because I find the vehicle remained durable to use as a mode of transportation, even though the vehicle's paint sustained rock chips with reasonable use. In other words, I find the lack of paint protection did not affect the vehicle's fitness, merchantable quality, or durability.
21. Mr. Cornett says the lack of mud flaps and PPF is a design flaw. I infer Mr. Cornett argues Tesla was negligent in designing the Model Y without those included features. In order to prove Tesla was negligent, Mr. Cornett must establish Tesla owed him a duty of care, Tesla failed to meet the standard of care, and that the failure caused the claimed damage, which was reasonably foreseeable (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).
22. It is well established that a vehicle manufacturer owes users a duty not to design an unreasonably dangerous vehicle (see for example *Ding v. Prévost, A Division of Volvo Group Canada Inc.*, 2022 BCSC 215). The law on negligent vehicle design, and product design generally, largely focuses on safety which I find is not the case here. Rather, Mr. Cornett's claim appears to be one of pure economic loss, rather than injury or physical damage to anything other than the or good at issue (here, the vehicle). Although a product manufacturer's duty is to take reasonable care to avoid causing personal injury or physical danger to property, that duty does not extend to

producing items that are merely defective, or shoddy, if they are not dangerous (see *M. Hasegawa & Co. Ltd. v. Pepsi Bottling (Canada)*, 2002 BCCA 324 at paragraph 37, cited in *Cantlie v. Canadian Heating Products Inc.*, 2017 BCSC 286). In other words, there is no general duty of care to design a defect-free product in cases of pure economic loss. Applying that reasoning here, I find Tesla does not owe Mr. Cornett a duty of care to design a Model Y in a way that protects itself from paint damage. So, Mr. Cornett's claim for negligent design must fail.

23. 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. Cornett was unsuccessful in his claims, I find he is not entitled to reimbursement of his CRT fees. As the successful respondent, Tesla did not pay any CRT fees. Neither party claimed any dispute-related expenses.

## **ORDER**

24. I dismiss Mr. Cornett's claims and this dispute.

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Sherelle Goodwin, Tribunal Member