



# Civil Resolution Tribunal

Date Issued: June 23, 2022

File: SC-2021-007543

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Momro v. Taylor*, 2022 BCCRT 729

BETWEEN:

KRZYSZTOF MOMRO

**APPLICANT**

AND:

GEORGE WAYNE TAYLOR and SANDRA TAYLOR

**RESPONDENTS**

AND:

KRZYSZTOF MOMRO

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This dispute is about payment for painting work. The respondents George Wayne Taylor and Sandra Taylor hired the applicant Krzysztof Momro to paint the ceilings in the Taylors' house. Mr. Momro says they agreed on a price of \$1,500 but the Taylors did not pay him. He claims \$1,500 for the unpaid painting work.
2. The Taylors deny agreeing to a \$1,500 price for the painting, and say that Mr. Momro's work was worth no more than \$500, which he refused to accept. Mr. Taylor alone counterclaims \$5,000 against Mr. Momro for cleaning up alleged paint deficiencies and overspray. Mr. Momro says the Taylors told him no masking or floor or appliance protection was needed, so he owes nothing.
3. Mr. Momro is self-represented in this dispute. Mr. Taylor represents both himself and Ms. Taylor.

## **JURISDICTION AND PROCEDURE**

4. These are the formal 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. Although the parties' submissions each call into question the credibility of the other party to some extent, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary in the interests of justice. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue.

Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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.

## **ISSUES**

8. The issues in this dispute are:
  - a. Are the Taylors responsible for paying Mr. Momro \$1,500 or another amount for unpaid painting work?
  - b. Is Mr. Momro responsible for \$5,000 in damages for deficient painting work and overspray on the Taylors' house and appliances?

## **EVIDENCE AND ANALYSIS**

9. In a civil proceeding like this one, Mr. Momro must prove his claim on a balance of probabilities, meaning "more likely than not." Mr. Taylor must prove his counterclaim to the same standard. I have read the parties' submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.
10. The parties undisputedly agreed that Mr. Momro would paint the Taylors' ceilings in return for payment. The Taylors say there was "no contract", which I infer means there was no written agreement, and there is no written contract in evidence. However, contracts do not need to be in writing to be enforceable, although it may be more difficult to prove the content of verbal contracts with evidence. Mr. Momro says he

completed all of the painting work as agreed, while the Taylors say the painting work was incomplete and substandard.

### ***Painting Work***

11. Mr. Momro says the parties agreed on a total fixed price of \$1,500 for the painting work. The Taylors deny agreeing to that price, and do not say that any price was agreed on. The Taylors say that Mr. Momro only worked for about 2.5 hours, during which he took many breaks, and that the value of his work is no more than \$500. Mr. Momro says he worked for much longer than that, and that he is entitled to the alleged \$1,500 fixed price regardless of how long he spent painting.
12. Other than the parties' own submissions, I find there is no evidence before me showing any detailed terms of the parties' verbal agreement. Specifically, I find the evidence does not show that the parties agreed to \$1,500 or another price for the painting work. I find the evidence is equally weighted on whether the parties agreed the Taylors would pay \$1,500 for Mr. Momro's work, and amounts to a "he said/they said" situation. This means that Mr. Momro has not met his burden of proving it is more likely than not that the Taylors agreed to a \$1,500 price.
13. Despite there being no proven payment terms or price, on the evidence before me I find it was an implied term of the agreement that the Taylors would pay Mr. Momro a reasonable amount for the painting work. So, I find that Mr. Momro may be entitled to payment on a contractual *quantum meruit* basis, which is a legal term meaning "value for work done." (See *Hodder Construction (1993) Ltd. v Topolnisky*, 2021 BCSC 666 at paragraphs 118, 148, and 177 to 179.) Under the contractual *quantum meruit* principle, where a binding contract is formed but the parties only agree to an unspecified reasonable price, an applicant is entitled to the cost of the services provided (see *Hodder* at paragraph 178).
14. What was the reasonable price of the ceiling painting? The parties agree Mr. Momro applied at least one coat of paint, although as discussed below the Taylors say that aspects of the work were deficient. However, the parties disagree about the size of

the house, the amount of time Mr. Momro spent painting, and an appropriate overall cost or hourly labour cost, none of which are supported by documentary evidence. The Taylors quote amounts they allegedly paid to other contractors for other types of work, but I find that is not helpful because those amounts do not support the likely cost of painting work and are unproven with evidence.

15. Mr. Momro emailed the Taylors on August 14, 2021 that he did not provide breakdowns of hourly labour and materials costs because he only charged for the “whole job”. However, 1 hour later he emailed a written breakdown to the Taylors: \$520 for “Materials”, 560 kilometres of travel at \$1 per kilometre which equals \$560, and \$420 for labour. However, the materials and travel charges are not supported by receipts or other documentary evidence. There is no evidence that the parties agreed to any travel costs, and there are no receipts or other records showing fuel costs or travel time. There is also no indication of how the labour charge was calculated, and there are no labour records before me showing how many hours Mr. Momro worked.
16. I find there is insufficient evidence about the painting services provided to calculate the cost of those services based on the time taken, materials costs, or other measures. However, the Taylors admit that Mr. Momro’s work was worth at least \$500, which they say they offered to pay. Mr. Momro says his work was worth more, but I find the evidence does not support that. I find that both parties say that without accounting for any deficiencies or damages (discussed below), the painting work was worth at least \$500. So, I find it would not likely have cost less.
17. On the submitted evidence, I find \$500 is the best reasonable estimate of the cost of the painting work, as the evidence does not support a greater amount. Subject to any deductions for deficiencies or damage, I find the Taylors owe Mr. Momro \$500 on a contractual *quantum meruit* basis.

### ***Alleged Deficiencies and Cleanup Costs***

18. The Taylors say Mr. Momro did not complete the painting work as agreed, and that there was “overspray” and other deficiencies. As Mr. Taylor counterclaims \$5,000 for

these alleged deficiencies and resulting damage, he bears the burden of proving that Mr. Momro failed to complete the ceiling painting in a reasonably professional manner (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Expert evidence is normally required to assess the quality of a professional's work (see *Bergen v. Guliker*, 2015 BCCA 283 at paragraph 124), unless a deficiency is non-technical and within an ordinary person's knowledge and experience, or if the work is obviously substandard (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).

19. The parties disagree about the amount of paint used and the number of coats applied. However, I find the evidence does not show that Mr. Momro agreed to use a specific volume of paint or to apply a specific number of coats. Based on the submitted photos, I find there are no ceiling areas that are obviously unpainted or defective. I also find that painting quality standards are technical matters outside of ordinary knowledge and experience that require expert evidence to prove. I find that none of the evidence in this dispute qualifies as expert evidence under the CRT's rules. So, I find the evidence does not show that Mr. Momro failed to complete the ceiling painting to a reasonably professional standard.
20. Mr. Taylor says that Mr. Momro broke a light fixture. Photos in evidence show a light fixture with the cover removed, but no broken cover or other damage. I find the evidence does not show that the fixture or its cover were broken.
21. Mr. Taylor also says that Mr. Momro damaged walls, floors, a washer, and a dryer, by splashing paint on them. Mr. Momro says the house was under construction, so the Taylors told him not to worry about masking the walls or beams, or about paint drops on unfinished floors. I find the photos in evidence clearly show that the house was being renovated, with several walls unpainted or damaged and in need of paint, and unfinished floors and stairs. The photos show some small paint drops on the unfinished floors and stairs, which were worn and somewhat soiled. There are also some very small paint streaks on ceiling beams and trim, and some areas of what appears to be overspray onto the walls adjacent to the ceiling.

22. Given the unfinished state of the house, I find it more likely than not that the Taylors told Mr. Momro such overspray was allowed. Even if they did not, the Taylors do not directly deny Mr. Momro's submission that they intended to paint over, or install flooring over, all of the oversprayed and paint-dabbed areas anyway, which I find means that the paint caused no permanent damage. Further, the Taylors submitted no evidence showing that they were unable to remove any paint overspray, such as around the base of the light fixture, or that it cost them anything to clean up excess paint. Finally, there is no evidence before me showing any paint drops on a washer, dryer, or finished laminate floors, as alleged by the Taylors.
23. For the above reasons, I find the evidence does not show that Mr. Momro's painting work was deficient or caused unauthorized damage to the Taylors' home, and the cost of repairing that alleged damage is unproven in any event. I dismiss Mr. Taylor's \$5,000 counterclaim.

### ***CRT Fees, Expenses, and Interest***

24. The *Court Order Interest Act* (COIA) applies to the CRT. I find that under the COIA, Mr. Momro is entitled to pre-judgment interest on the \$500 owing, reasonably calculated from the date of his August 14, 2021 email requesting payment, until the date of this decision. This equals \$1.94.
25. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Here, Mr. Momro was partly successful in his claim, but I find he was awarded the same \$500 amount that the Taylors offered before this CRT dispute began. Having received no more than he could have received without making his CRT claim, I decline to order reimbursement of Mr. Momro's CRT fees for that claim. Mr. Taylor paid no fees for Mr. Momro's CRT claim. Mr. Taylor was unsuccessful in his counterclaim, but Mr. Momro paid no counterclaim fees. Neither party claimed CRT dispute-related expenses. So, I order no reimbursements.

## ORDERS

26. Within 30 days of the date of this decision, I order the Taylors to pay Mr. Momro a total of \$501.94, broken down as follows:
- a. \$500 in debt, and
  - b. \$1.94 in pre-judgment interest under the *Court Order Interest Act*.
27. Mr. Momro is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
28. I dismiss Mr. Taylor's counterclaim.
29. 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.
30. 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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Chad McCarthy, Tribunal Member