

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 25, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 03-2791
STATE OF WISCONSIN**

Cir. Ct. No. 03SC001623

**IN COURT OF APPEALS
DISTRICT III**

LAMONT THAO,

PLAINTIFF-APPELLANT,

v.

PAUL CHRISTIANSON,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Marathon County:
VINCENT K. HOWARD, Judge. *Affirmed.*

¶1 CANE, P.J.¹ Lamont Thao, pro se, appeals a judgment dismissing his breach of contract and negligence claims with prejudice. We affirm the judgment.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

BACKGROUND

¶2 Thao purchased a front-end spoiler that slips over the bottom of his Honda S2000's front bumper. On April 21, 2003, Thao entered into a verbal contract with Paul Christianson to install it for \$180 by Friday, April 25. Thao did not give Christianson the spoiler that day because he was trying to exchange it for a refund. Unable to exchange the spoiler, Thao told Christianson the next day to proceed with its installation. Christianson testified he attempted to install the spoiler that night but found it needed alterations. Christianson testified that after he altered the spoiler, he went back to Thao's home on Thursday, while Thao maintained he did not show up until Friday.

¶3 In any event, Christianson encountered more problems when trying to install the spoiler this second time. He used his hands to tap and hit the spoiler from its bottom to try to fit it over the bumper. However, in so doing, he cracked the spoiler and allegedly scratched the bumper. Christianson said he could easily fix the spoiler, but evidently did not see the scratch. Thao testified Christianson said he would return to install the spoiler on Sunday, April 27, but Christianson never showed up.

¶4 On Monday, April 28, Thao called Christianson to inform him Thao moved over the weekend. Christianson indicated he would be over to install the spoiler as soon as possible. Sometime in the next few days, Thao called Christianson again, indicating he had waited long enough. According to Christianson, Thao said he did not want his cracked spoiler returned and told Christianson he scratched the car.

¶5 Christianson sensed Thao might sue him, so Christianson told Thao he was going to bring his attorney to Thao's house to have him sign some sort of a

release.² Christianson later showed up at Thao's house with someone. Christianson offered Thao the fixed spoiler and the paint Christianson purchased to paint the spoiler and insisted Thao sign this release. Thao refused to sign anything until Christianson completed the installation. Christianson left with Thao's spoiler.

¶6 Thao sued Christianson for \$1,000 in small claims court, \$534.69 to repair the paint scratch and \$224 for the spoiler. Christianson answered and counterclaimed for \$380, the \$180 contract price plus \$200 for time spent going to court and for pain and suffering. The court commissioner made a finding in Thao's favor.³ Christianson filed an objection and a demand for a trial. After a trial to the court, the circuit court concluded neither party met their burden of proof on their claims and dismissed all claims with prejudice. Thao appeals.

DISCUSSION

¶7 Thao asks us to determine whether Christianson breached the contract, scratched the bumper, and broke the spoiler. However, there seems to be no dispute as to these factual questions. The central issue concerns damages. The trial court essentially found Thao did not prove any damages. We uphold the trial court's factual findings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2).

² The record does not contain this document.

³ The record does not reveal what the finding was. All the record contains is Christianson's objection to the court commissioner's decision and demand for trial.

¶8 Turning first to Christianson’s breach of contract, “[d]amages for breach of contract need not be ascertainable with absolute exactness or mathematical precision. The evidence is sufficient if it enables the fact-finder to make a fair and reasonable approximation.” *Kersten v. H.C. Prange Co.*, 186 Wis. 2d 49, 59-60, 520 N.W.2d 99 (Ct. App. 1994) (citations omitted). Here, the record is void of any evidence indicating how Thao has been damaged by Christianson’s failure to install the spoiler.

¶9 As to the scratched bumper, even after viewing Thao’s photographs, the trial court had a difficult time seeing the scratch. After observing a small nick, the court found, based on Christianson’s testimony, that because the spoiler slips over the bumper and requires a tight fit, scratches to the bumper are a natural and probable consequence of installation. Additionally, the court found the nick will eventually be covered by the spoiler. Thus, the court concluded, Thao was not damaged. After reviewing the record, we conclude this finding is not clearly erroneous.

¶10 Finally, as to the cracked spoiler, the court found Christianson repaired the crack and, consequently, the spoiler’s structural integrity was not diminished.⁴ Thus, here too, the court concluded Thao was not damaged. Upon review of the record, this finding is not clearly erroneous.

¶11 Nevertheless, Thao argues that the structural integrity of the fiberglass spoiler must be compromised, given that fiberglass is comprised of fine fibers that intertwine with each other before a special binding glue is applied.

⁴ Even Thao could not find the crack in the spoiler at trial and asked Christianson to point out where the crack used to be.

When those fibers are broken and then glued together, Thao claims, the repaired fracture does not have the same strength as the rest of the parts. However, Thao should have advanced this argument in the trial court, not to this court for the first time on appeal. See *State v. Hydrate Chem. Co.*, 220 Wis. 2d 51, 79, 582 N.W.2d 411 (Ct. App. 1998) (court of appeals is an error-correcting court, not a fact-finding court).

¶12 Therefore, because none of the trial court's findings are clearly erroneous, we affirm the judgment dismissing Thao's claims with prejudice.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

