



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Byrne (DBA MFB Reliable Painter & Handyman Services 2021) v Faqeri, 2021 BCCRT 1318*

B E T W E E N :

MICHAEL BYRNE (Doing Business As MFB RELIABLE PAINTER &
HANDYMAN SERVICES)

APPLICANT

A N D :

MARIAM FAQERI

RESPONDENT

A N D :

MICHAEL BYRNE (Doing Business As MFB RELIABLE PAINTER &
HANDYMAN SERVICES)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Trisha Apland

INTRODUCTION

1. This dispute is about a home renovation contract.
2. The respondent and applicant by counterclaim, Mariam Faqeri, hired the applicant and respondent by counterclaim, Michael Byrne (dba MFB Reliable Painter & Handyman Services), to renovate portions of her condominium.
3. I note Michael Byrnes asks just to be called “Mike” in the decision and Mariam Faqeri asks to be called by her full name. I have referred to the parties as they requested in my decision.
4. Mike seeks payment of his 2 outstanding invoices totaling \$2,597.74 (June 1, 2021 invoice: \$2,085.85 and June 16, 2021 invoice: \$511.89) for the renovation job. Mariam Faqeri denies that she owes Mike any money. She alleges that Mike did not perform quality work, misrepresented his Worksafe BC (WCB) coverage, damaged her condominium, delayed the project, and abandoned the renovation job before finishing it. Mike disputes these allegations and says he completed most of the job but Mariam Faqeri prevented him from completing it in full. He says he is entitled to be paid for his completed work.
5. In the counterclaim, Mariam Faqeri seeks a total of \$5,000 in damages for alternative accommodations, property damage, and to pay new contractors to complete the unfinished renovation.
6. The parties are each self-represented.

JURISDICTION AND PROCEDURE

7. 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.

8. 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. Some of the evidence in this dispute amounts to a "he said, she said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me and the parties did not request an oral hearing. 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. I also note that in *Yas v. Pope*, 2018 BCSC 282, at paragraphs 32 to 38, the British Columbia Supreme Court recognized the CRT's process and found that oral hearings are not necessarily required where credibility is an issue.
9. 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.
10. 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.
11. As a preliminary issue, Mike submitted his evidence after the CRT's deadline to submit evidence. Mariam Faqeri did not object to the late evidence and I find she had a reasonable opportunity to respond to it in her submissions. Considering the CRT's mandate for a flexible process, I accepted Mike's late evidence as I find it is relevant. I also find no prejudice to Mariam Faqeri in accepting it.

ISSUES

12. The issues in this dispute are:

- a. To what extent, if any, is Mike entitled to payment of the invoice balances?
- b. To what extent, if any, is Mariam Faqeri entitled to the claimed \$5,000 in damages?

EVIDENCE AND ANALYSIS

13. In a civil proceeding like this one the applicant, Mike, must prove his claims on a balance of probabilities (meaning “more likely than not”). Mariam Faqeri bears the same burden for her counterclaim. I have read all the parties’ submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.

Background

14. In 2021, Mariam Faqeri hired Mike to complete the renovation job set out in his April 2021 estimate as follows:

- a. remove the “popcorn” ceiling and ready it for priming and sealer (\$2,100),
- b. prime and paint the ceilings, walls, doors and trims (\$2,400),
- c. demolition (\$800),
- d. boarding, taping and waterproofing (\$650),
- e. tiling tub surround, floor, and backsplash (\$2,100),
- f. kitchen drywall (\$300), and
- g. all materials at cost.

15. I find it was also an implied term of the contract that Mike's work quality would meet a reasonably professional standard: *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403 (*Belfor*).
16. Mariam Faqeri paid a \$1,575 deposit on May 2, 2021 and Mike commenced the job in early May. After Mike finished removing the popcorn ceiling and painted, Mariam Faqeri emailed Mike "the ceiling looks immaculate and all the walls, trim and baseboards look amazing!" He invoiced Mariam Faqeri \$4,068.56 for this work on May 14, 2021. Mariam Faqeri emailed Mike that the work looked "great" and she paid in full.
17. By email, the parties agreed that Mike would subcontract a plumber to install a diverter system and bathtub in Mariam Faqeri's bathroom. Mike removed the bathtub and wall tiles and Mike's plumber installed the bathtub and plumbing on May 27, 2021. Mike also drywalled the kitchen, apart from some "beading" (edging) work. The parties' relationship then broke down before Mike finished the full scope of the job and they ended the contract as I describe next.
18. On May 31, 2021, Mike emailed Mariam Faqeri that she had wrongly blamed Mike twice for some damage that he did not cause and so, he was no longer "enthusiastic about working on this project and would prefer to end our collaboration". Mike wrote that he would return to complete the job he started and "happily deduct a portion of money owing as per the sq/ft for painting of the bathroom and this will show on your final invoice".
19. Mariam Faqeri replied that she understood where Mike was coming from, thanked him for all the "great" work and not to worry about the remainder of the work because she would "take it from here". Mariam Faqeri also wrote that she would leave Mike's supplies in the lobby and asked him to leave her key in the mailbox. Mike confirmed that she did not want him to complete any further work, and so he did not return to finish and left the keys in the mailbox as requested.

To what extent, if any, is Mike entitled to payment of his invoice balances?

20. I address first Mike's claim for \$2,085.85 as payment for his June 1, 2021 invoice. This invoice is for demolition, drywalling and taping, plumbing, and materials. There is no dispute that it remains unpaid.
21. Mariam Faqeri says Mike is not entitled to any payment of his June 1, 2021 invoice because he "abandoned" the job. She also says some of his work quality was "a mess".
22. Based on the communications described above, I find Mike did not abandon the job. Instead, I find the parties mutually decided to end the contract. Since Mariam Faqeri had assessed Mike's work as "immaculate" and "great", I find there were likely no quality issues. Also, expert evidence is generally required when assessing the quality of a professional's work and there is no expert opinion in evidence: see *Zettl v. Roger Garside Construction Ltd.*, 2016 BCSC 2307. I find Mariam Faqeri has not proven that Mike's work fell below a reasonable professional quality.
23. Unless the parties agreed otherwise, the courts have said that a contractor is entitled to payment upon substantial completion of the work: see *Belfor* at paragraph 16. I find Mike is entitled to be paid for the substantially completed portions of the job. This is subject to any set off for misrepresentation, delay or property damage discussed below.
24. In the June 1, 2021 invoice Mike charged \$497.01 for the plumber's work with no mark-up. There is no dispute that the plumber completed the plumbing. Since the charge is also supported by the plumber's invoice, I find Mike is entitled to reimbursement of the \$491.01 plumbing charge.
25. Next, Mike charged \$581.51 for the drywall and taping which he admittedly did not finish. The drywall beading on a short section of a wall is undisputedly outstanding. There may also be an area that needed patching but the evidence is inconclusive. However, as discussed, Mike had offered to return to finalize the job and Mariam

Faqeri rejected the offer. I find on the photographs that Mike substantially completed the drywalling and he is entitled to be paid for this work with no reduction.

26. Mike charged Mariam Faqeri \$800 for the demolition, which is the same as his original estimate. Mike undisputedly removed the wall tile and bathtub, but not all the bathroom items. I find the parties initially agreed to the demolition at the estimate's flat rate and not by item. So, I find Mike is entitled to payment of the \$800 flat rate demolition charge. I note Mike did not charge Mariam Faqeri anything for the bathroom tiling work that he never performed.
27. I find Mike is not entitled to a \$108 charge for the painting and ceiling patches. The paid May 14, 2021 invoice already included painting materials and the photograph evidence does not establish that he patched the ceiling. I find Mike is not entitled to reimbursement for these materials.
28. I find Mike is also not entitled to payment of his June 16, 2021 invoice of \$511.89 for extra ceiling and painting work. As Mariam Faqeri points out, Mike had the opportunity to measure the condominium during his site visit and estimated the job on a square foot basis. Mike has not proven he did any extra work, and undisputedly did not finish all the painting. I find Mariam Faqeri already paid in full for the ceiling and painting and so I find Mike is not entitled to anything more.
29. As mentioned, Mike had also offered to deduct the unfinished painting from his invoice, which Mariam Faqeri accepted. However, Mike included no deduction in his June 1, 2021 invoice. On June 6, 2021 Mike had sent a revised invoice with a \$389.51 discount. On a judgment basis, I find this discount reasonably covers the unfinished painting and should be applied to the outstanding amount owing
30. In summary, I find that Mariam Faqeri owes Mike \$1,489.01 (\$1,878.52, less the \$389.51 discount) plus \$74.45 in GST. This totals \$1,563.46. As discussed next, I find Mariam Faqeri has not proven she is entitled to any further set off.

To what extent, if any, is Mariam Faqeri entitled the claimed \$5,000 in damages?

Alleged Misrepresentation and Delay

31. Mariam Faqeri alleges that Mike misrepresented he had WCB coverage and this delayed the job causing her to incur extra expense. A misrepresentation is a false statement of fact made during negotiations that has the effect of inducing a reasonable person to enter into a contract: see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308.
32. I find Mike made no false or misleading statement. Rather, I find Mike was clear in his initial emails with Mariam Faqeri that he had to apply for WCB coverage and Mariam Faqeri agreed to proceed with the contract anyway. The submitted WCB certificate also shows Mike obtained the coverage by May 5, 2021, within a few days of starting the job.
33. I find the parties had not agreed to any set completion date. Mariam Faqeri also did not express any urgency in her emails and was sourcing and scheduling contractors as the job progressed. So, I find no contractual breach for delay. Since the parties mutually agreed to end the contract, I find Mike also did not breach the contract by stopping work before the job was complete.
34. As I find no misrepresentation or breach of contract, I find Mariam Faqeri is not entitled to the claimed damages. I note it is not otherwise Mike's responsibility to pay for Mariam Faqeri's alternative accommodation or costs to complete the renovation. These are costs she would have incurred in any event and I dismiss these aspects of her counterclaim.

Alleged Property Damage

35. It is undisputed that Mariam Faqeri's bathroom door cracked in half when Mike's worker removed it from its hinges. Mariam Faqeri alleges that the original door cracked because of Mike's worker's negligence, which Mike denies. Mike says the door was already "compromised".

36. Mike replaced the door at his own cost with a new solid door. However, Mariam Faqeri says the replacement door is of lower quality than the original and requires millwork to reinstall. She seeks \$888.30 for the supply and installation of a new custom door.
37. I find Mariam Faqeri has not proven that the door cracked because of any negligent handling. There is no evidence about the door's age or condition or what exactly caused the door to crack when Mike's worker removed it. Even if it cracked from mishandling, Mike has already replaced the door. The evidence does not establish that the replacement door is of lower quality or requires millwork. I dismiss Mariam Faqeri's claim for the new bathroom door.
38. Next, Mariam Faqeri alleges that Mike damaged her laminate flooring.
39. The parties agree Mariam Faqeri had covered her new laminate flooring with "Ramboard" to protect it during the renovation. Mariam Faqeri submitted photographs showing some damage to the floors that she allegedly discovered after removing the Ramboards. Mariam Faqeri says Mike must have caused this flooring damage because he had "dumped garbage" on the floors, which Mike disputes. He says the damage was likely caused by Mariam Faqeri herself or her other contractor.
40. It is undisputed that Mike's workers placed a bathtub and some tiles on the Ramboard. However, I am not satisfied, without more evidence, that this caused the damage. This is because Mike was not the only contractor working in Mariam Faqeri's condominium at the time and there is no witness statement about what caused the damage. A different contractor was working on the kitchen cabinets. Also, Mariam Faqeri herself, or her other contractor, had demolished parts of her condominium and moved garbage from the condominium. I find it equally likely that the floors were damaged in that process. So, I find Mariam Faqeri has not proven that it was Mike or his workers who damaged her flooring and I dismiss her claim over the flooring damage.
41. The last issue is about water damage. Mariam Faqeri says that Mike's plumber left the water valves on after installing the bathroom plumbing. She alleges the kitchen

plumbing lines leaked soon after the plumber left the site, and caused some water damage to her cabinets and floors. However, Mariam Faqeri did not ask Mike to ensure his plumber turned the water valves off and Mike's plumber undisputedly did not plumb the kitchen. The kitchen plumbing was done by others. If Mariam Faqeri's kitchen pipes leaked, I find it was likely an issue with the kitchen plumbing and unrelated to Mike or his plumber's work. There is also no evidence, such as an expert opinion from a plumber, that Mike's plumber caused the kitchen leak. I find Mike is not responsible for the kitchen leak.

42. For the reasons above, I find that Mariam Faqeri has not proven her counterclaims and I dismiss her \$5,000 damages claim.

43. I find Mariam Faqeri must pay Mike a total of \$1,563.46 for the renovation job.

Interest, Fees and Expenses

44. The parties had no agreement over a contractual interest rate and I find the *Court Order Interest Act* applies here. Mike is entitled to pre-judgment interest on the \$1,563.46 debt from the June 1, 2021 invoice date to the date of this decision. The interest equals \$3.86.

45. 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 the unsuccessful party, I find Mariam Faqeri is not entitled to any reimbursement. As Mike was partially successful in his claims, I find he is entitled to reimbursement of \$62.50 as half his paid CRT fees. He claimed no specific dispute-related expenses.

ORDERS

46. Within 30 days of the date of this order, I order Mariam Faqeri to pay Mike a total of \$1,629.82, broken down as follows:

- a. \$1,563.46 in debt,
- b. \$3.86 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$62.50 in CRT fees.

47. Mike is entitled to post-judgment interest, as applicable.

48. I dismiss Mike's remaining claim and Mariam Faqeri's counterclaims.

49. 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.

50. 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.

Trisha Apland, Tribunal Member