



# Civil Resolution Tribunal

Date Issued: December 15, 2023

Files: SC-2022-008626 and  
SC-2023-001029

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Amimer v. Mills*, 2023 BCCRT 1106

B E T W E E N :

RACHID AMIMER

**APPLICANT**

A N D :

DAVID MILLS

**RESPONDENT**

A N D :

RACHID AMIMER

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Megan Stewart

## INTRODUCTION

1. These 2 linked disputes are about ceiling repair work. I find they collectively consist of a claim and a counterclaim. So, I have issued a single decision for both disputes.
2. David Mills hired Rachid Amimer to repair his ceiling. Mr. Mills paid Mr. Amimer \$3,000 of the \$4,725 total contract price. Mr. Amimer says although they completed the ceiling repair work, Mr. Mills refused to pay them the balance. In dispute SC-2022-008626, Mr. Amimer claims \$1,725 for the amount outstanding under the contract.
3. In dispute SC-2023-001029, Mr. Mills alleges Mr. Amimer's work was deficient and Mr. Amimer misrepresented themselves as a drywaller. Mr. Mills says despite being given the chance to fix the deficiencies, Mr. Amimer did not do so, and Mr. Mills must now hire someone else to complete the repair. He says this will cost him more than the original contract price, and claims reimbursement of the \$3,000 he has already paid Mr. Amimer. Mr. Mills also claims \$630 for "assessment report costs". I find this is the same \$630 Mr. Mills claims separately as a dispute-related expense for an expert report. As Mr. Mills obtained the report after Mr. Amimer filed his application for dispute resolution, I find the \$630 is a claim for a dispute-related expense, rather than a claim for damages. I address the parties' claims for dispute-related expenses further below.
4. The parties are each self-represented.

## 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.
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.

## **ISSUES**

9. The issues in this dispute are:
  - a. Is Mr. Amimer entitled to \$1,725 for the unpaid ceiling repair work?
  - b. Was Mr. Amimer's repair work deficient, and if so, what are Mr. Mills' damages?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, Mr. Amimer must prove their claims on a balance of probabilities (meaning more likely than not). Mr. Mills must prove his counterclaim to the same standard. I have read all the parties' submissions and evidence, but refer only to the evidence and argument that I find necessary to explain my decision. In coming to my decision, I have considered the submissions and evidence submitted by the parties collectively in both disputes.
11. In September 2022, Mr. Mills' wife contacted Mr. Amimer about repairing the Mills' ceiling. Mr. Amimer met with the Mills' at their home to inspect the ceiling. Mr. Amimer proposed 2 repair options. The first option, for \$3,000, involved patching the ceiling,

matching the existing texture to 90%, and painting. The second option, for \$4,500, included sanding off all the ceiling's existing texture and refinishing it. Refinishing consisted of priming and retexturing the ceiling to the Mills' desired style, or priming and painting it without retexturing. The Mills said they were interested in the second option without retexturing. None of this is particularly disputed.

12. Mr. Amimer emailed Mr. Mills a September 27, 2022 estimate for the repair, setting out the scope of work and a total price of \$4,725, including tax. Around the same time, they exchanged text messages with Mr. Mills' wife, who confirmed the Mills' wished to proceed with the second option without retexturing. I find between the text messages and the September 27, 2022 estimate, Mr. Amimer contracted with both Mr. Mills and his wife for the repair work, with the estimate forming the basis of the contract. I note Mr. Amimer consistently refers to "Ms. Mills" in their submissions, but did not name them as a party in SC-2022-008626. So, I have only considered whether Mr. Mills is liable for Mr. Amimer's claimed amount.

### ***Claim for unpaid ceiling repair work***

13. The contract set out the following scope of work:

- Site preparation, including masking walls, floors, and furniture, and disposing of construction related debris,
- Drywall, including patching 2 ceiling cutouts and 1 wall cutout, taping, mudding (3 coats), scraping unpainted ceiling texture, repairing damage from texture removal, repairing "nail pops" and "cornerbead" where there was mud shrinkage, and
- Painting, including sealing a water stain, priming the repaired ceiling and wall, painting the repaired ceiling and wall (2 coats).

14. In submissions, Mr. Mills says the parties agreed to a flat ceiling, which required the application of a level 5 drywall finish to the ceiling. Mr. Amimer disagrees, and says there was no guarantee of a flat ceiling. They say the term "texture removal" used in

the contract meant the elimination of existing texture by sanding and scraping. They say that had the contract been for a flat ceiling, the project would have been a major renovation, not a repair.

15. It is true that the parties' contract did not specify a flat ceiling. However, there is an implied term in contracts for professional or trade services that the contractor's work will be done to a reasonable standard (see *Lund v. Appleford Building*, 2017 BCPC 91 at paragraph 124). I find whether Mr. Mills was entitled to a flat ceiling depends on the standard applicable to Mr. Amimer's work. I come back to this below when I turn to Mr. Mills' counterclaim about alleged deficiencies.
16. Mr. Mills was not satisfied with Mr. Amimer's first effort, so Mr. Amimer came back and redid a significant part of the work. Mr. Mills remained unhappy with the ceiling repair. He says the untextured ceiling revealed lumps, cracks, small holes, and other imperfections in the work, and so was incomplete. On October 8, 2022, Mr. Mills sent Mr. Amimer a partial payment of \$3,000, which he says was based on the understanding that Mr. Amimer would return to address the outstanding issues. However, Mr. Mills says Mr. Amimer blamed the deficiencies on poor lighting, and refused to do any further work.
17. For their part, Mr. Amimer says upon re-inspection of the work, they found the ceiling fixtures were creating a "critical lighting condition" by flooding the ceiling with light and exaggerating minor surface differences. Mr. Amimer says Mr. Mills told them he intended to replace the light fixtures, so they agreed to come back after the new lights had been installed. On their return, Mr. Amimer says they were unable to identify any deficiencies, but the Mills disagreed, and refused to pay the amount outstanding under the contract.
18. Generally, contractors are entitled to payment upon substantial completion of a project. If a customer believes there are deficiencies in the contractor's work, the customer may bring a claim for damages. However, the customer must still pay the contractor's invoice, subject to any deduction for deficient work (see *Belfor (Canada) Inc. v. Drescher*, 2021 BCSC 2403).

19. Here, I find based on the parties' email exchanges and submitted photos, Mr. Amimer had substantially completed the work described in the contract by October 8, 2022. So, I find they are entitled to payment of the outstanding amount under the contract, which is \$1,725, subject to any deduction for proven deficiencies. With that, I turn to Mr. Mills' counterclaim.

### ***Counterclaim for alleged deficiencies***

20. As noted above, Mr. Mills claims Mr. Amimer's ceiling repair work was deficient and that Mr. Amimer misrepresented himself as a drywaller and falsified his qualifications. Mr. Mills provided no evidence of any misrepresentation or falsification of Mr. Amimer's qualifications, so I find his bare assertions unproven.
21. Expert evidence is usually required to prove whether a professional's work was deficient and fell below a reasonable standard. This is because an ordinary person does not know the standards of a particular profession or industry, which I find includes ceiling repair work. Exceptions to this general rule include when the work is obviously substandard, or the deficiencies relate to something non-technical (see *Schellenberg v. Wawanesa Mutual Insurance Company*, 2019 BCSC 196 at paragraph 112).
22. Mr. Mills submitted a January 11, 2023 report from the BC Wall & Ceiling Association (BCWCA). John Warrington, Executive Director at BCWCA, wrote the report but did not conduct the in-person "peer review" of Mr. Amimer's work. Peter Weston conducted the review. John Warrington's report referenced Peter Weston's observations and conclusions. So, I find the report's content is largely hearsay. The CRT may accept hearsay evidence even if it would not be admissible in a court of law. Mr. Amimer challenges the report on the basis that it is hearsay evidence, suggesting it is unreliable and inaccurate. However, Mr. Amimer does not explain this further, and I find the report described Peter Weston's observations and conclusions, discussed below, in an objective and neutral way.

23. The report did not include either John Warrington's or Peter Weston's qualifications, such as their education, training or experience in ceiling repair work, as required by CRT rule 8.3(2). I have waived strict compliance with that rule under CRT rule 1.2(2) for 2 reasons. First, Mr. Amimer does not specifically say either John Warrington or Peter Weston is unqualified to provide an expert opinion on the applicable standard for ceiling repairs and on Mr. Amimer's work. Second, given John Warrington's title and Peter Weston's role as peer reviewer at BCWCA, I find they are qualified to provide expert evidence on ceiling repair work.
24. For these reasons, I accept the BCWCA report as expert evidence.
25. The BCWCA report stated a level 4 drywall finish is the minimum finish for a ceiling to which no texture is applied. It also said that because there was an observable critical lighting condition, Mr. Amimer should have applied a higher level 5 finish to the Mills' ceiling. The report did not explain the difference between a level 4 and a level 5 finish, though Mr. Amimer provided unchallenged evidence differentiating them. Mr. Amimer's evidence indicated a level 4 finish should be used where residential grade wall coverings, flat paints or light textures are applied. It also indicated a level 5 finish is required where gloss, semigloss or enamel are specified or where "flat joints (...) are specified over an untextured surface, or where critical lighting conditions occur." The BCWCA report indicated the Mills' ceiling after Mr. Amimer's work was below a level 4 finish. I note the report cautioned that even if the ceiling were brought up to a level 4 finish with texture applied, or a level 5 finish without texture, there was no guarantee joints or fasteners in the drywall and ceiling framing would not be visible in harsh lighting conditions.
26. I turn to Mr. Amimer's evidence. Mr. Amimer provided a report from Duxbury & Associates – Building Inspections & Consulting Ltd (Duxbury). The report's author, Glenn Duxbury, said they were a professional building and property inspector, "quality assurance observer", and technical specialist, with over 30 years' experience documenting deficiencies on construction issues. I find Glenn Duxbury is qualified to provide expert opinion evidence about the standard of ceiling repair work.

27. In their report, Glenn Duxbury said industry standard for such work was “an end result which is an overall, uniform finish, once sanded, primed & decorated – not necessarily without any imperfection” (reproduced as written). They said because this was repair work and not a complete renovation or new construction, or otherwise specified as a level 5 drywall finish, some imperfection was to be expected. Glenn Duxbury said they tried to arrange to view the Mills’ ceiling in person, but were told they could not be accommodated. They did not review any photos of Mr. Amimer’s work. So, they did not provide an opinion about its quality. Glenn Duxbury said any critical lighting condition would be irrelevant because repair work required blending. However, they did not explain why a critical lighting condition would not matter where texturing was being entirely removed, as was the case here.
28. Overall, I prefer the BCWCA report to the Duxbury report. I find the BCWCA report references an objective standard for drywall finish to be applied to an untextured ceiling in a critical lighting condition. I find that having seen the ceiling in person, BCWCA applied this standard to Mr. Amimer’s work to come to an independent, neutral conclusion about its quality. I note that in their report, Glenn Duxbury said both BCWCA and another organization, the Drywall Finishing Council, are “a basis for factual information regarding drywall-installation and finishing. Referencing such eliminates personal bias & opinions (...)”.
29. I acknowledge Mr. Amimer’s allegations that the Mills prevented both Glenn Duxbury and another consultant Mr. Amimer tried to engage from viewing the repair work in person. Even if this is the case, given BCWCA’s position within the industry and as I have found its report objective and neutral, I find Mr. Amimer has not suffered any disadvantage in the result.
30. Based on the BCWCA report, I find Mr. Amimer’s work fell below a reasonable standard for ceiling repair without texture in a critical lighting condition.
31. I turn to the question of damages. Mr. Mills submitted 2 estimates to repair the ceiling to the standard described in the BCWCA report. The first was for \$7,743.75 or \$8,741.25, depending on the extent of the painting. The second was for \$8,662.50.

Each estimate was well above the CRT's small claims monetary limit of \$5,000. However, in the Dispute Notice for SC-2023-001029, Mr. Mills does not ask to be compensated for the amount it would cost to fix the ceiling to the applicable standard. Instead, he asks for reimbursement of the \$3,000 he paid Mr. Amimer, so that in effect, he pays nothing under the parties' contract. Put another way, Mr. Mills asks for a full refund. Since I found Mr. Amimer is entitled to payment of the outstanding \$1,725 under the contract, I find a full refund is the \$4,725 total contract price.

32. Mr. Mills has proven it would cost more than \$4,725 to repair the ceiling to the applicable standard based on the estimates. So, I find he is entitled to the full refund he seeks. Deducting the \$1,725 Mr. Amimer is entitled to for the unpaid ceiling repair work from the \$4,725 Mr. Mills is entitled to for a full refund leaves a balance of \$3,000 in Mr. Mills' favour. I order Mr. Amimer to pay Mr. Mills \$3,000.
33. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Mills is entitled to pre-judgment interest on the \$3,000 damages award from January 30, 2023, the date of his counterclaim application, to the date of this decision. This equals \$123.95.
34. 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. Overall, I find Mr. Mills was the successful party, and is entitled to reimbursement of \$125 in CRT fees. I dismiss Mr. Amimer's claim for CRT fees.
35. Mr. Mills claims \$630 for the BCWCA report, which is supported by an invoice in evidence. I find the report was directly relevant to the disputed issue of deficiencies, so I allow the claimed amount. Mr. Mills also claims \$130 for other unspecified expenses. He did not explain these expenses or provide a receipt, so I dismiss this part of his claim. Mr. Amimer claims \$1,087.50 for the Duxbury report and legal fees. As he was unsuccessful overall, I dismiss his claim for dispute-related expenses. I note Mr. Amimer provided no documentary evidence in support of his claimed legal fees. In any event, the CRT does not normally award legal fees in small claims disputes absent extraordinary circumstances, which I find do not exist here. So, I

would have dismissed Mr. Amimer's request for reimbursement of legal fees for those reasons.

## **ORDERS**

36. Within 30 days of the date of this order, I order Mr. Amimer to pay Mr. Mills a total of \$3,878.95, broken down as follows:

- a. \$3,000 in damages, as reimbursement for deficient ceiling repair work,
- b. \$123.95 in pre-judgment interest under the COIA, and
- c. \$755, for \$125 in CRT fees and \$630 for dispute-related expenses.

37. Mr. Mills is entitled to post-judgment interest, as applicable.

38. I dismiss the balance of the parties' claims.

39. 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. 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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Megan Stewart, Tribunal Member