



# Civil Resolution Tribunal

Date Issued: June 7, 2019

File: SC-2018-005741

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Jaskaranjit Singh (dba 1152931 B.C. Ltd.) v. Dudley Brooks (dba SKYACRES MANAGEMENT SERVICES)*, 2019 BCCRT 697

B E T W E E N :

Jaskaranjit Singh (Doing Business As 1152931 B.C. Ltd.)

**APPLICANT**

A N D :

Dudley Brooks (Doing Business As SKYACRES MANAGEMENT SERVICES)

**RESPONDENT**

A N D :

Jaskaranjit Singh (Doing Business As 1152931 B.C. Ltd.)

**RESPONDENT BY COUNTERCLAIM**

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## REASONS FOR DECISION

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Tribunal Member:

Trisha Apland

## **INTRODUCTION**

1. This dispute is about a contract to resurface a driveway.
2. The applicant, Jaskaranjit Singh (Doing Business As 1152931 B.C. Ltd.), supplied and installed asphalt grindings on the driveway of the respondent, Dudley Brooks doing Business As SKYACRES MANAGEMENT SERVICES (Skyacres). Mr. Singh claims \$4,410, is the outstanding invoice amount.
3. Skyacres refuses to pay Mr. Singh the \$4,410.00. Skyacres says their transport trucks were unable to drive on the new grindings and they paid another company \$1,919.86, to remove the grindings from the driveway and pile them elsewhere on their property. Skyacres counterclaims re for the \$1,919.86. It also asks for an order that Mr. Singh either remove the pile of grindings himself or pay Skyacres \$483.50 to have someone else remove them from their property.
4. The Dispute Notices and Dispute Responses refer to the applicant and respondent by counterclaim, as Bobby Singh (Doing Business As 1152931 b.c Ltd.). Mr. Singh says his legal name is Jaskaranjit Singh. Skyacres agrees that Jaskaranjit is Mr. Singh's legal first name. Mr. Singh's invoice that is subject of this dispute, shows the company name as 1152931 B.C. Ltd. Based on the invoice, I find that 1152931 b.c Ltd contains typographical errors, not capitalizing the B.C. and missing the period after the c. Based on my finding of the typographical errors and the parties' agreement that Jaskaranjit is Mr. Singh's legal name, I order that the name of the applicant and respondent by counterclaim are amended as follows: Jaskaranjit Singh (Doing Business As 1152931 B.C. Ltd.).
5. The applicant is represented by Mr. Singh and the respondent by Mr. Brooks.

## **JURISDICTION AND PROCEDURE**

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution

services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.

7. The tribunal 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. 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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
8. Further, bearing in mind the tribunal’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 BC Supreme Court recognized the tribunal’s process and found that oral hearings are not necessarily required where credibility is in issue.
9. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
10. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

11. The issues in this dispute are:

- a. Should Skyacres be ordered to pay Mr. Singh \$4,410 for supplying and installing the grindings?
- b. Should Mr. Singh be ordered to pay Skyacres \$1,919.86 and \$483.50 for the cost of removing the grindings?

## **BACKGROUND AND EVIDENCE**

12. In this civil claim, the applicant Mr. Singh, bears the burden of proof on a balance of probabilities that he performed his part of the contract and that Skyacres breached the contract by not paying the invoice. In the counterclaim, Skyacres bears the burden of proof that it is entitled to reimbursement for the costs of removing the grindings. I have only referenced the evidence and submissions as necessary to give context to my decision.

13. Skyacres has run a turkey farm business for 45 years. Skyacres hired Mr. Singh to resurface a driveway on their farm using asphalt grindings. The driveway is fairly steep, dedicated to farm traffic, and used regularly by heavy-loaded transport trucks to deliver feed and load turkeys for the processing plant. It is the only driveway that provides truck access to the turkeys. These facts are uncontested.

14. After Mr. Singh's worker installed the first load of grindings, Skyacres became concerned their transport trucks would not make it up the driveway because the grindings were too loose for traction. Skyacres called Mr. Singh to ask him to stop work. The parties discussed that the transport trucks would be using the driveway four or five days later and therefore, the driveway would need to hold. Mr. Singh told Skyacres that the grindings would harden with time. He recommended that the trucks not use their heavy brakes. After waiting four or five days, the grindings failed to compact. Skyacres's transport trucks were unable to make it up the driveway without getting stuck. I find these facts are undisputed.

15. The evidence also demonstrates that Skyacres needed an accessible driveway to carry-on business and after about eight days from the date of installation, the grindings were still not holding. Skyacres hired another company to remove the grindings from the driveway to allow its trucks access to the turkeys.
16. According to the parties' texts, Skyacres had left the grindings piled on their farm and told Mr. Singh they were ready for him to collect. Mr. Singh agreed to do so if Skyacres paid him \$700 in labour and machinery. He agreed to deduct the material fees from the invoice. Skyacres agreed to pay for his labour costs and not the machine cost. On that basis, Mr. Singh refused to pick up the materials. The grindings remain piled on the farm.

## **LAW AND ANALYSIS**

### ***The Contract Terms***

17. The parties did not write out their contract in a formal sense. Instead, they exchanged text messages that showed what the parties intended and promised to one another. I find these texts formed the main terms of the contract. Though not binding on me, my finding is consistent with the tribunal's reasoning in *Jenkins v. Jibu*, 2018 BCCRT 79.
18. Based on the texts, I find the parties agreed to a fixed price contract in the amount of \$4,200 plus tax for Mr. Singh to supply and install 100 tons of asphalt grindings on Skyacres's driveway.
19. Apart from its express terms, a contract can also include implied terms. Unless circumstances suggest otherwise, where a party performs the work and supplies materials to another party, they implicitly promise to use materials of good quality, do the work with care and skill, and that their work and materials will be reasonably fit for the purpose for which they were required (see for example, *Robertson et al v. 1007820 B.C. Ltd.*, 2018 BCCRT 107).

20. I find the parties' contract contained the implied terms that Mr. Singh would select appropriate surfacing materials considering the characteristics of the driveway and use the skill and care needed to install it correctly, and that the driveway's surface would be reasonably fit for Skyacres's purposes. It is undisputed that Mr. Singh knew the grade of the driveway when he took the contract.

### ***Was There a Breach of Contract?***

21. Mr. Singh argues that his claim should succeed because he installed the driveway perfectly and any problems were because Skyacres failed to follow his instructions. He claims that he always tells customers they must stay off a freshly completed driveway for a "certain period of time depending on weather conditions and the area". He claims he told Skyacres a faster driveway solution would be asphalt but they refused based on its higher cost. He also claims he insisted on fixing the driveway but Skyacres insisted on removing the grindings.

22. Skyacres say Mr. Singh did not provide them with a time period to stay off the driveway. Had they known the driveway would be unusable for an unknown length of time, they would not have agreed to grindings because they knew they could only hold off using the driveway for five days. I find Skyacres's argument persuasive since they had been operating the turkey farm business for 45 years and would know when they required the trucks to access the turkeys. As discussed below, I find Mr. Singh knew Skyacres ran a turkey farm business and needed to use the driveway soon.

23. I find that many of Mr. Singh's statements are contrary to the texts. Where the texts conflict with Mr. Singh's statements, I find the texts are more persuasive because they are in writing and made at the relevant time.

24. Based on the texts, I find Mr. Singh knew Skyacres intended to allow truck traffic soon after installation. I find he provided no instruction or warning by text to Skyacres to stay off the driveway depending on weather. The only instruction I find he provided was that the trucks not use heavy brakes. The texts show that Mr. Singh specifically recommended that Skyacres use grindings and guaranteed the product would hold after Skyacres gave him the characteristics of their driveway and the requirements of their farm. I note the texts show Skyacres asked Mr. Singh to view the driveway prior to installation to ensure grindings were appropriate, but he never did. While it is possible that the grindings would have eventually compacted, Mr. Singh submitted no timeframe for when this would happen. Given the known need to use the driveway, I find an indefinite compaction period was unreasonable.
25. I also find based on the texts that price was not the determining factor. Instead, I find that Skyacres chose grindings based on Mr. Singh's advice. Finally, I find the texts demonstrate that Skyacres had asked Mr. Singh several times to return to fix the driveway but he never returned to fix it when he had the opportunity.
26. Skyacres also disputes that Mr. Singh supplied the agreed 100 tons of grindings. The invoice from Mr. Singh's supplier shows that Mr. Singh purchased asphalt for a total of \$440.00 but it does not show the weight. The invoice Mr. Singh gave Skyacres shows a total price without listing the quantity or weight of the materials. I find both invoices inconclusive on weight. Apart from Mr. Singh stating that he supplied the agreed materials, he provided no objective evidence confirming he supplied 100 tons.
27. It is Mr. Singh who carries the burden of proof that he satisfied the terms of the contract and should be paid. I find he failed to discharge this burden. I find Mr. Singh has not sufficiently proven that the materials he supplied to Skyacres were the agreed 100 tons, or that they were appropriate for Skyacres's known driveway needs.

28. I also find Mr. Singh breached the implied terms of the contract. Specifically, I find he failed to employ reasonable care and skill by not attending the site prior to installation to ensure the grindings would be appropriate for Skyacres's driveway. Further, when he was told about the problem after the first load I would have expected him to attempt to address the problem, which I find he did not. I also find the driveway was inaccessible for an indeterminate amount of time by Skyacres's transport trucks. As a result, I find Mr. Singh supplied and installed materials that were not reasonably fit for the purpose for which they were required. This went to the heart of the parties' contract to provide an accessible driveway for truck traffic. Accordingly, I find Skyacres is not required to pay the outstanding invoice. I dismiss Mr. Singh's claim.
29. Turning to Skyacres's counterclaim, I find it was reasonably foreseeable that Skyacres would have needed to fix the driveway to make it accessible, so trucks could reach the turkeys, and that Skyacres would incur expense in doing so. I find Skyacres's claimed expense for removing the grindings off the driveway was reasonable and that the expense arose directly from Mr. Singh's breach of the contract. I find that Mr. Singh must reimburse Skyacres the invoiced amount of \$1,919.86.
30. By counterclaim Skyacres asks that Mr. Singh remove the grindings that remain piled on their property, or in the alternative, that he reimburse them \$483.50 for the cost to remove them from their property. Generally speaking, specific performance is not ordered where compensation will suffice. I find based on Mr. Singh's breach of contract that he is required to pay to remove the grindings he had delivered and that remain on the property. As mentioned above, Mr. Singh agreed remove the pile of grindings from the property for \$700. Therefore, I find Skyacres's claim for \$483.50 is reasonable. I find that Mr. Singh must pay Skyacres \$483.50 for the cost of removing the grindings from the property.
31. I find Skyacres is also entitled to prejudgment interest in the amount of \$27.16 calculated from August 8, 2019, the date of the \$1,919.86 invoice. Since Skyacres



did not incur the expense related to the cost of removing the grindings prior to judgment, I have not ordered any amount in pre-judgment interest on the \$483.50.

32. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case, not to follow that general rule. Since Mr. Singh's claims are dismissed, I find he is not entitled to reimbursement of tribunal fees or dispute-related expenses. As Skyacres is the successful party by counterclaim, Skyacres is entitled to \$125.00 in tribunal fees. Skyacres made no claim for dispute-related expenses.

## **ORDERS**

33. Within 30 days of the date of this decision, I order Mr. Singh to pay Skyacres, \$2,555.52, broken down as follows:
- a. \$1,919.86 in expenses to remove the grindings off the driveway,
  - b. \$27.16 in pre-judgment interest under the *Court Order Interest Act* calculated from August 8, 2018,
  - c. \$483.50 for the cost to remove the grindings from the property, and
  - d. \$125.00 in tribunal fees.
34. Skyacres is also entitled to post-judgment interest as applicable under the COIA.
35. Under section 48 of the Act, the tribunal 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 tribunal's final decision.
36. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal 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 tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

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Trisha Apland, Tribunal Member