



# Civil Resolution Tribunal

Date Issued: March 14, 2023

File: SC-2022-003664

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Masoud v. Invictus Professional Snowfighters Ltd.*, 2023 BCCRT 211

**B E T W E E N :**

NAGI MASOUD

**APPLICANT**

**A N D :**

INVICTUS PROFESSIONAL SNOWFIGHTERS LTD.

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member:

Shelley Lopez, Vice Chair

## **INTRODUCTION**

1. This dispute is about payment for subcontracted snow clearing services. The applicant, Nagi Masoud, says the respondent, Invictus Professional Snowfighters Ltd. (Invictus), owes him \$2,965.
2. Invictus says the “work was not done to standard”. However, Mr. Masoud’s vehicle undisputedly damaged a building. Invictus says it had to pay to repair that damage, and so it does not have to pay for Mr. Masoud’s snow clearing services. Mr. Masoud says the property damage is being handled by the Insurance Corporation of BC (ICBC). ICBC is not a party to this dispute. Invictus did not file a counterclaim.
3. Mr. Masoud is self-represented. Invictus is represented by an employee or principal.

## **JURISDICTION AND PROCEDURE**

4. 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). CRTA section 2 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. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. As the CRT’s mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.
6. CRTA section 42 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.
8. I note in its response submissions Invictus asks, "Please have ICBC contact us". The CRT's role is not to act as an investigator or intermediary. The CRT is an independent adjudicative or decision-making body. As noted, ICBC is not a party to this CRT dispute. So, I decline to arrange any communication between ICBC and either party and leave that to the parties to arrange as they consider appropriate.

## **ISSUES**

9. The issues in this dispute are:
  - a. Whether Mr. Masoud's snow clearing work was deficient,
  - b. Whether Invictus is entitled to a set-off for the property damage, and
  - c. Whether Mr. Masoud is entitled to the claimed \$2,965 for the snow clearing services.

## **EVIDENCE AND ANALYSIS**

10. As the applicant in a civil proceeding like this one, Mr. Masoud must prove his claims on a balance of probabilities (meaning "more likely than not"). I have read all the submitted evidence and arguments but refer only to what I find relevant to provide context for my decision. I note Invictus chose not to submit any documentary evidence, despite having the opportunity to do so.
11. The evidence before me is limited. However, I find it shows that in around January 2022 Invictus hired Mr. Masoud as a subcontractor to do certain snow clearing work. While doing the work, Mr. Masoud caused some property damage to Invictus' customer's property (broken glass). Because a vehicle caused the damage, there

was an ICBC claim. ICBC held Mr. Masoud 100% responsible, as shown in ICBC's January 27, 2022 letter to Mr. Masoud. None of this is disputed.

12. In short, Mr. Masoud essentially says ICBC is “handling” the property damage issue and so it is separate from his entitlement to payment for his snow clearing services. In contrast, Invictus says it has paid for the property damage and has not been reimbursed by ICBC. I address Invictus’ allegation of its payment below.
13. I return then to the relevant chronology. Invictus wrote Mr. Masoud on May 13, 2022, saying that its customer incurred a \$1,200 cost for an “integrity inspection”, which Invictus said it was charging back to Mr. Masoud. Invictus wrote that the \$1,200 had been deducted from money Invictus owed him, so no further action was required.
14. On May 20, 2022, Mr. Masoud emailed Invictus asking for a copy of Invictus’ customer’s \$1,200 bill. Invictus refused, saying that Invictus’ invoice was “the only one you will receive”. As noted above, Invictus chose to submit no documentary evidence in this dispute, so I do not have any supporting evidence that Invictus in fact paid \$1,200 related to Mr. Masoud’s undisputed property damage. So, I find it unproven that Invictus paid any money to anyone for the property damage. It follows that I find it unproven that Invictus is entitled to any set-off against Mr. Masoud’s snow clearing invoices for that property damage.
15. I turn then to Invictus’ other defence, that Mr. Masoud’s work was substandard. As the party alleging defective work, Invictus has the burden of proving it (see *Absolute Industries Ltd. v. Harris*, 2014 BCSC 287 at paragraph 61). Here, again, Invictus submitted no supporting evidence, such as a witness statement or photographs. It also submitted no description of how the work was substandard, other than referring to the property damage issue discussed above. I also have no evidence about the extent of the property damage or its value in relation to the snow clearing work at issue.
16. In short, while Mr. Masoud undisputedly damaged Invictus’ customer’s property, I have also found above that Invictus has not proved it sustained any loss as a result.

So, I find the property damage irrelevant to Mr. Masoud's entitlement to payment for the snow clearing work. I also find the allegation of deficient work unproven. This means I find Invictus is not entitled to any set-off for deficient work.

17. Mr. Masoud claims payment of 2 invoices, each for \$1,732.50 and both for work done for the same Invictus customer on January 4 and 5, 2022. These 2 invoices total \$3,465. The January 5, 2022 invoice has an annotation that Invictus paid only \$532.50, which I find left a \$2,932.50 balance. Mr. Masoud does not explain how he arrived at the claimed \$2,965 figure. I find on the invoices submitted in evidence that he is only entitled to the \$2,932.50 balance.
18. The *Court Order Interest Act* (COIA) applies to the CRT. Mr. Masoud is entitled to pre-judgment interest under the COIA on the \$2,932.50. Calculated from January 5, 2022 (a date I consider reasonable) to the date of this decision, this equals \$57.63.
19. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mr. Masoud was largely successful and so I allow his claim for reimbursement of \$125 in CRT fees. No dispute-related expenses were claimed.

## **ORDERS**

20. Within 21 days I order Invictus to pay Mr. Masoud a total of \$3,115.13, broken down as follows:
  - a. \$2,932.50 in debt,
  - b. \$57.63 in pre-judgment interest under the COIA, and
  - c. \$125 in CRT fees.
21. Mr. Masoud is entitled to post-judgment interest, as applicable.

22. 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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Shelley Lopez, Vice Chair