



# Civil Resolution Tribunal

Date Issued: June 28, 2024

File: SC-2023-005694

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Sky Harvest Inc. v Quesnel*, 2024 BCCRT 616

B E T W E E N :

SKY HARVEST INC.

**APPLICANT**

A N D :

AARON DONALD QUESNEL

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Deanna Rivers

## INTRODUCTION

1. This is a dispute about payment of money following the sale of a business.
2. The applicant Sky Harvest Inc (Sky Harvest) says the respondent, Aaron Donald Quesnel, owes it \$1,307.20.

3. Mr. Quesnel says he has paid the amount owing. If he has not, he says Sky Harvest has breached the contract and so he does not have to pay. He also claims that Sky Harvest owes him receivables.
4. The applicant is represented by the owner, Christopher Duncan Arthur. The respondent is 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.
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 court.
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. Does Mr. Quesnel owe Sky Harvest \$727.85, or some other amount, for amounts customers mistakenly sent to him after the sale of the company?
  - b. Does Mr. Quesnel owe Sky Harvest \$430.44 for occupancy cost recovery incurred before the sale of the company?
  - c. Does Mr. Quesnel owe Sky Harvest \$98.91 for income tax credits he wrongfully claimed?
10. Sky Harvest has reduced its claim amount from \$2,276.19 to \$1,307.20 because it says it obtained more accurate information after it filed its application for dispute resolution.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Sky Harvest as applicant must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' submissions and evidence but refer only to the evidence and argument that I find relevant to explain my decision.
12. The parties agree that:
- a. Mr. Arthur agreed to buy Mr. Quesnel's company, Sky Harvest, in a contract dated May 10, 2022.
  - b. The closing date of the purchase was July 8, 2022.

### ***Payment to Legacy Account***

13. Sky Harvest claims that after the closing date, a customer, SH, paid invoices to a bank account only Mr. Quesnel could access. It says those payments belong to Sky Harvest.
14. The contract provides at paragraph 3.1(l) that Sky Harvest had only one bank account and Mr. Quesnel was the only signatory. Paragraph 6.4(f) says Mr. Quesnel and Mr. Arthur will arrange to have the signatory on this legacy account changed to Mr. Arthur.

There is no evidence this happened. Mr. Arthur says he could not access the account. Mr. Quesnel does not dispute this.

15. Mr. Quesnel admits the legacy account was open until at least 2023. He says he did not use the account. As only Mr. Quesnel had access to the account, he breached the contract in not providing Mr. Arthur as the new owner access to the account. I find that all payments into the account belonged to Sky Harvest.
16. Mr. Quesnel must pay all payments into the account to Sky Harvest.
17. Sky Harvest says SH paid invoices to the legacy account as follows:
  - a. \$869.50 between August and October 2022. Sky Harvest is only claiming \$668.50 as it has credited Mr. Quesnel \$200.55 for money owing to him by Sky Harvest.
  - b. \$1,033.15 between November 2022 and January 2023. Mr. Quesnel paid \$447.85 to Sky Harvest. Sky Harvest is only claiming \$59.35 as it has credited Mr. Quesnel \$525.95 for money owing to him.
18. Emails between Mr. Quesnel and Mr. Arthur confirm these amounts.
19. Each party made submissions about receivables due to Mr. Quesnel for invoices prior to the closing date, the other's communications, who made mistakes, other payments owing to Mr. Quesnel, and reasons for delays. None of these are relevant to the payments made into the legacy account which only Mr. Quesnel could access.
20. Mr. Quesnel said he would start a counterclaim for those items, but he has not done so. Since he did not file a counterclaim, I find he is arguing he is entitled to an equitable set off. A set off is a right between parties who owe each other money where their respective debts are mutually deducted, leaving the applicant to recover only the remaining balance. As the party alleging a set off, Mr. Quesnel has the burden of proving it.

21. As noted above, Sky Harvest waived collection of some amounts paid into the legacy account, as payment for receivables it owed to Mr. Quesnel. Other than those, Mr. Quesnel has provided no evidence of the receivables owing to him. I find Mr. Quesnel has not proved Sky Harvest owes him for further receivables.
22. So, I find that Mr. Quesnel owes to Sky Harvest a total of \$727.85, being \$668.50 from August to October 2022, and \$59.35 from November 2022 to January 2023, paid into the legacy account.

### ***Occupancy Cost Recovery***

23. Sky Harvest's landlord sent it a letter dated March 7, 2023, for payment of \$826.90 in 2022 occupancy cost recoveries.
24. Mr. Quesnel warrantied in the contract at paragraph 3.1(n) that Sky Harvest did not have any liabilities of any nature, including those to become due, except as set out in Schedule 3.1(n). Schedule 3.1(n) does not note occupancy cost recovery as an amount to become due under the lease.
25. Mr. Quesnel says Sky Harvest did not provide the letter to him until June 2, 2023, after he had filed his taxes. He says he should not have to pay as Sky Harvest breached the contract at paragraph 6.5, which requires the parties to provide documents promptly.
26. Sky Harvest says that it did not receive the letter until June 2, 2023. It provided:
  - a. An email dated June 2, 2023, from the landlord saying that Sky Harvest has not paid the debt and reattaching the letter.
  - b. An undated email from Sky Harvest to Mr. Quesnel attaching the letter and requesting payment of \$430.44, the amount owing for January 1 to July 8, 2022.
27. I find it is more likely than not that Sky Harvest first became aware of the letter at the June 2, 2023, email, and provided the letter to Mr. Quesnel the same day.

28. The 2022 operational cost recoveries became due in March 2023. Sky Harvest is entitled to rely on Mr. Quesnel's warranty that there were no liabilities. I find that Mr. Quesnel owes \$430.44 for the operational cost amount from January 1 to July 8, 2022.

### ***Income Tax Credits***

29. Sky Harvest submits that Mr. Quesnel agreed to claim \$11,875.20 on his 2022 tax return for doubtful accounts to the closing date but claimed \$12,864. It says this created a tax credit of \$988.80, which Sky Harvest would not be able to claim, resulting in a loss of \$98.91, calculated as 10% at the corporate tax rate.

30. Sky Harvest provided emails between Mr. Quesnel and Mr. Arthur discussing the amount Mr. Quesnel should claim. It did not provide evidence of an agreement, tax returns, or evidence from an accountant or other expert of the effect of the difference or that the amount claimed was incorrect. An expert provides knowledge that an ordinary person would not know. See *Homolka v. Harris*, 2002 BCCA 262, paragraph 12. I find that the effects of credits in corporate tax is knowledge that an ordinary person would not know, so Sky Harvest needed expert evidence to prove the \$98.91 loss.

31. As noted, Sky Harvest has the burden to prove its claims, I find it has not done so and dismiss this part of its claim.

### ***Summary***

32. I find that Mr. Quesnel owes Sky Harvest \$1,158.29:

- a. \$727.85 for payments into the legacy account, and
- b. \$430.44 for occupancy cost recovery from January 1 to July 8, 2022.

### ***Interest***

33. The *Court Order Interest Act* applies to the CRT. Sky Harvest is entitled to pre-judgment interest:

- a. On the \$727.85 in legacy account payments from February 1, 2023, to the date of this decision, and
- b. On the \$430.44 in operational costs from June 2, 2023, to the date of this decision.

34. This equals \$73.44.

35. 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 Sky Harvest was mostly successful, I find it is entitled to reimbursement of \$125 in CRT fees. It did not claim any dispute-related expenses.

## **ORDERS**

36. Within 30 days of the date of this order, I order Mr. Quesnel to pay Sky Harvest a total of \$1,356.73, broken down as follows:

- a. \$1,158.29 in debt,
- b. \$73.44 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$125 in CRT fees.

37. Sky Harvest is entitled to post-judgment interest, as applicable.

38. This is a validated decision and order. 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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Deanna Rivers, Tribunal Member