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STATE OF VERMONT

SUPERIOR COURT  
Washington Unit

CIVIL DIVISION  
Docket No. 485-9-19 Wncv

Codling Brothers Logging,  
David Codling,  
Paul Codling,  
Joe Codling,  
Appellants

v.

Michael A. Carriveau,  
Appellee

**Ruling on Appeal From the Small Claims Court**

Defendants-Appellants (the “Codlings”) appeal from a small claims judgment in favor of Plaintiff–Appellee Michael Carriveau. This dispute arose out of written logging contract entered into between the Codlings and Carriveau. Carriveau claimed that the Codlings owed him money for the logs removed from his property and sold to a mill. The Codlings asserted a counter-claim in which they said there was also an oral contract to remove other trees on Carriveau’s property. They asserted that any monies they might owe Carriveau should be offset by the \$3,000.00 allegedly owed them for the removal of the additional trees.

The Small Claims Court (SCC) held a hearing where Carriveau appeared and offered evidence and David Codling appeared for the Codlings and offered evidence. The Court issued a written ruling in which it concluded that Carriveau was owed

\$2,092.99 for unpaid sums due to him under the logging contract. While Carriveau sought additional sums, the Court concluded he had not proven them. The Court also found that the Codlings had not proven that a second contract existed beyond the written one provided by Carriveau.

Subsequently, the Codlings filed the instant appeal.

The Court has reviewed the record below and listened to the recording of the hearing, and considered the oral arguments of the parties. It makes the following determinations.

### **Standard of Review**

In seeking to overturn the judgment of the SCC, the Codlings face a significant hurdle. An appeal from a small claims judgment is heard and decided “based on the record made in the SCC.” 12 V.S.A. § 5538. The “appeal is limited to questions of law.” V.R.S.C.P. 10(d). If the SCC has applied the correct law, this Court will affirm its “conclusions if they are reasonably supported by the findings.” *Maciejko v. Lunenburg Fire Dist. No. 2*, 171 Vt. 542, 543 (2000) (mem.). In turn, the findings of fact must be supported by the evidence, *Brandon v. Richmond*, 144 Vt. 496, 498 (1984), and such findings “must be construed, where possible, to support the judgment,” *Kopelman v. Schwag*, 145 Vt. 212, 214 (1984). The Court’s review of the SCC’s legal conclusions, however, is “non-deferential and plenary.” *Maciejko*, 171 Vt. at 543 (quoting *N.A.S. Holdings, Inc. v. Pafundi*, 169 Vt. 437, 439 (1999)).

### **Analysis**

The Codlings raise two issues on appeal. First, they point out that the SCC’s

decision mistakenly stated that Paul Codling had been present at the hearing. In a post-hearing ruling, however, the SCC acknowledged the error and noted that it was, in fact, David Codling who had been present at the hearing. That corrected error provides no basis to overrule the decision below.

Second, the Codlings argue that the SCC's decision rejecting their counterclaim was flawed. They assert that the SCC should not have relied on Carriveau's testimony concerning the removal of hazardous trees because, they maintain, those trees were near a power pole and were not the trees that were the focus of the counterclaim.

The Codlings raised that same point in a post-judgment motion to reconsider. The SCC examined that argument and denied it, noting that there was no evidence at trial concerning work done around a power pole.

At the oral argument in the case, the Codlings continued their argument concerning the work done around a power pole and asserted that Carriveau had offered false testimony to the SCC.

This Court is limited to the record put forth by the parties and admitted by the SCC. If the record supports the conclusions of the SCC, those conclusions must be affirmed. As concerns the counterclaim, the SCC did not find the Codlings' testimony as to a second oral contract to be credible.

After reviewing the evidence submitted below, this Court concludes that the SCC's decision concerning the second contract was supported by the record. The SCC had the chance to consider the evidence and the demeanor of the witnesses.

This Court has not empowered to second-guess the SCC's decision to credit Carriveau's testimony over that of the Codlings. The SCC's decision is supported by evidence in the record, including: the written contract between the parties, Plaintiff's denial of a second oral contract, Plaintiff's testimony that the trees that were the subject of the counterclaim fell within the scope of the written contract, and Plaintiff's testimony that the Codlings did not remove certain hazardous trees near his home because they recommended a tree service perform the work. The Court also concludes that no evidence was offered below that specifically discussed work done around a power pole.

### **Conclusion**

Review in this Court is limited by the legal principles set out above. On that basis, the Court has found no legal error, and the judgment of the SCC is affirmed.

Dated at Montpelier, Vermont this \_\_ day of December, 2019.

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Timothy B. Tomasi  
Superior Court Judge