VERMONT SUPERIOR COURT
Orleans Unit
247 Main Street
Newport VT 05855
802-334-3305
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 24-SC-00024

Marc Brillon v. Ronald Kasper et al

SMALL CLAIMS JUDGMENT

A Small Claims Complaint was filed on January 02, 2024.

On February 06, 2024 Defendant(s) filed an Answer with the Court.

Defendant ☐ did ☒ did not file a counterclaim.

Trial by Court took place on 7/12/2024.

The Plaintiff:

☒ was present and appeared ☒ was pro se

The Defendant:

☒ was present and appeared ☒ was pro se

☐ Based upon the stipulation of the parties

☒ Based upon the evidence and testimony as presented. The Court makes the following findings: Plaintiff Marc Brillon's claim for compensation arises under 19 V.S.A. § 2702. Plaintiff's property sits at the end of a private road known as Miller Way, which also serves four other property owners as their primary means of ingress and egress. In the spring of 2023, the road along Miller Way was in need of maintenance. It had not been graded, crowned, or replenished with gravel and material since 2019.

To effectuate this work, Plaintiff Brillon consulted with the other landowners along Miller Way and sought and obtained bids for the re-grading of Miller Way from four contractors. After sharing the bids with the other four property owners served by Miller Way, all but the Defendants, Ronald and Susan Kasper, agreed to use the contractor Kennison & Son to perform the grading work. Kennison's bid was for $9,300 and called for 33 loads of stay-crush and screened gravel, with accompanying crowning, grading, and roller work. This bid was the second lowest bid received, but it included approximately four times as much material as the lowest bid from S&R Grading (8 loads). The difference between the lowest bid and the Kennison bid was approximately $7,000. The Kennison and S&R bids were both substantially lower than the other two remaining bids, which came in at $21,900 and $26,450.

Despite Defendants Kaspers' objections, Plaintiff Brillon hired Kennison and fronted the money for the work. Kennison performed in a timely manner and completed the work during the summer of 2023. Following completion of the grading work, the final invoice from Kennison came in below the bid estimate at $8,993.00. On September 5, 2023, Plaintiff Brillon sent an email to all four landowners along Miller Way asking for equal contributions for this work. Three out of the four landowners complied with the request and re-imbursed Brillon for their share. The Kaspers have refused to contribute any money for this work. Plaintiff now seeks to re-coup the Kaspers' share of the costs for this work under 19 V.S.A. § 2702.

At trial, the Defendants' objections and defenses fell into three areas.

First, Defendants contend that Plaintiff should pay a greater share of the cost for the work because the segment of right of way extending from the Kasper's southern boundary to their northern boundary with Brillion should not be considered part of Miller Way. Defendants provided no credible evidence that would support this contention. The maps provided by both the Kaspers and Brillon shows Miller Way extending from Strawberry Acres Road to the shared boundary between Brillon and Kasper. The Kasper admit that the portion of the right of way across their property is not exclusive to Brillon, and in fact,

they have to use and cross this right of way to access the western portions of their lot. Defendants submitted a map that is of record with the Town of Newport's land records and appears to be a survey map. While it is unclear from the portion of this map, submitted by the Kaspers, who drew the map or what sources the surveyor consulted, it does reflect an opinion that is consistent with both the town maps submitted by Brillon and the lay opinion offered by neighbor Paul Ambers that Miller Way is a single private road from Strawberry Acres to the Kasper/Brillon property line.

The Kaspers' argument is more productively viewed as an argument for prorata contributions to any maintenance of the road. In effect, the Kaspers argue that the segment of Miller Way running across their property should be the sole responsibility of Brillon because it only serves his property, and it would only be fair that he be responsible for its upkeep. In support of this argument, the Kaspers note that the Brillons predecessors had paid additional amounts for maintenance consistent with a prorata assessment. The problem with this argument is two-fold. First, such an argument could be made by any landowner along Miller Way against Brillon and the Kaspers. The landowners did not elect to make such a distinction, and there is no evidence that Kennisons' work divided along those lines. Second, apart from three maintenance payments there is no evidence that the landowners along Miller Way have used a prorata method to assign costs. Under 19 V.S.A. § 2702, the Court is required to determine what is reasonable and equitable when assigning a judgment of contributions. *Rawley v. Heymann*, 2023 VT 64, ¶ 13.

In this case, the entire length of Miller Way is open and avaialable to the residents along the right of way to use, and there is no evidence that any one segment is private and exclusive. While practically traffic may lessen the further one travels along the right of way, the evidence that one segment is significantly private to warrant a prorata assignment. Further and for the purposes of the present case, there is no evidence that the cost of the work done on Miller Way could be equally assigned between the various segments. The work was bid as a single project, and there is no evidence that the invoices distinguished or broke down the actual costs between segments. As such, it would be speculation on the part of the Court to impose such a distinction after the fact. The fact that the landowners closer to Strawberry Acres were satisfied with the division of costs also seems to indicate that division had a certain fairness that was generally acceptable to landowners.

The Kaspers second argument is that Brillon caused most of the damage to the road by having construction vehicles and tractor trailers drive up the length of the road to his property where he was constructing a house and outbuildings. The Kaspers sought to introduce several articles discussing the different weight and impact of larger trucks on roads. While the Court did not allow most of these articles into evidence, the Court takes judicial notice that dump trucks and tractor-trailers weigh substantially more than passenger cars, and when such trucks are loaded, they are likely to be significantly heavier than passenger cases. Further, the Court takes notice of the fact that truck traffic, due to its weight and size, will cause a road wear down faster than lighter vehicles.

Notwithstanding these points, the Kaspers provided no evidence that Brillon's trucks, or that their use of the right of way, caused it to deteriorate any faster or more significantly than more frequent passenger car traffic. There were no photographs showing impacts to the road before and after Brillon's trucks drove on the road. In fact, there was no testimony establishing this allegation or pointing to specific dates or damage that Defendant contended were related to the heavy truck traffic. Without such evidence, the Court is not in a position to speculate or extrapolate that the heavy trucks caused more damage to the right of way than other traffic. In fact, the Kaspers' other arguments appear to undercut this position. In another argument, Mr. Kasper decried the expense of the Kennison work and claimed that the landowners should have gone with the cheaper S&R grading estimate, which was in line with its 2019 and 2017 work proposals. In effect, Mr. Kasper is arguing that all the road needed was limited additional gravel and the same grading work that had been done in prior years. Given that the gap was twice as long between grading—2 years between 2017 and 2019 as opposed to 4 years between 2019 and 2023—the Defendant's position that S&R Grading's modest proposal was the appropriate choice is inconsistent with the allegation that Brillon had caused extensive damage during that time with his trucks.

Again, due to the lack of evidence of any specific truck-related damage to the road or disproportionate impacts, the Court finds no basis for denying Brillon's demand based on the fact that contractors and agents drove truck along Miller Way.

The third and final argument offered by the Kaspers is that Section 2702 allows for joint contributions of maintenance but not repairs. To that end, the Kaspers referred to joint road maintenance statutes in other states, such as New Hampshire and Finland, as well as a google search that Mr. Kasper performed in which he sought to distinguish maintenance from repair.

When interpreting a statute, it is the Court's role to implement the legislative intent. *T.C. v. L.D.*, 2020 VT 19, ¶ 4. This analysis begins and ends with the plain language of the statutes, unless there is ambiguity. Id. In this case, regardless of how

Plaintiff in his complaint characterized the work done in 2023 by Kennison, the work was quintessential maintenance work. As the evidence from both sides demonstrates, Miller Way is a hardpacked, unpaved road. It requires periodic resurfacing and grading. This process involves amending the surface with new gravel and crushed stone. It requires grading, crowning, and packing the material with a roller. While this work may "repair" sections of the road where there are potholes and the quality has sunk below a certain level, the primary purpose is maintenance—to keep the road passable and to keep its quality within an acceptable range. Whether Section 2702 would also cover work that could be characterized as more of a repair—such as re-building a section of roadbed if it is washed out in a flood—is not before the Court at this time, and the Court expresses no opinion on this issue.

Based on this analysis, the Court finds no credible basis to deny Plaintiff Brillon's claims under section 2702 as falling outside of the statute. The re-surfacing work that Plaintiff contracted and had performed appears to be completely consistent with the intent and language of the statute. Under the provisions of 19 V.S.A. § 2702, Defendants are obligated to contribute their share, which the Court has determined to be 20% of the original price, which come out to $1,798.60.

For these reasons, the Court grants judgment in favor of Plaintiff Brillon in the amount of $1,798.60. Given that this amount was readily ascertainable on September 5, 2023, the Court also awards pre-judgment interest to Plaintiff in the amount of $186.26. *Bull v. Pinkham Engineering Assocs., Inc.*, 170 Vt. 450, 463–64 (2000) ("[Prejudgment] interest is awarded as of right when the principal sum recovered is liquidated or capable of ready ascertainment . . . ."). The Court also awards Plaintiff's court costs of $90 for a total judgment of **$2,074.86.**

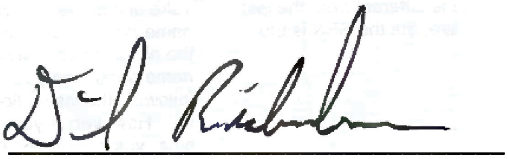
IT IS ORDERED AND ADJUDGED that judgment is entered for the ☒ Plaintiff ☐ Defendant.

The Plaintiff Marc Brillon shall have judgment against Defendants Ronald and Susan Kasper in the amount of:

$1,798.60	in damages
$186.26	in interest
$90.00	in costs
$2,074.86	Total

Interest will accrue at the rate of 12% per year on any unpaid amounts.

Electronically signed on 7/15/2024 7:27 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge

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NOTICE OF RIGHT TO APPEAL

Either party may appeal this judgment by filing a Notice of Appeal with the Clerk of the Court. A fee is due within thirty (30) days of the date of judgment.

YOU MUST TELL THE COURT WHEN THE JUDGMENT IS PAID

The party collecting the judgment must notify the court clerk and the other party(ies) within 21 days after the judgment is paid in full so that satisfaction of judgment can be entered on the docket. If notification is not received within that time, the other party(ies) may file a motion for an order that judgment be deemed satisfied.

ACCEPTANCE OF SERVICE

I accept service of this Order.

_____ _____

Date Signature