



Civil Resolution Tribunal

Date Issued: October 28, 2020

File: SC-2020-004914

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Green Clover Inc. v. Radius Transport Ltd.*, 2020 BCCRT 1213

B E T W E E N :

GREEN CLOVER INC. and TYLER MADISON

APPLICANTS

A N D :

RADIUS TRANSPORT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a cleaning services agreement. The applicants, Green Clover Inc. (Green Clover) and Tyler Madison, say they provided cleaning services to the respondent, Radius Transport Ltd. (Radius). They say that Radius did not provide proper notice to terminate the parties' agreement. Green Clover and Mr. Madison seek \$623.44 in lieu of notice.

2. Radius says Green Clover failed to provide adequate cleaning services and so it was not required to provide notice.
3. Green Clover and Radius are each represented by an employee. Mr. Madison is self-represented.

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). 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 parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. 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.

ISSUES

8. The issues in this dispute are:

- a. Whether Green Clover provided proper cleaning services, and
- b. Whether Radius was required to provide 60 days notice to terminate the agreement, and if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

9. In a civil dispute like this one, the applicants, Green Clover and Mr. Madison, bear the burden of proof on a balance of probabilities. The parties provided evidence and submissions to support their respective positions. While I have considered all of this information, I will refer to only what is necessary to provide context to my decision. In this decision, witnesses and others are identified by their initials which are known to the parties.
10. The parties agree they entered into an agreement for cleaning services on August 8, 2019 to start on September 7, 2019. Mr. Madison was not named in his personal capacity as a party to the agreement. He did not submit any evidence indicating that Radius was obligated to him personally. I find that since Mr. Madison did not establish there was a contractual relationship between her and Radius, she is not personally entitled to any remedy if Radius breached the agreement. I dismiss Mr. Madison's claims against Radius.
11. According to the terms of agreement, Green Clover agreed to provide weekly cleaning services for Radius's premises for \$475 per month. The agreement included a detailed 2-page checklist of the specific services Radius would provide in various areas of Radius's premises. The agreement also stated that if Green Clover's services were "unsatisfactory", either party could terminate the agreement by providing 60 days' written notice to the other party. I find the agreement between Green Clover and Radius was binding and enforceable.
12. Radius says it terminated the agreement effective December 31, 2019 in a December 9, 2019 email to Green Clover. Radius agrees that it did not provide 60 days' notice but says it was not required to because Green Clover failed to provide the cleaning

services in the agreement. Radius says it contacted Green Clover by phone and email 17 times between September 30, 2019 and December 9, 2019 to complain about the cleaning services. It says it also emailed Green Clover photographs of the deficiencies in the work. The complaints included: the upstairs bathrooms were not cleaned, the premises were not dusted, the upstairs was not vacuumed, the lunchroom floor, table and countertops were not washed, the floors in various areas were not swept or washed, and garbage cans were not emptied. Radius says Green Clover sent its cleaners to re-do the work on several occasions.

13. Radius says that in a November 25, 2019 email, Green Clover's employee, SJ, stated that new permanent cleaners were assigned to Radius's premises and she did not foresee any future problems. Despite this, Radius says on December 8, 2019, the cleaners did not clean the main entrance glass doors or empty the garbage and recycling bins in the offices. Radius says it felt that Green Clover could not fulfill the terms of the agreement by providing adequate weekly services and so it terminated the agreement.
14. Although Radius referred to photographs and emails in its submissions, it did not submit copies of either. However, Green Clover did not dispute Radius's description of the cleaning services it provided and so I accept it to be accurate.
15. Green Clover says that even though Radius was dissatisfied with the cleaning services, it was still required to provide 60 days' notice to terminate the agreement. On balance, I find Radius's complaints went beyond dissatisfaction with the quality of Radius's services but instead were about whether Green Clover actually provided the services in the first place. I find the evidence shows on several occasions Green Clover failed to perform the contracted services and so I find Green Clover fundamentally breached the agreement.
16. In particular, when a party fails to perform a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract, it is called a fundamental breach (see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC)). A fundamental breach is a breach that destroys the whole

purpose of the contract and makes further performance of the contract impossible (See *Bhullar v. Dhanani*, 2008 BCSC 1202).

17. Whether a breach of contract is a fundamental breach matters because there are different remedies available to the wronged party. For most breaches of contract, the wronged party can claim damages against the other party for a breach of contract. For a fundamental breach, the wronged party can end the contract immediately. If the wronged party terminates the contract because of a fundamental breach, they do not have to perform any further terms of the contract. (See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BC CA).)
18. Since Green Clover fundamentally breached the agreement, I find Radius was entitled to immediately terminate the agreement and was not required to provide 60 days' notice. I dismiss Green Clover's claims.
19. 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. Since Green Clover was unsuccessful, I find it is not entitled to reimbursement of the CRT fees. Radius did not pay any fees or claim any dispute-related expenses.

ORDER

20. I dismiss Green Clover's claims and this dispute.

Rama Sood, Tribunal Member