



Civil Resolution Tribunal

Date Issued: July 2, 2021

File: SC-2021-001621

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Revolution Resource Recovery Inc. v. Pacific Enclosures Ltd.*, 2021
BCCRT 726

B E T W E E N :

REVOLUTION RESOURCE RECOVERY INC.

APPLICANT

A N D :

PACIFIC ENCLOSURES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Roy Ho

INTRODUCTION

1. This is a dispute about a contract for waste disposal services.

2. The applicant, Revolution Resource Recovery Inc. (Revolution), says the respondent, Pacific Enclosures Ltd. (Pacific), breached the parties' July 2, 2019 contract. Revolution claims \$4,943.75 in liquidated damages.
3. Pacific denies liability and says it was permitted to terminate the contract. Pacific also claims legal fees for this dispute.
4. The parties are each represented by their own respective business contacts.
5. As discussed below, I find that Revolution is entitled to liquidated damages.

JURISDICTION AND PROCEDURE

6. 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, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.
7. 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 in the interests of justice.
8. 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 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.

9. 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.

ISSUE

10. The issue is to what extent, if any, Revolution is entitled to liquidated damages under a waste disposal contract.

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Revolution must prove its claims on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
12. In this dispute, Revolution says that Pacific breached the contract, so it is entitled to \$4,943.75 in liquidated damages. Pacific says that it did not breach the contract. Pacific says it is permitted to terminate the contract if there were any service issues from Revolution. Pacific further says it felt bullied into contracting with Revolution and that Revolution failed to amend the contract to add an exit clause for Pacific if for any reason it was dissatisfied with Revolution.
13. The parties' July 2, 2019 contract, signed by Revolution's senior consultant and Pacific's co-owner, included the following relevant terms:
 - a. Revolution will provide a construction bin and a metal bin to Pacific.
 - b. Revolution has the exclusive right to provide waste disposal services to Pacific for 36 months starting on July 15, 2019. If Pacific has a preexisting waste disposal service contract with another company (preexisting contract), the service start date will begin on the day the preexisting contract ends.
 - c. Pacific will provide a copy of the preexisting contract to Revolution.
 - d. Revolution will give Pacific 1 free month's service.

- e. Pacific can terminate the agreement “if any documented service issues are not resolved within 30 days from date of written notice received” (service issue clause),
- f. “Services” in the contract is defined as “solid waste and recyclable material collection, recovery and disposal services” (reproduced as written), and
- g. Under the contract’s general conditions page, the “FAILURE TO PERFORM” clause states that if the contract is improperly terminated by Pacific, Pacific will pay liquidated damages. Liquidated damages will be calculated equal to the balance of the current term or the sum of Pacific’s most recent 15 months billings, whichever is greater. I note here that Pacific initialled the general conditions page.

14. I turn to the relevant undisputed chronology.

15. On July 12, 2019, Pacific emailed Revolution that it had 1 preexisting waste disposal contract with SSD for the construction bin. The parties later determined that Pacific also had another preexisting contract with S company for the metal bin. So, Pacific had 2 preexisting waste disposal contracts with 2 different companies. Pacific did not provide Revolution with copies of both preexisting contracts.

16. On July 16, 2019, Revolution notified Pacific by letter that it would be delivering the construction and metal bins on August 9, 2019 in accordance with the contract.

17. On August 8, 2019, Pacific told Revolution that the preexisting contract with SSD ended on February 26, 2020.

18. On August 10 and 15, 2019, Revolution emailed Pacific asking for S company’s contract end date. Pacific did not provide a response.

19. On August 30, 2019, Revolution emailed Pacific again asking for S company’s contract end date. Revolution notified Pacific that without an end date it would fulfill its contractual obligation and deliver the metal bin to Pacific by September 6, 2019. There is no evidence before me whether Pacific responded to Revolution’s email.

20. On September 4, 2019, Revolution delivered the metal bin to Pacific. Pacific rejected the bin because it had not agreed to this date.
21. On September 6, 2019, Pacific sent a complaint letter to Revolution about Revolution's poor customer service. In that letter, Pacific cited the contract's service issue clause. While Pacific did not use these words, I infer that Pacific was attempting to terminate the contract under the service issue clause. I will address this further below in my decision.
22. On September 10, 2019, Revolution emailed Pacific deferring the construction bin service commencement date to February 26, 2020, given the preexisting SSD contract. Revolution also gave Pacific the option to remain with S company for metal bin service. By doing so, I find that Revolution waived its contractual rights to provide Pacific metal bin service.
23. On February 13, 2020, Pacific's lawyer wrote to Revolution alleging that Revolution had materially breached the contract and that Pacific would not pay for Revolution's services. The letter sets out that Pacific had not agreed to the September 4, 2019 metal bin drop off. The letter also repeats the alleged poor customer service Pacific had been experiencing. The letter does not identify what material term in the contract Revolution allegedly breached.
24. On February 18, 2020, Revolution emailed Pacific's lawyer affirming the contract. Revolution advised Pacific that, if it wished to terminate the contract, it should do so in writing by February 24, 2020. Pacific did not do so.
25. On an unspecified date, Revolution conducted a site check in preparation for the February 26, 2020 construction bin delivery date. Revolution learned that Pacific would be using SSD's construction bin.
26. On March 9, 2020, Revolution notified Pacific by email that Revolution had deemed that Pacific had breached the contract.
27. I turn next to Pacific arguments.

Service issue clause

28. Pacific says that it did not breach the contract. Pacific says that it can terminate the contract under the service issue clause because Revolution provided poor customer service by being complicit, rude, sarcastic, and abusive. Pacific says it felt taken advantage of, bullied, uncomfortable, and pressured when Revolution attempted to drop off the metal bin on September 4, 2019 without Pacific's consent. As noted, Revolution undisputedly deferred the construction bin service to February 26, 2020, so Revolution had made no attempts to commence this service.
29. Revolution says it had not provided "Services" to Pacific because Revolution had been unable to drop off the metal bin to start service. Revolution relies on the contract's definition of "Services" as noted above. I agree with Revolution. I find that Revolution had not provided Pacific with waste disposal services, as defined. Even if Pacific received poor customer service from Revolution, this is not the "Services" contemplated in the contract. For these reasons, I find that Pacific cannot cancel the contract based on the service issue clause.
30. Even if I were to find that the contract's definition of "Services" included customer service, I would still find that Pacific cannot cancel the contract. The clause states there are 30 days from the date Revolution receives written notice to resolve the service issue. As noted above, Pacific sent its September 6, 2019 complaint letter to Revolution after Revolution tried to start the metal bin service. Within 4 days, Revolution waived its contractual right to provide the metal bin service to Pacific. Because of this, I find that any service issue about the metal bin has been resolved. So, I do not find that Pacific can rely on the service issue clause to cancel the contract.

Duress

31. Next, Pacific says it felt bullied into contracting with Revolution for the metal bin, which I infer to mean Pacific says it signed the contract under duress. Pacific does not make any allegations about feeling bullied into contracting with Revolution for the construction bin. Duress is a defence to the enforceability of a contract. However,

given that Revolution is not enforcing its rights under the metal bin service but only the construction bin service, I find that the defence of duress does not apply here. For this reason, I find any claim for duress must fail.

Contractual amendment

32. Last, Pacific alleges Revolution failed to amend the contract to add a clause that “in the event that if [Pacific] was in any way dissatisfied with [Revolution] that [Pacific] could get out”. While not stated, I infer Pacific to mean it is not bound by the contract due to Revolution’s omission of the clause. However, I do not accept the parties had agreed to add this clause. Under the contract’s “SPECIAL INSTRUCTIONS” heading, the parties added numerous contractual terms, variations, and amendments to the contract, such as the 1-month free Revolution service and the service issue clause. I find it likely that the parties negotiated these contractual changes and Pacific signed the contract after reviewing them. I find that if the parties had agreed to the exit clause as alleged it would have been in the special instructions section. For this reason, I conclude that the parties did not agree on the exit clause. So, I find that the contract is binding on Pacific.
33. For the above reasons, I find that the parties’ contract is enforceable, and I find that Pacific breached it.

Liquidated damages

34. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract.
35. The parties’ contract undisputedly states that Revolution may seek liquidated damages if Pacific improperly terminates the contract. While Pacific says it was “not aware” about the liquidated damages clause, I do not accept this argument. Above the signature line on the front page of the contract, in boldface, is the statement: “By signing this Agreement, Customer acknowledges having read, understood and agreed to this entire Agreement, which includes GENERAL CONDITIONS on the other side”. The general conditions page, which Pacific undisputedly initialled,

contained the liquidated damages clause. By signing and initialling the contract, I find Pacific acknowledged that it had read, understood and agreed to the entire agreement. While I acknowledge that this clause is onerous, it is enforceable. In *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690, the British Columbia Supreme Court held that a similar contract with virtually identical language was enforceable. This decision is binding on me. For this reason, I find that Revolution is entitled to liquidated damages.

36. So how much liquidated damages is Revolution entitled to? As noted, the clause states that Revolution may seek liquidated damages for the remainder of the contractual term or the sum of the last 15 months of billing, whichever is greater. Revolution says it is entitled to the amount for the entire remaining term, here being 35 months after deducting the 1 month free. I agree. The parties do not have 15 months' worth of billing history to calculate liquidated damages from.
37. Revolution calculates the 35 months' payment at \$141.25 (\$125 plus GST + \$10 monthly administrative fee charge) per month, which equals \$4,943.75. I accept this calculation because these are the rates and fees set out in the contract. So, I find that Pacific must pay Revolution \$4,943.75 in liquidated damages.
38. The *Court Order Interest Act* applies to the CRT. Revolution is entitled to pre-judgment interest on the \$4,943.75 from March 9, 2020, when Revolution deemed Pacific to have breached the contract, to the date of this decision. This interest equals \$52.15.
39. 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. I find Revolution is entitled to reimbursement of \$175 in CRT fees. Pacific claimed legal fees as dispute-related expenses. As Pacific was not successful in this dispute, I find it is not entitled to reimbursement of legal fees. I would have dismissed Pacific's claim for reimbursement of legal fees in any event given the CRT's rules that say legal fees are reimbursable only in extraordinary cases. There is nothing

extraordinary about this contract breach dispute. Revolution did not claim dispute-related expenses.

ORDERS

40. Within 30 days of the date of this order, I order Pacific to pay Revolution a total of \$5,171.08, broken down as follows:
 - a. \$4,943.75 in liquidated damages,
 - b. \$52.33 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in CRT fees.
41. Revolution is entitled to post-judgment interest, as applicable.
42. Pacific's claim for dispute-related expenses is dismissed.
43. Under section 48 of the CRTA, the CRT will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the CRT's final decision. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is in effect until 90 days after June 30, 2021, which is the date of the end of the state of emergency declared on March 18, 2020, but the Province may shorten or extend the 90-day timeline at any time. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
44. 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. A CRT order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and

the time for filing a notice of objection has passed. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Roy Ho, Tribunal Member