



# Civil Resolution Tribunal

Date Issued: August 10, 2021

File: SC-2021-002609

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Revolution Resource Recovery Inc. v. SHARC Energy Systems Inc.*,  
2021 BCCRT 876

B E T W E E N :

REVOLUTION RESOURCE RECOVERY INC.

**APPLICANT**

A N D :

SHARC ENERGY SYSTEMS INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Kristin Gardner

## INTRODUCTION

1. This dispute is about a waste disposal contract.
2. The applicant, Revolution Resource Recovery Inc. (Revolution), says that it entered into an agreement with the respondent, SHARC Energy Systems Inc. (SHARC), on

January 20, 2021 for waste disposal services. SHARC was already under contract with another waste disposal company until November 2024. Revolution says that SHARC breached their agreement by refusing to honour the contract it signed with Revolution. Revolution claims \$4,779 in liquidated damages.

3. SHARC says that Revolution misrepresented that it would immediately cancel SHARC's existing waste disposal contract and begin providing services on better terms. SHARC requests rescission of its agreement with Revolution on the basis of this misrepresentation. SHARC did not file a counterclaim.
4. SHARC also says if its agreement with Revolution is enforceable, it did not cancel or breach it. SHARC says Revolution has demonstrated bad faith in starting this dispute when SHARC would not have any obligations to Revolution under the contract until November 2024.
5. Each party is represented by their own respective employee.

## **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.

## **ISSUES**

10. The issues in this dispute are:
  - a. Whether the parties' contract is enforceable, and
  - b. If it is, to what extent, if any, Revolution is entitled to liquidated damages under the contract.

## **EVIDENCE AND ANALYSIS**

11. In a civil proceeding like this one, Revolution as the applicant must prove its claims on a balance of probabilities. This general burden is subject to SHARC's burden to prove it is not bound by the contract it signed, as discussed below. I have read all the parties' evidence and submissions but refer only to what is needed to explain and provide context for my decision.
12. The parties signed an agreement on January 20, 2021. I find the following terms apply to this dispute:
  - a. Revolution agreed to provide waste and cardboard disposal services, including containers, to SHARC's business address for \$75 per month. Revolution would deliver its containers once SHARC's former waste disposal services provider's containers were removed. Revolution would start providing service on March 20, 2021, subject to deferral.

- b. The first month of scheduled services was free.
  - c. The agreement's initial term started on the date the agreement was signed and extended to the date that was 60 months after the service commencement date. The agreement would automatically renew every 60 months. If SHARC had a pre-existing contract for waste removal from another service provider, the service commencement date would be deferred until the day after SHARC's pre-existing contract ended.
  - d. SHARC could terminate the contract by sending written notice to Revolution by registered mail 90 to 120 days before the end of the 60-month term (the cancellation window).
  - e. If SHARC terminated the agreement outside the cancellation window, Revolution could accept the termination and require SHARC to pay liquidated damages. Liquidated damages are calculated as the greater of a) the projected billings for the first month x 15, or b) the sum of amounts that would have become due over the balance of the term.
13. It is undisputed that SHARC had a pre-existing contract for waste removal with another service provider, SSD. I infer that at the time Revolution and SHARC entered into their agreement, neither party knew when SHARC's contract with SSD was set to expire.
14. The parties' email evidence shows that on February 1, 2021, Revolution confirmed with SHARC that it had sent a letter to SSD requesting a copy of SHARC's contract. Revolution stated it needed the contract to determine when it expired so Revolution could cancel it "in the proper window". In a follow up email on February 8, 2021, Revolution told SHARC it needed to see SHARC's current contract with SSD so it could start its services right when the existing contract ends.
15. On March 16, 2021, Revolution emailed SHARC that the Revolution sales consultant SHARC had been dealing with, BB, had left the company. SHARC provided its contract with SSD to the new Revolution senior consultant with conduct of SHARC's

file, KS. Revolution then confirmed that SHARC's contract with SSD expired on November 1, 2024, and it would cancel the contract in the cancellation window of 90 to 120 days before the term's expiry, for Revolution's service to begin on November 1, 2024.

16. SHARC responded on March 16, 2021, stating that it had signed the contract with Revolution "under the guise" that Revolution would work to get SHARC out of its contract with SSD, and start service within a few months. SHARC said given the new information that there was no way out of its contract with SSD, it would have to reconsider the agreement with Revolution. When KS responded that he had no idea what BB had said, SHARC replied that BB stated Revolution would begin the cancellation process immediately and there would be no concern or issues because Revolution offers a different type of service than SSD. SHARC also said BB represented that the process could possibly take months, but not 4 years.
17. After a phone call with Revolution on March 18, 2021, SHARC confirmed by email that it would continue with the parties' agreement, with Revolution's services to begin after the contract with SSD expired in 2024.
18. Then, in a March 23, 2021 email, SHARC told Revolution it had reconsidered and would like to rescind the contract given Revolution's misrepresentation. Specifically, SHARC said that BB stated Revolution would cancel its contract with SSD so SHARC could use Revolution's services. SHARC also said that if Revolution did not accept the request to rescind the contract, it would commence legal proceedings for misrepresentation.
19. Revolution says that SHARC's March 23 email amounts to a refusal to honour their January 20, 2021 agreement. It says rescission carries the same meaning as cancellation, which means SHARC breached their contract by trying to cancel it outside the cancellation window. Revolution relies on the terms of its agreement which state that if SHARC purports to terminate the agreement before the term's end, Revolution may accept the termination and is entitled to liquidated damages.

### ***Is the parties' contract enforceable?***

20. In general, when a party signs a contract, the signing party is bound even if the signing party may not have read or understood the contract. The exceptions to this include fraud, misrepresentation, where a party seeking to enforce the document knew or had reason to know of the other's mistake as to its terms, and *non est factum*, which is where the document signed is fundamentally different from what the person believed they were signing.
21. Given that SHARC signed the contract with Revolution, SHARC has the burden to show that an exception applies. As noted, SHARC says that Revolution misrepresented the contract by stating Revolution would cancel SHARC's contract with SSD right away, and that Revolution would start its service within a few months.
22. A misrepresentation is a false statement of fact made during negotiations or in an advertisement that has the effect of inducing a reasonable person to enter into the contract (see *O'Shaughnessy v. Sidhu*, 2016 BCPC 308). A misrepresentation can be innocent, negligent, or fraudulent. Here, there is no suggestion that Revolution made a fraudulent misrepresentation. Rather, SHARC alleges that Revolution's misrepresentation was made either innocently or negligently.
23. An innocent misrepresentation occurs when a party makes an innocent but untrue material statement of fact that the other party relies on as a reason to enter into the contract (see *O'Shaughnessy* at paragraph 106). A negligent misrepresentation is where one party fails to exercise reasonable care in making a representation that is untrue, inaccurate, or misleading, and the other party has reasonably relied on the negligent misrepresentation to enter into the contract to their detriment (see *Queen v. Cognos Inc.*, [1993] 1 SCR 87 at paragraph 110).
24. The only remedy available for an innocent misrepresentation is rescission, which results in the contract being set aside and the parties being restored to their original positions. Negligent misrepresentation can also result in rescission, but damages for consequential loss may be awarded as well (see *O'Shaughnessy* at paragraph 111)

25. Revolution argues that BB's February 1 and February 8, 2021 emails show that BB did not promise Revolution would cancel SHARC's contract with SSD immediately. However, I find the statements in those emails about cancelling the SSD contract in the proper window and starting Revolution's service when the current contract ends, were statements made after the January 20, 2021 contract had already been signed. I find they do not necessarily reflect what BB told SHARC while they were negotiating.
26. Notably, Revolution did not provide a statement from BB about what he told SHARC. While I acknowledge that BB no longer works for Revolution, I find there is no evidence before me that Revolution made any effort to determine BB's version of what he said to SHARC during negotiations. For instance, Revolution provided no contemporaneous business records, such as phone notes or a memo to file. Without a statement from BB or any explanation for its absence, I find SHARC's version of what BB said is essentially uncontradicted.
27. On balance, I find that BB represented to SHARC that Revolution would be able to cancel SHARC's existing contract with SSD before the term's end, and that Revolution's service would start within a few months of signing the contract. I say this because when KS advised that Revolution would not be starting its service until 2024, SHARC's response alleging BB made those misrepresentations, was immediate. I find the parties' emails show SHARC clearly expected that Revolution could get SHARC out of its contract with SSD and start service right away. I find SHARC could only have developed this mistaken expectation from BB's representations.
28. At the very least, I find BB made careless statements that misled SHARC into believing that "cancelling" the contract meant getting out of SSD's contract early, rather than simply providing notice to SSD within the contract's cancellation window. In one of its March 16, 2021 emails to KS, SHARC expressed disappointment that BB's departure had delayed the process of cancelling its contract with SSD and starting service with Revolution. This shows an obvious misunderstanding of the process. Again, I find this misunderstanding could only have come from BB's statements.

29. I also find SHARC's emails with BB before it signed the contract, show it signed with Revolution based on BB's representations that Revolution would provide better service at a lower rate than SSD. While those statements may have been true, I find that SHARC expected to realize the cost savings in the short term, and that this was a significant factor in SHARC's decision to sign the contract with Revolution.
30. I accept that SHARC did not sign the contract with Revolution on the understanding that Revolution's service would not start until 2024. In SHARC's March 16, 2021 emails to KS, SHARC stated twice that it could not promise its business to Revolution 4 years into the future. On balance, I find that had BB been truthful and clear that Revolution's service could begin only after SHARC's existing waste disposal contract expired, and that Revolution would not likely be able to cancel the existing contract early, SHARC would not have entered into the contract with Revolution. Overall, I find BB's statements to SHARC constituted negligent misrepresentation by Revolution.
31. I find the appropriate remedy for Revolution's negligent misrepresentation is rescission of the contract. This means that the contract is set aside, and Revolution cannot rely on its terms to claim liquidated damages. So, I dismiss Revolution's claim.
32. 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. Revolution was unsuccessful and so I dismiss its claim for CRT fees. Neither party claimed any dispute-related expenses.

## **ORDER**

33. I dismiss Revolution's claims, and this dispute.

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Kristin Gardner, Tribunal Member