



Civil Resolution Tribunal

Date Issued: February 4, 2022

File: SC-2021-002825

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Revolution Resource Recovery Inc. v. Modern Meat Inc.*,
2022 BCCRT 134

B E T W E E N :

REVOLUTION RESOURCE RECOVERY INC.

APPLICANT

A N D :

MODERN MEAT INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about a waste disposal contract. The applicant, Revolution Resource Recovery Inc. (Revolution), says the respondent, Modern Meat Inc. (Modern), cancelled the parties' contract without justification. Revolution claims \$3,568.45 as liquidated damages for breach of contract.

2. Modern previously denied signing the contract. It now acknowledges it “entered into” the agreement, but says the contract’s starting conditions were unfulfilled. Modern also relies alternatively on the legal doctrine of frustration.
3. An employee represents Revolution. An employee or principal represents Modern. I note that a lawyer, Olen Aasen, represented Modern until a brief time before I issued this decision.
4. For the reasons that follow, I find Revolution has proven its claims.

JURISDICTION AND PROCEDURE

5. 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.
6. 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.
7. 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.

8. 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.

Class Action Lawsuit

9. The CRT has previously noted that Revolution is the defendant in an ongoing class proceeding under the *Class Proceedings Act*. See, for example, *Revolution Resource Recovery Inc. v. Cooper Electrical Contracting Ltd.*, 2021 BCCRT 998 citing *676083 B.C. Ltd. v. Revolution Resource Recovery Inc.*, 2021 BCCA 85. I asked Revolution to provide a copy of the order made by Justice Milman certifying the class action in reasons indexed as *676083 B.C. Ltd. v. Revolution Resource Recovery Inc.*, 2021 BCSC 2072. I also asked the parties to comment on whether the CRT should refuse to resolve this dispute because the claims would be more appropriately resolved in the BC Supreme Court.
10. For the reasons that follow, I find it appropriate to resolve the claims in this dispute.
11. In general terms, the certified classes are 1) a “surcharge class” alleging breach of contract and unjust enrichment with respect to an 18% surcharge, and 2) a “restraint of trade class” alleging certain terms in Revolution’s standard form agreement are a restraint of trade. The order provides greater details which I need not repeat here.
12. Modern says the CRT should refuse to resolve this dispute as it is an eligible class member. However, it provided few details linking its position in this dispute with the allegations in the class proceeding. As noted earlier, Modern’s position is that the contract’s term never started or that it was frustrated. I find this falls short of showing that Modern is likely a member of either the surcharge class or the restraint of trade class. In contrast, Revolution says that the CRT should decide this dispute.
13. Given the above, I will resolve this dispute on the merits.

ISSUE

14. The issue in this dispute is whether Modern breached the parties' contract, and if so, what remedy is appropriate.

BACKGROUND, EVIDENCE AND ANALYSIS

15. In a civil proceeding like this one, the applicant Revolution must prove its claims on a balance of probabilities. This means more likely than not. I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
16. I begin with the undisputed facts. Modern is one of the commercial tenants in a building. Modern's landlord is a party to a contract with a third-party company for waste disposal services. I discuss the relevance of this below.
17. On February 2, 2021, Modern and Revolution signed Revolution's customer service agreement. The evidence shows Modern's facility manager signed it for Modern. I find the following terms are relevant:
 - a. Revolution agreed to provide waste disposal services for 24 months after the service commencement date.
 - b. The service commencement date was February 4, 2021. However, Modern could defer this date if it was a party to a pre-existing contract with a third party that currently provided waste disposal services similar to those of Revolution. To defer the service commencement date, Modern had to deliver to Revolution a copy of the pre-existing contract and take all steps necessary to terminate the pre-existing contract at the earliest possible date. The service commencement date would then be deferred to the day after the pre-existing contract's termination date.

- c. Modern could terminate the parties' agreement by sending written notice to Revolution by registered mail during a cancellation window. The cancellation window was 90 to 120 days before the end of the 24-month term.
 - d. Under section 9, if Modern terminated the contract before the cancellation window, Revolution could accept the termination and require Modern to pay liquidated damages as discussed below.
18. Modern's landlord subsequently advised Modern that the landlord's third-party company continued to provide waste disposal services for the building, and that Revolution would not be allowed to place its bins. On February 3, 2021, Modern telephoned Revolution. It advised that it wished to cancel the contract.

Did Modern breach the parties' contract?

19. Modern argues that the contract's service commencement date was deferred. I find that under the contract, Modern had to satisfy 2 conditions for deferral. First, it had to be a party to a pre-existing contract for waste disposal services. The evidence before me indicates that Modern's landlord was a party to such a contract rather than Modern. So, I find Modern did not fulfill this condition.
20. Second, I find the parties' contract specified that even if Modern was a party to a pre-existing waste disposal contract, Modern would have to terminate the pre-existing agreement. It has not done so, nor could it since it is not a party to the landlord's contract. So, I find Modern did not fulfill this condition either for deferring the service commencement date. As a result, I find Modern breached the contract by refusing to comply with its terms as of February 3, 2021.
21. Modern argues in the alternative that the contract was frustrated. A contract is frustrated where a supervening event causes a radical change in the nature of a fundamental contractual obligation. The event must not be the fault of either party, not self-induced, not reasonably foreseeable, and not one for which the contract makes a provision. See *Wilkie v. Jeong*, 2017 BCSC 2131.

22. Modern says that it cancelled the contract because its landlord said Revolution could not place waste disposal bins on its property. I find this falls short of a supervening event that was not reasonably foreseeable. This is because there is no indication that Modern could not ask its landlord about using Revolution's services before signing the customer service agreement. Modern also says its landlord "acknowledged that they had not been clear enough in their communications on this matter". Modern did not provide a statement from its landlord about this. So, I find it unproven that Modern relied on the landlord's statement in any event.
23. Aside from this, Modern did not explain why the contract was frustrated. So, I find that the contract was not frustrated, and that Modern breached the parties' contract. I now turn to Revolution's claim for \$3,568.45 as liquidated damages. Section 9 allows Revolution to claim for liquidated damages equal to the amount that would have become due to Revolution over the balance of the contract's term. Revolution seeks the balance of 23 months remaining in the contract's term, multiplied by the monthly charge of \$155.15. The contract provides for a monthly charge of \$145, plus a fuel surcharge of 7%. The total equals the claimed monthly charge of \$155.15. As the contract was for a term of 24 months, I find Modern must pay Revolution the claimed amount of \$3,568.45 as liquidated damages.
24. Modern says Revolution's claim should be disallowed because it suffered no damage. In the binding decision in *Tristar Cap Garment Ltd., v. Super Save Disposal Inc.*, 2014 BCSC 690, the court found that the income stream loss over the remaining term of the contract amounts to a genuine pre-estimate of damages and is not a penalty. Here, Modern's claim is based on the income stream lost over the contract's term, so I find it is a genuine pre-estimate of damages for breach of contract.
25. The *Court Order Interest Act* applies to the CRT. Revolution is entitled to pre-judgment interest on the liquidated damages award from February 4, 2021, the service commencement date of the contract, to the date of this decision. This equals \$16.06.

26. 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 the applicant is entitled to reimbursement of \$175 in CRT fees. The parties claimed no specific dispute-related expenses, so I order none.

ORDERS

27. Within 14 days of the date of this order, I order Modern to pay Revolution a total of \$3,759.51, broken down as follows:

- a. \$3,568.45 as liquidated damages,
- b. \$16.06 in pre-judgment interest under the *Court Order Interest Act*, and
- c. \$175 in CRT fees.

28. Revolution is entitled to post-judgment interest, as applicable.

29. 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.

30. 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.

David Jiang, Tribunal Member