



Civil Resolution Tribunal

Date Issued: October 19, 2022

File: SC-2022-002105

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Imagepath Printing Solutions Inc. v. Portal Crane Parts Ltd.*,
2022 BCCRT 1142

B E T W E E N :

IMAGEPATH PRINTING SOLUTIONS INC.

APPLICANT

A N D :

PORTAL CRANE PARTS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This dispute is about a printing equipment lease.

2. The applicant, Imagepath Printing Solutions Inc. (Imagepath), provided printing equipment and services under contract with the respondent, Portal Crane Parts Ltd. (Portal).
3. When the parties' contract ended, Imagepath sent Portal a final invoice for \$1,401.22, which Portal refused to pay. Imagepath claims \$1,401.22 in this dispute.
4. Portal says when it told Imagepath that it was not renewing the contract, Imagepath unfairly increased prices for the services it was providing. Portal also says it owes nothing because Imagepath has overcharged it for years, breaching the contract. Lastly, Portal says Imagepath failed to provide credit for remaining toner.
5. Each party is represented by a director.

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 issues in this dispute are:

- a. Were Imagepath's rate increases permitted under the contract?
- b. To what extent is Portal responsible for Imagepath's final invoice of \$1,401.22?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Imagepath must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. The following facts are undisputed. On September 2, 2014, the parties entered into a written lease agreement with a 5-year term. Imagepath was to provide a specific printer/copier for \$220 per month. There were a certain number of free copies provided, after which the rate was \$0.0085 for black and white copies and \$0.065 for colour copies.
13. When the 5-year term ended, the contract was to renew on an annual basis unless cancelled by either party with 30 days' notice. On September 2, 2019, the contract renewed for another year.
14. Around February 2020, Portal undisputedly terminated the contract in accordance with its terms. On February 27, 2020, Imagepath issued its final invoice for \$1,401.22.

The invoice was based on meter readings showing the number of copies of each type. Those readings are undisputed.

15. The rates on the February 2020 invoice were \$0.013 for black and white copies and \$0.103 for colour copies. The parties disagree about whether Imagepath's rate increases were permitted under the contract.
16. The contract included a term that Imagepath could adjust the copy rates on the annual renewal date to reflect "prevailing rates". The contract does not define "prevailing rates". I find the term "prevailing rates" is ambiguous, as it is unclear how they are determined. The parties made few submissions about how to interpret the term.
17. Where there is ambiguity in contractual terms, evidence of the parties' subsequent conduct can be considered to resolve the ambiguity (see *Wade v. Duck*, 2018 BCCA 176 at paragraphs 26-28). Imagepath's invoices from 2015 to 2019 show that it increased the copy rates annually. From 2014 to 2019, the rates increased each year, on average, by 10% for black and white copies and 11% for colour copies. In 2020, the rates increased by 8% and 10% respectively. So, I find the evidence does not support Portal's assertion that Imagepath increased prices in retaliation for Portal's decision to end the contract. Rather, I find Imagepath's most recent rate increases were consistent with its annual rate increases in every year of the contract.
18. Portal argues that Imagepath breached the contract by charging more than prevailing rates, resulting in overcharges of thousands of dollars over several years. Portal's evidence of prevailing rates is an August 28, 2019 letter in which Imagepath provided Portal with a quote to replace the printer it was leasing with a more modern printer. The quote provided rates of \$.009 for black and white and \$.06 for colour copies. Portal says these were prevailing rates. Portal thus argues that Imagepath was not permitted under the contract to increase rates above \$.009 and \$.06.
19. Imagepath says its quote for new equipment had nothing to do with the previous contract. On balance, I agree. I find the 2019 quote did not reflect "prevailing rates" applicable to the existing agreement because the 2019 quote was for new equipment.

The quote said the rate reflects toner, parts, labour, and other costs. I find it is common knowledge that different printers will have different costs associated with toner and parts. So, I do not accept the 2019 quote as evidence of prevailing rates. Further, Portal received the quote in August 2019, and does not say it was unaware that it was paying higher rates at the time. Portal did not object to the rates Imagepath invoiced at that time. So, I am not persuaded by Portal's argument that the most recent rate increase breached the contract.

20. I find the parties' contract allowed Imagepath to change its copy rates annually without notice to Portal. When the contract renewed in September 2019 with an increased copy rate, Portal was free to end the contract without penalty with 30 days' notice if it did not consider Imagepath's rates to align with prevailing rates. I find that by paying Imagepath's invoices without objection up to February 2020, Portal accepted that the rates Imagepath invoiced were the prevailing rates (see *Hardwoods Specialty Products LP Inc. v. Rite Style Manufacturing Ltd. et al.*, 2005 BCSC 1100, paragraphs 37-42).
21. Based on the above, I find that Imagepath's rate increases did not breach the contract, and Imagepath is entitled to be paid its \$1,401.22 invoice as claimed.
22. Portal made no submissions about the credit for remaining toner it raised in its Dispute Response, so I find that potential claim for set-off unproven. In any event, I find the contract was clear that Imagepath would provide no credit for early termination.
23. The *Court Order Interest Act* applies to the CRT and says pre-judgment interest must not be awarded where there is an agreement about interest between the parties, which I find is the case here. However, Imagepath did not claim interest, so I do not award any.
24. 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. As the successful party, Imagepath is entitled to reimbursement of \$150 in CRT fees.

25. Imagepath claims \$991.35 for legal costs and associated expenses. Under CRT rule 9-5(3), parties are not compensated fees paid to a lawyer except in extraordinary circumstances. I find that there are no extraordinary circumstances in this dispute, so I dismiss Imagepath's claim for reimbursement of legal fees. However, the legal invoice includes some disbursement charges. I allow the claimed \$7.00 for a corporate search and \$13.90 in mailing costs, for a total of \$20.90. I do not allow the other charges, including photocopy charges. I find it unproven that such expenses were necessary or reasonable given that the CRT is an online tribunal.

ORDERS

26. Within 14 days of the date of this order, I order Portal to pay Imagepath a total of \$1,572.12, broken down as follows:
- a. \$1,401.22 in debt, and
 - b. \$170.90, for \$150 in CRT fees and \$20.90 for dispute-related expenses.
27. Imagepath is entitled to post-judgment interest, as applicable.
28. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member