



# Civil Resolution Tribunal

Original Decision Issued: May 15, 2023

New Decision Issued: June 9, 2023

File: SC-2022-003326

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ripplesmith Services v. Advantech Sterilizers Inc.*, 2023 BCCRT 487

B E T W E E N :

RIPPLESMITH SERVICES

**APPLICANT**

A N D :

ADVANTECH STERILIZERS INC.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sarah Orr

## INTRODUCTION

1. This is a dispute about unpaid invoices. The applicant, Ripplesmith Services (Ripplesmith), is a registered partnership. Ripplesmith says Advantech Sterilizers Inc. (Advantech), owes it \$1,575 for 3 unpaid invoices for digital campaign management

2. services it provided. Ripplesmith also claims contractual interest on the 3 unpaid invoices and 2 other invoices that it says Advantech paid late.
3. Advantech says it terminated its business relationship with Ripplesmith and does not owe it anything.
4. Ripplesmith is represented in this dispute by a partner. Advantech is represented by its president.

## **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.
9. On July 29, 2022, the CRT issued a default decision and order against Advantech based on its failure to file a Dispute Response by the required deadline. Advantech subsequently applied to the CRT to cancel the default decision and order. In an October 18, 2022, decision, the CRT granted Advantech's request and cancelled the July 29, 2022, default decision and order.
10. On August 17, 2022, Advantech filed a Notice of Claim in the BC Provincial Court against "Ripple Smith Services" and Candace Smith claiming a refund of management fees and "Google Marketplace spend". On November 7, 2022, the BC Provincial Court dismissed Advantech's claim on the basis that the CRT has jurisdiction over this dispute.

### ***Jurisdictional Defect***

11. I issued a decision on May 15, 2023. I dismissed Ripplesmith's claims on the basis that it was not a legal entity because there was no evidence that it was a registered partnership. Later, CRT staff advised that, through an inadvertent CRT error, the evidence of Ripplesmith's status as a registered partnership was not before me when I issued my original May 15, 2023 decision. According to the CRT's usual practice, during the intake process the CRT searched the BC Online registry to confirm the applicant's status as a registered partnership. The BC Online search result for Ripplesmith was saved to the dispute file but was inadvertently not uploaded to the CRT's online portal as evidence. This means the respondent did not see this piece of evidence, nor was it before me when I made my original decision. I find this is a jurisdictional defect which must be cured.
12. Under section 51(3) of the CRTA, and under the common law, an administrative tribunal may reopen a proceeding to cure a jurisdictional defect. The BC Court of Appeal discussed the scope of the power to reopen a hearing to cure a jurisdictional

defect in *Fraser Health Authority v. Workers' Compensation Appeal Tribunal*, 2014 BCCA 499. Among other things, the court found it is a jurisdictional defect for an administrative tribunal to fail to provide the parties with procedural fairness.

13. I also rely on the decision in *Chandler v. Alberta Association of Architects*, 1989 CanLII 41 (SCC), in which the Supreme Court of Canada said that if a tribunal has failed to dispose of an issue which is fairly raised by the proceedings and of which the tribunal is empowered by its enabling statute to dispose, it ought to be allowed to complete the statutory task. *Chandler* also says that where there is a denial of natural justice that takes away the legal force of the proceeding, the tribunal must start afresh.
14. I find it would be a breach of procedural fairness for me to decide this dispute without considering all of the evidence that was intended to be before me for my review. So, I have exercised my authority under CRTA section 51(3) to reopen this dispute and consider the merits of the applicant's claims with all of the evidence before me, including the evidence that Ripplesmith is a registered partnership. Both parties were given an opportunity to respond to the BC Online search result and both parties acknowledged Ripplesmith's status as a registered partnership.
15. In summary, given the jurisdictional defect, I have voided my original decision and issued this new decision in its place.

## **ISSUES**

16. The issues in this dispute are:
  - a. Is Advantech required to pay Ripplesmith \$1,575 for unpaid invoices?
  - b. Is Advantech required to pay Ripplesmith contractual interest?

## EVIDENCE AND ANALYSIS

17. In a civil proceeding like this one, as the applicant, Ripplesmith must prove its claims on a balance of probabilities. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.

### ***Is Advantech required to pay Ripplesmith \$1,575 for unpaid invoices?***

18. On October 19, 2020, Ripplesmith sent Advantech an estimate for an initial account review and "Analytics Integration," and for 3 months of digital campaign management services at \$500 per month, plus GST. The estimate states that after the initial 3-month commitment, Ripplesmith's services would continue on a month-to-month basis until cancelled in accordance with its terms of service. A note at the bottom of the estimate stated, "By acquiring services from RippleSmith, you agree to our Terms of Service", and linked to its terms of service document.

19. Ripplesmith says Advantech accepted the estimate and terms of service by clicking an "accept" button contained in Ripplesmith's October 19, 2020 email to Advantech attaching the estimate. Advantech does not dispute any of this. So, I find the estimate and the terms of service together formed a binding contract between the parties.

20. Evidently Ripplesmith provided its services to Advantech without incident until early 2022, at which point the parties' relationship began to break down. On April 5, 2022, Advantech terminated its contract with Ripplesmith by email.

21. Ripplesmith claims a total of \$1,575 for the following 3 invoices for digital campaign management services which Advantech has undisputedly not paid:

- a. Invoice #1723 for \$525 issued February 16, 2022, due March 16, 2022, for services between February 16 and March 15, 2022 (February invoice)
- b. Invoice #1732 for \$525 issued March 16, 2022, due April 15, 2022, for services between March 16 and April 15, 2022 (March invoice)

- c. Invoice #1775 for \$525 issued April 16, 2022, due May 15, 2022, for services between April 16 and May 15, 2022 (April invoice)
22. Advantech says it does not have to pay the 3 invoices for several reasons. First, it says it noticed discrepancies in Ripplesmith's invoices and determined that Ripplesmith was not providing sufficient value to its company. However, Advantech did not say exactly what discrepancies it found in the invoices. Advantech submitted
23. a spreadsheet which I find shows it was not receiving a return on its investment in Ripplesmith's services between September 2021 and February 2022. However, I find the spreadsheet alone is insufficient to establish that Ripplesmith's services were substandard. I find that would require expert evidence, which Advantech did not provide.
24. Ripplesmith relies on its terms of service which state that it does not warrant that all services will meet the client's expectations or desired outcome, and that it provides its services "as is" without any express or implied warranty of any kind.
25. On the evidence before me, I find Advantech has failed to establish that Ripplesmith's services were substandard such that they were in breach of the parties' contract. I find that Advantech is not relieved of its responsibility to pay the invoices on account of Ripplesmith's service quality.
26. In an April 19, 2022 email, Advantech told Ripplesmith it would not pay the March invoice because Ripplesmith did not work during that invoice period (March 16 to April 15, 2022). Advantech says it revoked Ripplesmith's access to its account in mid-March 2022 without telling Ripplesmith. It says Ripplesmith did not notice until April 5, 2022, the day Advantech cancelled the contract. Advantech says this shows Ripplesmith did not provide services during that period.
27. However, Ripplesmith submitted its March 2022 and April 2022 reports, which I find shows it completed work during the March invoice period. I find Advantech has not

explained how Ripplesmith could have created these reports without providing services. Ripplesmith also relies on the terms of service which state that the client is responsible for providing Ripplesmith with access to its online accounts, and any shortfalls in services caused by client delays in delivery of client-controlled items are the client's responsibility. On balance, I am satisfied that Advantech is not relieved of its responsibility to pay the invoices on of the alleged basis that Ripplesmith provided no services during the March invoice period.

28. I infer from Advantech's submissions that it did not pay the April invoice because the entire invoice period (April 16 to May 15, 2022) was after Advantech terminated the contract. However, under the terms of service, cancelling monthly services requires a minimum of 35 days' notice, with the effective termination date being no sooner than the last day of the following month from when Ripplesmith receives the cancellation notice. The terms of service state that full payment is due on either the effective termination date or in accordance with the ongoing payment schedule, whichever is sooner. Ripplesmith says that under the terms of service, the effective termination date and last day of services was May 31, 2022. I agree. Ripplesmith also relies on another clause in its terms of service which states that the client remains responsible for all amounts due, even after termination of service, including interest, collection costs, and legal costs.
29. Advantech says it asked Ripplesmith "numerous times" to pay invoices by wire transfer instead of credit card to avoid the credit card transaction fee. Advantech says Ripplesmith allowed this on only one occasion when it paid several invoices at once. I presume that when Advantech says "wire transfer" it means e-transfer. Regardless, I find Advantech has not provided evidence to support its allegation. Even if true, I find Advantech has not explained how any confusion or disagreement over method of payment relieved it of its responsibility to pay the invoices or prevented it from paying any of the invoices on time. I find there is nothing in the estimate or the terms of service allowing Advantech to insist on payment by e-transfer.

30. I find Advantech has failed to provide a satisfactory reason why it is not required to pay the invoices. I am satisfied that under the parties' agreement, Advantech is required to pay Ripplesmith \$1,575 for the 3 unpaid invoices.

***Is Advantech required to pay Ripplesmith contractual interest?***

31. Ripplesmith claims contractual interest on the 3 unpaid invoices to the date of this decision, as well as on 2 additional invoices that Advantech paid late. The first of these 2 additional invoices is #1686 issued December 15, 2021, due January 17, 2022, for \$525 for services Ripplesmith provided between December 16, 2021, and January 15, 2022 (December invoice). Advantech undisputedly paid this invoice on April 14, 2022. Ripplesmith claims contractual interest on the \$525 December invoice amount from the January 17, 2022 due date to the April 14, 2022 payment date.

32. The second additional invoice is #1701 issued January 17, 2022, due February 15, 2022, for \$525 for services Ripplesmith provided between January 16 and February 15, 2022 (January invoice). Advantech undisputedly paid this invoice on April 19, 2022. Ripplesmith claims contractual interest on the \$525 January invoice amount from the February 15, 2022 due date to the April 19, 2022 payment date.

33. Advantech says Ripplesmith's claim for contractual interest is "bad optics," but does not deny that it owes Ripplesmith interest. The terms of service state that a "per month service charge" applies to any account more than 30 days overdue. The estimate, which I have found formed part of the parties' binding agreement, states that accounts not paid within 30 days of the date of the invoice are subject to "a 1.5% monthly finance charge." I am satisfied that the parties agreed that overdue invoice amounts would be subject to interest. However, section 4 of the federal *Interest Act* says that unless a contract expressly states the equivalent yearly interest rate, the maximum interest rate is five percent per year. Since there is no yearly interest rate stated in either the estimate or the terms of service, I find that Ripplesmith's contractual interest claims are limited to 5% per year.



34. I find Advantech must pay Ripplesmith \$101.41 in contractual interest, broken down as follows:
- a. December invoice –\$6.26
  - b. January invoice –\$4.53
  - c. February invoice - \$32.36
  - d. March invoice - \$30.21
  - e. April invoice - \$28.05
35. 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 Ripplesmith was successful, I find it is entitled to reimbursement of \$150 in CRT fees. Since Advantech was unsuccessful, I make no order for reimbursement of the \$50 it paid in CRT fees.
36. Ripplesmith claims \$239.60 in dispute-related expenses. It claims \$92 in online filing fees in the BC Provincial Court, and \$147.60 in office expenses, both in relation to Advantech’s BC Provincial Court claim. However, I find the BC Provincial Court is the appropriate forum to seek reimbursement of those expenses, not the CRT. I dismiss Ripplesmith’s claim for dispute-related expenses.

## **ORDERS**

37. Within 30 days of the date of this order, I order Advantech to pay Ripplesmith a total of \$1,826.41, broken down as follows:
- a. \$1,575 as payment of the 3 unpaid invoices,
  - b. \$101.41 in contractual interest, and
  - c. \$150 in CRT fees.
38. Ripplesmith is entitled to post-judgment interest, as applicable.

39. I dismiss Ripplesmith's claim for dispute-related expenses.

40. 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.

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Sarah Orr, Tribunal Member