



Civil Resolution Tribunal

Date Issued: March 22, 2024

File: SC-2023-001864

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Rosarito Foods Ltd. v. First Data Canada Ltd.*, 2024 BCCRT 305

B E T W E E N :

ROSARITO FOODS LTD.

APPLICANT

A N D :

FIRST DATA CANADA LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about credit and debit processing services. Rosarito Foods Ltd. had a Merchant Processing Agreement with First Data Canada Ltd. (contract). Rosarito says that it was entitled to terminate the contract because of a fee increase, but First Data sent its account to collections. Rosarito asks for an order that First Data cancel the debt or pay it \$2,370.96. Rosarito is represented by an employee or principal.

2. First Data says that it has now cancelled the contract and waived the account balance, so Rosarito does not have any damages to claim. It asks me to dismiss this dispute. First Data is represented by its in-house counsel, Bram Maravent.

JURISDICTION AND PROCEDURE

3. 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). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
4. CRTA section 39 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.
5. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

ISSUES

6. The issues in this dispute are:
 - a. Whether the dispute is moot,
 - b. If not, whether First Data must pay Rosarito the claimed \$2,370.96, and
 - c. Whether First Data must reimburse Rosarito for its CRT fees.

EVIDENCE AND ANALYSIS

7. As the applicant in this civil proceeding, Rosarito must prove its claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision. Rosarito did not provide final reply submissions, despite having the opportunity to do so.
8. Rosarito says that it requested to terminate the contract in August 2022, following a fee increase. It says it was permitted to do so within 3 months of notice of the fee increase, under the terms of the contract and the *Canadian Code of Conduct for the Credit and Debit Card Industry in Canada (Code)*. However, it says that First Data did not accept the contract termination, and instead sent its account balance to collections.
9. In its Dispute Response filed at the outset of this dispute, First Data initially denied Rosarito's claims. However, in later submissions, First Data acknowledges that Rosarito terminated the contract in accordance with the *Code* and the contract terms. First Data says that it has now "closed" the lease and waived the collection balance. So, it says it has fulfilled the applicant's request.
10. I infer First Data is arguing that Rosarito's claim for the account balance is now moot. A claim is considered moot when something happens after the start of a legal proceeding that removes any "present live controversy" between the parties. The CRT will generally dismiss a moot claim. However, the CRT has discretion to decide otherwise moot claims if doing so would have a practical impact and potentially avoid future disputes.¹
11. Here, Rosarito does not dispute First Data's assertion that it has terminated the contract and waived the account balance, which is the same remedy Rosarito sought in this dispute. So, I find there is no longer any practical significance in determining whether First Data breached the contract or the *Code* as Rosarito alleges.

¹ See *Binnorsley v. BCSPCA*, 2016 BCCA 259.

12. I have considered whether deciding this claim anyway would have any practical impact or potentially avoid future claims. I find no reason to decide Rosarito's claim anyway. There is no suggestion that a decision about the termination of this specific contract would prevent other similar disputes.
13. So, I find Rosarito's claim for the account balance is moot, and I dismiss it.

CRT FEES AND EXPENSES

14. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses.
15. Here, while I have dismissed Rosarito's primary claim for mootness, First Data undisputedly did not terminate the contract and waive the account balance until this dispute was in the CRT's tribunal decision process. So, I considered whether Rosarito is entitled to its CRT fees, as it was ultimately successful in obtaining its requested remedy.
16. First Data says it should not have to reimburse Rosarito's CRT fees, for two reasons. First, it says Rosarito did not comply with the contract provisions that require it to return leased equipment to First Data upon termination of the contract. Rosarito does not dispute this. However, First Data undisputedly did not accept Rosarito's termination initially, and acknowledges that it sent Rosarito's account to collections. I find First Data cannot now rely on Rosarito's failure to return leased equipment upon termination of the contract, when it did not accept that termination until this dispute was already underway.
17. Second, First Data relies on contract provisions which say that it is not liable for "indirect damages". First Data says this includes fees and costs. I disagree. CRT fees represent the cost that Rosarito paid to initiate this dispute, and are separate from its claim for damages.

18. Previous CRT decisions have awarded CRT fees to applicants whose claims were resolved during the CRT process.² I agree with the reasoning in those decisions, and apply it here. I find that Rosarito was successful in its substantive claims, and is entitled to reimbursement of \$125 in CRT fees.

ORDERS

19. Within 21 days of this decision, I order First Data to pay Rosarito \$125 in CRT fees.
20. Rosarito is entitled to post-judgment interest under the *Court Order Interest Act*, as applicable.
21. I dismiss Rosarito's remaining claims.
22. This is a validated decision and order. Under CRTA section 58.1, 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.

Alison Wake, Tribunal Member

² See *De Vuono v. Simpson*, 2018 BCCRT 33, and *Chang v. Make Your Mark Training & Consulting Inc.*, 2018 BCCRT 374.