
CANADA / JUDGMENT

Revolution Infrastructure Inc. v. Pacific Substrate Ltd.

2021 BCSC 888

COURT

Supreme Court of British Columbia

DECIDED

11 May 2021

Source: bccourts.ca - Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 888 Revolution Infrastructure Inc. v. Pacific Substrate Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Revolution Infrastructure Inc. v. Pacific Substrate Ltd.,

2021 BCSC 888

Date: 20210511

Docket: S1811655

Registry: Vancouver

Between:

Revolution Infrastructure Inc.

Plaintiff

And

Pacific Substrate Ltd.

Defendant

Before: Master Taylor

Reasons for Judgment

Counsel for the Plaintiff:

K. Mansveld

Counsel for the Defendant:

L. Smeets

Place and Date of Hearing:

Written submissions of the Defendant:

Written submissions of the Plaintiff:

Reply submissions by the Defendant:

Vancouver, B.C.

February 18, 2021

March 15, 2021

April 1, 2021

April 9, 2021

Place and Date of Judgment:

Vancouver, B.C.

May 11, 2021

- [1] There are two cross-applications before the court. Both applications are for document production. Both are lengthy and detailed. Each application could have taken at least two hours and perhaps more, but counsel attempted to have both matters heard within the two-hour maximum time allowed for matters on the chambers list. Because litigation at a high rate of speed is not conducive to the court's comprehension of the submissions made by counsel, I directed counsel provide me with written submissions to augment their verbal submissions, which were made by telephone.
- [2] It turns out that counsel had attended chambers on three prior occasions to have these matters heard, but were not able to be heard because of the length of the chambers lists on those dates. These matters were referred to me from regular chambers for hearing in the afternoon of February 18, 2021.

Background Facts

- [3] Both parties are involved in the composting and recycling industry. The plaintiff, Revolution Infrastructure Inc. ("Revolution"), is in the business of recovering organic material ("Material") such as source-separated food scraps, yard trimmings, old corrugated and wax cardboard, paper products, and other organic material from the municipal solid waste stream via two licensed Material recovery facilities that it owns and manages.

- [4] In its notice of civil claim ("NOCC") filed October 30, 2018, Revolution says it contracts for the secondary processing of the Material it generates at composting and other organics processing facilities with which it enters into exclusive Material supply agreements. The defendant, Pacific Substrate Ltd. ("PacSub"), owns and operates one such processing facility in Cache Creek (the "Facility").
- [5] Revolution alleges in its NOCC that, in late 2015, PacSub notified Revolution that PacSub was about to lose its contract to produce mushroom compost. PacSub enquired if Revolution was interested in supplying Material to PacSub if PacSub properly licenced, designed, and equipped the mushroom composting facility to receive and process Material.
- [6] Revolution says that prior to 2016, the Facility was only equipped and licensed to produce mushroom compost, not Material. Revolution says it assisted PacSub to set up its Facility to process Material in order to increase the amount of guaranteed Material processing capacity available to Revolution.
- [7] Revolution alleges that it advised PacSub that it would only be prepared to provide Material to PacSub on specific terms and conditions, including that PacSub would covenant to only accept Material from Revolution (with certain exceptions if Revolution were unable to supply PacSub with a minimum amount of Material from time to time), and allow Revolution to "step-in" to operate the Facility if PacSub, for any reason, failed to perform its obligations to Revolution.
- [8] Thus, says Revolution, in or about February 2016, once Revolution confirmed that PacSub was able to consistently receive and process Material, Revolution confirmed in writing to PacSub the terms upon which it was prepared to supply Material, which Revolution refers to as the Exclusive Supply and Processing Agreement (the "Agreement"). Revolution says two key terms were part of the Agreement: (i) Revolution would be the exclusive supplier of Material to PacSub, and (ii) if PacSub failed to meet its performance obligations under the Agreement, Revolution may step in and take control of the Facility.
- [9] Revolution maintains that pursuant to the Agreement, it delivered Material to PacSub and, for more than two years, PacSub accepted such Material in accordance with the Agreement.
- [10] Revolution alleges that PacSub has breached the Agreement by, among other things, agreeing, or negotiating to agree, to accept Material from third parties, including from Green for Life Environmental (GFL).
- [11] Revolution says it has performed all of its obligations under the Agreement, and seeks to enforce it. Revolution claims it is entitled to step in and take over PacSub's operations, and that it is entitled to damages for breach of contract.

- [12] In response, PacSub contends that no contractual agreement was made between PacSub and Revolution. It says a draft agreement was put forward by Revolution, but was rejected by PacSub because PacSub was unwilling to accept a step-in clause. PacSub also says it asserted it would have the right to source organics from other suppliers if Revolution could not supply a minimum monthly tonnage of Material.
- [13] PacSub says that after it rejected the proposed agreement, the parties, per Revolution's suggestions, contracted on a load-by-load basis.
- [14] PacSub admits that it accepted Material from other entities. PacSub alleges that, while Revolution said it expected to deliver at least five loads per day to PacSub's facility, Revolution's deliveries continuously fell short. PacSub says it warned Revolution about the financial strain this was causing, and when Revolution refused or failed to increase its deliveries, PacSub looked for other parties to supplement supply.
- [15] PacSub also counterclaimed for payment for invoices it says Revolution owes for Material that Revolution provided to PacSub in 2018. Revolution denies it owes funds to PacSub.
- [16] The parties conducted examinations for discovery of representatives from the two companies in March 2020. The two applications before me relate to requests for document production arising from those examinations for discovery, as well as requests for documents Revolution made as early as 2019.

PacSub's Application

- [17] Counsel for PacSub conducted an examination for discovery of Ralph McRae, a principal of Revolution, on March 19, 2020. At that time, counsel for PacSub made 14 requests for information and documents (collectively, "PacSub's XFD requests").
- [18] On August 24, 2020, counsel for PacSub sent a letter to counsel for Revolution, reiterating its requests and demanding a response within 21 days (see Hua #2, Exhibit E).
- [19] When it did not receive a response, PacSub filed its notice of application on November 17, 2020, seeking an order compelling production of the requested information and documents from Revolution ("PacSub's application").
- [20] Revolution contends that it has since responded substantively to all of PacSub's XFD requests.
- [21] PacSub has narrowed its application to five requests for documents that it says remain outstanding (see Appendix A). The parties disagree over the relevancy of the documents PacSub requests.

Revolution's Application

- [22] Counsel for Revolution conducted an examination for discovery of James Lambert, a principal of PacSub, on March 16, 2020. At that time, counsel for Revolution made 42 requests for information and documents (collectively, "Revolution's XFD requests").
- [23] On April 6, 2020, counsel for Revolution sent an email to counsel for PacSub, reiterating its requests (see Hansen #1, Exhibit U).
- [24] On August 24, 2020, and December 9, 2020, PacSub responded to Revolution's XFD requests. Revolution argues many of these responses are inadequate and legally indefensible, and it seeks an order compelling PacSub to produce the remaining requested documents.
- [25] In written submissions, Revolution narrowed its application to 12 requests that predominately relate to PacSub's dealings with third parties (see Appendix B). PacSub has refused to provide many of the documents sought in those requests "absent a court order", citing concerns for third party confidentiality. Others were produced, but heavily redacted.
- [26] In addition to Revolution's XFD requests, Revolution also seeks an order that PacSub list and produce categories of documents that Revolution originally requested at the outset of first-tier document production as early as 2019 (the "Documents for Listing") (see Appendix C). Revolution says PacSub never provided a reasoned response to the documents requested, has either completely failed or refused to list these categories of documents, or has provided heavily redacted documents that are of no use to Revolution. Notably, the Documents for Listing include documents relating to PacSub's dealings with third parties, including GFL, a company that PacSub admits it received Material from.

Document Discovery and Examination for Discovery Rules

- [27] It is apparent from counsel's correspondence that neither party has fully complied with R. 7-1 of the Supreme Court Civil Rules, which governs document disclosure.
- [28] Although the various requests at issue on these two applications are requests for documents, many of them were initially made in the course of examinations for discovery. It seems to me that counsel often conflate the Rules governing document disclosure (R. 7-1) and examinations for discovery (R. 7-2). As such, I wish to clarify the scope and application of these Rules.
- [29] Rule 7-1 governs production of documents in civil actions. It sets out a two-tier process of disclosure. Under sub-rule (1), parties are initially required to list documents that could be used at trial to "prove or disprove a material fact", as well as documents that the disclosing party intends to rely on at trial. If a party who has received a list of documents believes it omits documents that should have been disclosed, that party may demand listing and production of those documents under sub-rule (10).

- [30] Sub-rules (11)-(14) provide processes by which broader disclosure can be demanded. Under sub-rule (11), a party may demand additional documents that "relate to any or all matters in question in the action".
- [31] In *Chen v. Obsidian Advisory Group Inc.*, 2020 BCSC 1482, Master Vos explained the breadth of disclosure under sub-rule (11) as follows:
- [89] The test for disclosure of documents under Rule 7-1(11) is wider than the test in Rule 7-1(1). It is whether the document or class of documents can reasonably be expected to contain information which may enable the party requiring the document to either advance their own case or damage their opponent's case, or which may fairly lead the requesting party to a train of inquiry in relation to either of those consequences: *Global Pacific Concepts Inc. v. Strata Plan NW 141*, 2011 BCSC 1752.
- [32] A demand for additional documents under Rule 7-1(11) must be made in writing, identify the additional documents or classes of documents with "reasonable specificity", and provide a reason why the additional documents should be disclosed.
- [33] A party who receives a demand under sub-rule (10) or (11) must, within 35 days, either comply with the demand or indicate why they are not making the documents available. If the disclosing party does not fully comply with the demand within 35 days, the demanding party may apply to the court under sub-rule (13), and the court will decide whether and to what extent broader disclosure should be ordered under sub-rule (14).
- [34] Rule 7-2 governs examinations for discovery. Where a party is not an individual, sub-rule (5) permits examination of a representative of the party who is knowledgeable concerning the matters in question in the action. Under sub-rule (18), a person being examined for discovery must answer any question within their knowledge or means of knowledge. When a witness at a discovery is unable to answer a question, sub-rule (22) provides that the witness may be required to inform themselves, and the examination may be adjourned for that purpose. Sub-rule (23) allows the examining party to require the witness to provide their response by letter. Finally, sub-rule (25) allows the examined party to object to a question asked of them, such that the court may decide the validity of the objection. If the court does not sustain the objection, the examined party must answer the question.
- [35] The parties here have primarily relied on Rule 7-1 as the legal basis for their applications. However, in its NOA, Revolution also relies on Rule 7-2(16) for the proposition that "Mr. Lambert is required to produce for Revolution's inspection 'all documents in his or her possession or control, not privileged, relating to the matters in question in the action'".

[36] In my view, this reliance on sub-rule (16) is incorrect. That rule creates an obligation to produce documents for inspection on discovery for only those persons referred to in sub-rules (6), (7), (8), (9), or (10), not for a representative of a party under sub-rule (5). In *Gardner v. Viridis Energy Inc.*, 2012 BCSC 1816, Justice Pearlman found that a company's representative did not have an independent obligation to produce documents under sub-rule (16):

66 The obligation to produce documents for inspection on discovery which was formerly of general application, is now limited under Rule 7-2(16) to only those persons referred to in subrule (6), (7), (8), (9) or (10). Rule 7-2(16) ensures that the persons to whom it applies, who for the most part are not parties in their own right and therefore have no obligation to deliver a list of documents, will bring to their discovery all relevant non-privileged documents. In the case of an examinee nominated or selected as the representative of a party under Rule 7-2(5), in the normal course the party that person represents will have delivered a list of documents, and that party's counsel will have those documents available for use at the examination for discovery of its representative.

67 Here, the defendant had available at the discovery of Mr. Campbell the documents that it had listed, but its document production was incomplete. However, under Rule 7-2(16) Mr. Campbell was under no independent obligation to bring documents in his possession or control to his discovery.

[37] In *LaPrairie Crane (Alberta) Ltd. v. Triton Projects Inc.*, 2012 BCSC 1594 [LaPrairie], the defendant sought additional information from the opposing parties following examinations for discovery. The information sought included documents as well as answers to questions arguably left outstanding at the examinations. While the application was described as being mostly within Rule 7-2, Master Bouck found that the application largely fell under Rule 7-1(11) as the LaPrairie parties were being asked to produce more documents:

28 In my view, the relief sought by Triton on this application largely falls under Rule 7-1(11). No reference is made to this Rule in the notice of application. Rather, the legal basis for the application is described as being mostly within Rule 7-2, the procedure which governs examinations for discovery.

29 It is acknowledged that much of the information sought arises from questions asked and requests made at examinations for discovery. In reality, however, the LaPrairie parties are being asked to produce more documents.

36 Finally, it is acknowledged that under the SCCR, the duty to answer questions at an examination is broader than the duty to produce documents: *More Marine Ltd. v. Shearwater Marine Ltd.*, supra, at para. 7. However, a party does not get around the application of *Kaladjian v. Jose* principles by asking for the documents at these examinations: *Maxam Opportunities Fund (International) Ltd. Partnership v. 893353 Alberta Inc.*, 2012 BCSC 553.

[38] Addressing the defendants' failure to comply with Rule 7-1(11), Master Bouck wrote:

30 The LaPrairie parties argue that Triton has not laid the necessary groundwork for further document production as required by Rule 7-1(11): see *Przybysz v. Crowe*, 2011 BCSC 731 (B.C. Master) at paras. 28 to 31, and *Balderston v. Aspin*, 2011 BCSC 730 (B.C. Master) at paras. 25 to 30. That is, the defendant has not cited the relevant Rule in its application, nor provided sufficient written reasons substantiating the document production request.

31 A determination of whether a proper request for production has been provided will be made on a case by case basis. The purpose of providing a detailed request in writing is to ensure that both the opposing party and the court understand the basis for the additional document production. Upon review of the correspondence exchanged between counsel both before and since July 1, 2010, I am satisfied that there is no mystery to the basis for the additional disclosure sought by the applicant.

[39] In *More Marine Ltd. v. Shearwater Marine Ltd.*, 2011 BCSC 166, Justice N. Smith discussed the difference between the duty to disclose documents and the duty to answer questions at an examination:

[6] While Rule 7-2 (18) is the same as its predecessor, the new Rules create a distinction that did not previously exist between oral examination for discovery and discovery of documents. The former rule 26 (1) required a party to list all documents "relating to every matter in question in the action." Although disclosure in those terms may still be ordered by the court under Rule 7-1 (14), the initial disclosure obligation is set out more narrowly in Rule 7-1(1):

[7] Under the former rules, the duty to disclose documents and the duty to answer questions on oral examination were therefore controlled by the same test for relevance. Under the new Rules, different tests apply, with the duty to answer questions on discovery being apparently broader than the duty to disclose documents.

[8] Although that may appear to be an anomaly, there are at least two good reasons for the difference. One reason is that if the court is to be persuaded that the broader document discovery made possible by rule 7-1(14) is appropriate in a particular case, some evidence of the existence and potential relevance of those additional documents will be required. The examination for discovery is the most likely source of such evidence.

[9] The second reason relates to the introduction of proportionality as a governing concept in the new Rules.

[40] Thus, the examination for discovery can, and often does, provide an evidentiary basis on which to demand additional documents under Rule 7-1(11).

[41] It is apparent from the Rules and the authorities cited above that any demand for documents should comply with Rule 7-1. Although Rule 7-2 contemplates that a party being examined may have to review documents to properly inform themselves, it does not contemplate production of documents (besides in limited circumstances under sub-rule (16), which I have already explained does not apply to the present applications).

[42] If, on an examination for discovery, counsel discovers additional documents or classes of documents they believe are relevant to the action, best practice is to follow up with a formal written demand that relies on and complies with Rule 7-1(10) or (11). As Master Bouck stated in LaPrairie, a party should not be permitted to get around the document disclosure principles by requesting the documents at an examination for discovery.

Analysis

[43] These applications require me to determine:

- 1) the degree to which the parties' document requests fail to comply with Rule 7-1;
- 2) whether it is appropriate to decide these applications on their merits, despite lack of strict compliance with the Rules; and
- 3) if so, which demands for documents should be ordered pursuant to Rule 7-1(14)?

[44] I begin by addressing the first two questions.

Have the parties complied with Rule 7-1?

[45] Although Revolution and PacSub's XFD requests were originally made at examinations for discovery, they are, in reality, demands for documents. It is apparent from counsel's correspondence that neither party has fully complied with Rule 7-1 with respect to these demands.

[46] The August 24, 2020 letter from counsel for PacSub to counsel for Revolution reiterated PacSub's requests from the examination for discovery of Mr. McRae. Although several of PacSub's XFD requests were for documents, that letter did not specify that PacSub was making a demand under Rule 7-1(10) and/or (11), nor did it clearly identify reasons why the additional documents should be disclosed. PacSub admits that its August 24 letter did not strictly comply with Rule 7-1(11). It says, however, that during the examination of Mr. McRae, the reasons behind PacSub's requests were conveyed verbally to Revolution.

[47] Revolution's XFD requests suffer many of the same deficiencies. The April 6, 2020 email from counsel for Revolution to counsel for PacSub reiterated Revolution's requests at the examination of Mr. Lambert. Although several of Revolution's XFD requests were for production of documents, that email did not specify that Revolution was making a formal demand under Rule 7-1(10) and/or (11), nor did it provide reasons why the additional documents should be disclosed.

- [48] The verbal requests made at the examinations for discovery are not proper document production demands. However, I consider the written correspondence between counsel reiterating those requests to be demands, albeit incomplete ones. Neither party specified in their correspondence whether they were demanding document disclosure under sub-rule (10) and/or (11). Assuming the latter, neither party clearly stated why the requested documents should be disclosed.
- [49] Sub-rule (14) gives the court discretion to order document disclosure despite non-compliance with sub-rule (10) or (11). However, this discretion should be exercised cautiously: *Mann v. Jagpal*, 2020 BCSC 1919 at paras. 40-41; *Lit v. Hare*, 2012 BCSC 1918 at paras. 65-67.
- [50] A purpose of the written demand is to prevent unnecessary document production applications to the court. As Justice Giaschi noted in *Mann* at para. 41, "a prior demand allows the parties to address the document disclosure issues, hopefully, without the expense and delay of an application. This process furthers the object of the Rules, as described in Rule 1-3, to secure the just, speedy and inexpensive determination of the proceeding on the merits."
- [51] And, as Master Bouck observed in *Balderston v. Aspin*, 2011 BCSC 730 at para. 29:
- [29] The intent of Rule 7-1(11) is to inform the opposing party of the basis for the broader disclosure request in sufficient particularity so that there can be a reasoned answer to the request. The Rule allows the parties to engage in debate or discussion and possibly resolve the issue before embarking on an expensive chambers application.
- [52] In this case, the parties should have sent more fulsome written document demands following the respective examinations for discovery. They should have clearly stated which rules they were relying on and set out their positions with respect to relevance and materiality. It is also clear that the parties could have done more to narrow their issues and arguments before coming to court. However, considering that the issues were subsequently narrowed in written submissions, in my view, the objectives of the Rules are met by dealing with the merits of the applications rather than rejecting them on procedural grounds. I will, therefore, consider whether the requested documents meet the broader test for relevance under Rule 7-1(11).
- [53] I turn now to Revolution's Documents for Listing requests.
- [54] Counsel for Revolution sent three letters to counsel for PacSub in January 2019 requesting the Documents for Listing, citing PacSub's obligation to list documents in accordance with the Rules. At that point, PacSub had not yet provided any list of documents.
- [55] Of the requested Documents for Listing, Revolution has been particularly concerned with the documents relating to PacSub's receipt of material from third parties, including GFL (the "GFL documents"). Being unsatisfied with PacSub's eventual list/amended list of documents, counsel for Revolution sent a letter to counsel for PacSub on May 17, 2019, demanding the

GFL documents. That letter specifically relied on Rules 7-1(9)-(11), and stated, "These documents should have been included in PacSub's List of Documents, especially after we brought their relevance and materiality to your attention several months ago, and demanded that they be produced."

- [56] On the application record before me, it is not obvious that the relevance and materiality of the GFL documents was brought to PacSub's attention prior to the May 17, 2019 letter, as is required when making a demand under Rule 7-1(11), but it was by May 17, 2019, which was some considerable time before the examination for discovery of Mr. Lambert.

Which requests for document production should be ordered?

PacSub's Requests

- [57] PacSub seeks an order that Revolution produce the following:

- (3) a copy of all permit applications by Revolution or related entities to the Ministry of Environment for permits to operate the Lytton facility;
- (6) a copy of all email communications between Ralph McRae as a principal and Western Organics Management, Renewi, Enterra and Boost Organics;
- (7) all text communications between Ralph McRae and Western Organics Management, Renewi, Enterra and Boost Organics;
- (8) a copy of each contract that was entered into between Revolution and Renewi;
- (9) any payment and related information concerning services provided by James Lambert to Revolution.

- [58] I am satisfied that the examination for discovery answers of Mr. McRae establish an evidentiary basis for a demand under Rule 7-1(11). What is left to be determined is whether the requested documents are relevant to a matter in question in the action.

- [59] PacSub contends that the central issue in Revolution's claim is whether or not the parties entered into a binding contract for the supply, by Revolution, of Materials to PacSub's composting facility in Cache Creek. PacSub says the documents requested directly relate to negotiations for a formal agreement between Revolution and PacSub, Revolution's negotiating and business practices with other parties generally, the alleged business opportunities foregone by Revolution, and the losses claimed by PacSub in its counterclaim.

- [60] I agree that, for these reasons, requests (6) and (7) are relevant to the issues in the action and should be produced. According to Revolution, request (8) has been complied with, and all such documents have been provided.

- [61] To reiterate, with respect to request (8), Revolution says that such documents have already been provided, and points out that contracts with Renewi may refer to "Orgawold", the company's new name. In the event these documents have not already been provided, I agree they should be produced.
- [62] Finally, Revolution says that request (9) is not relevant to any issues in this action, and that, in any event, PacSub should have such documents in its possession, given that Mr. Lambert is PacSub's representative. I am unsure how the fact that Mr. Lambert at some time in the past worked for Revolution is relevant to the issues currently before the court. I, therefore, deny this request by PacSub.

Revolution's Requests

- [63] I will address the parties' main arguments before turning to Revolution's specific requests, as many of the disputed requests can be resolved on a few threshold points.
- [64] Revolution claims that once it assisted PacSub to set up its facility to process Materials, PacSub chose to undercut Revolution and make available to Revolution's competitors Material processing capacity that PacSub has covenanted to make available to Revolution. Revolution claims that, had PacSub respected its promise under the Agreement, Revolution would have been able to process the Material that PacSub received from Revolution's competitors instead. This is the measure of damages Revolution seeks to prove.
- [65] Revolution says this measure of damages puts directly into issue questions relating to the volume of Material PacSub received (and continues to receive) from third parties, from which third parties it received that Material, when it received that Material, and what fees it received on account of that Material. Revolution submits that these factual matters, and documents relevant to them, are central to Revolution's claim.
- [66] PacSub argues Revolution's requests are not material or relevant to whether the parties entered the alleged Agreement, nor are they relevant to the issue of damages.
- [67] Further, PacSub submits that the documents that Revolution requests in relation to PacSub's dealings with third parties contain confidential and commercially sensitive information that would prejudice the business interests of PacSub (and third parties). PacSub "fears that Revolution's requests for information are made in an effort to stifle competition and to punish PacSub for engaging in legitimate business". In particular, PacSub argues that GFL and Revolution are direct competitors, and in the absence of permission from GFL, PacSub is bound not to disclose the GFL documents. PacSub submits that, although GFL is not named as a respondent in this application, the court has a duty to consider the privacy interests of persons not in attendance when the issue arises. PacSub cited *D.E.P. v. N.J.P.*, [1997] B.C.J. No. 1634 (S.C.) at para. 37, in support of a privacy argument, but that case had to do with a complaint made to police, which is a very different kind of privacy interest than the one at bar where PacSub refuses to provide documents because they are confidential.

[68] In my view, PacSub's concerns about the confidentiality of commercially sensitive information do not accord with the principles of document production. Information concerning PacSub's relationship with Revolution's competitors or other third parties, such as how much Material PacSub received for them, and for what price, is relevant to Revolution's claim for damages. No assertion of privilege has been made. Therefore, the documents falling into this category must be produced. If at all, I would suggest the parties enter into an agreement where the information is kept confidential between the parties and not shared or used outside of this litigation. A good starting point would be D.E.P. at para. 41.

[69] Many of Revolution's requests are requests for documents from 2016 to present. However, PacSub disputes the relevance of any documents that post-date the commencement of this action in 2018. Revolution pleads an ongoing contract and mounting damages, and therefore contends that PacSub's document production obligations are ongoing. I agree that documents up to the present are relevant for Revolution's theory of damages and must be produced.

[70] I now turn to Revolution's specific requests.

Revolution's XFD Requests

[71] A complete list of the 12 examination for discovery requests that Revolution seeks on this application is reproduced in Appendix A.

[72] I am satisfied that the examination for discovery answers of Mr. Lambert establish an evidentiary basis for all of Revolution's XFD requests and that the information being sought by the questions is relevant.

[73] PacSub contends that it has responded to all of these requests. However, Revolution submits that PacSub's responses to requests (6), (14), and (16) are incomplete. From the answers set out in the written submissions of PacSub on April 9, 2021, it appears that these requests have been adequately addressed.

[74] For the reasons I have identified above, I find that the documents in requests (21), (35), (38), (39), (40), (42), (43), (44), and (46) should be produced. For clarity, this includes documents post-dating the commencement of this action in 2018.

Revolution's Documents for Listing Requests

[75] As I said earlier, I use my discretion to allow the use of Rule 7-1(11) for the requests by Revolution herein.

[76] A complete list of Revolution's requested Documents for Listing is reproduced in Appendix C.

[77] Revolution says that the categories of documents it seeks are relevant as to:

- (a) setting up PacSub's mushroom composting facility to receive Material in 2015 and 2016 (paras. 1-3, 7);
 - (b) PacSub's representations regarding its financial position (which would have touched on whether it had, and represented that it had, a binding Agreement with Revolution to supply it with Material) and the value of its business (paras. 5-6, 8);
 - (c) the parties' entry into the Agreement and operation pursuant to it (paras. 4, 9); and
 - (d) PacSub's communications with third parties regarding supply of Material to its facility, which Revolution alleges was a breach of the Agreement (paras. 10-12).
- [78] PacSub submits that the requests in paras. 2-3, 4, 8, and 10 relate to matters that "have already been dealt with fully". In this connection, I think PacSub should provide more and specific response to it having answered these questions. In my view, saying they have been dealt with fully, and giving what was provided to answer the requests fully should be set out.
- [79] PacSub also submits that some of the requests involve companies or legal entities whose legal connection with the matters in issue in the case has not been established, either in the documents or in the examination for discovery of James Lambert: namely, Metro-Vancouver, the City of Coquitlam, Valley Couriers Ltd., D. Jones Trucking Ltd., and D. Jones Trucking 777 Ltd. In my view, PacSub should provide reasons why it says the legal connections with the matters in issue and, in particular, the documents or in the examination for discovery of James Lambert, Metro-Vancouver, the City of Coquitlam, Valley Couriers Ltd., D. Jones Trucking Ltd., and D. Jones Trucking 777 Ltd., have not been established. Without reasons, Revolution is left in the dark.
- [80] Paragraph 12 lists third parties Revolution says it knows to have delivered or to be delivering Material to PacSub, including GFL. Thus far, the GFL documents provided by PacSub have been heavily redacted, and fail to specify who PacSub is billing for, for what, and quantity or price of materials for which payment is sought (see Hansen #1, pages 141-148). I have already determined that all documents concerning PacSub's business with third parties are relevant. I agree that these documents must be provided in their full, un-redacted form, absent any claims for privilege only.
- [81] Revolution also raised that PacSub has provided some of the text messages sought by Revolution, but not in their original form. It appears that PacSub provided emails with the text of relevant text messages crudely "copy-typed" into the body of the email. These communications must be provided in their original form without copy-typing or any other methods of providing the requested documents in anything but in the original form.
- [82] The documents to which the order of production applies should be disclosed within seven days of the release of these reasons.
- [83] In my view, costs should be in the cause.

"Master Taylor"

Appendix A

As per PacSub's written submissions dated March 15, 2021, and notice of application, PacSub seeks an order that Revolution produce the following:

- (3) a copy of all permit applications by Revolution or related entities to the Ministry of Environment for permits to operate the Lytton facility;
- (6) a copy of all email communications between Ralph McRae as a principal and Western Organics Management, Renewi, Enterra and Boost Organics;
- (7) all text communications between Ralph McRae and Western Organics Management, Renewi, Enterra and Boost Organics;
- (8) a copy of each contract that was entered into between Revolution and Renewi;
- (9) any payment and related information concerning services provided by James Lambert to Revolution.

Appendix B

As per Revolution's written submissions dated April 1, 2021, and Notice of Application, Schedule A, Revolution seeks an order that PacSub provide complete responses to the following requests:

- (6) Identify the names of the other potential investors in PacSub and produce any documents that were prepared or provided to those potential investors
- (14) Determine and provide documents in respect of Farm Credit Canada's consideration of the loan application, the outcome of the loan application, and any resulting loan applications
- (16) Confirm the status of the loan and mortgage referred to on page 0021 of Exhibit 7, including information regarding any renewal of the mortgage and the loan, any documents provided to Farm Credit Canada in support of any renewal of the loan, and any documents exchanged with Farm Credit Canada concerning the mortgage and the loan
- (21) Identify any other loans, credit applications, lease applications, or other applications for credit of any other type, including tax credits, that PacSub has made since January 2016, together with the materials relating to those applications, including all communications, financial information, agreements, and any other documents relating to that
- (35) Produce copies of all financial statements, annually or otherwise, produced by or for PacSub from January 2016 to present
- (38) Confirm whether PacSub has taken deliveries of feedstock from GFL at any time since January 2016, and if so, produce documents in relation to those transactions including any contract in respect of those transactions

- (39) Obtain and produce unredacted copies of all invoices between PacSub and GFL since 2016
- (40) Produce all information, including volume, related to all deliveries from GFL since January 2016
- (42) Determine if Mr. Chee [sic] typed out copies of his text messages with Daryl Goodwin and anyone else from GFL, and if so, produce the original text message
- (43) Produce all communications as between PacSub, Enterra and Net Zero in relation to the sourcing of feedstock
- (44) Produce the OMRR records and any other records maintained by PacSub in relation to deliveries of feedstock to PacSub by or on behalf of any third party since January 2016
- (46) Identify the monthly tonnes of feedstock delivered to PacSub since January 2016

Appendix C

As per Revolution's Notice of Application, Schedule B, Revolution seeks an order that PacSub list and produce documents concerning:

1. the design, equipment and operation of the mushroom composting facility of PacSub prior to 2015;
2. material supply contracts to which PacSub was a party in or prior to October 2015;
3. communications with Revolution commencing in or about 2015 regarding the possible supply of Material (as defined in the Notice of Civil Claim) to PacSub;
4. the provision of the terms of the Exclusive Supply and Processing Agreement (as defined in the Notice of Civil Claim) to PacSub by Revolution in or about early 2016, including any consultations undertaken by PacSub regarding that agreement
5. communications between or on behalf of Zhinian (Nick) Chi, on one hand, and Tan Truong, Rossland Mushroom Farm, or Farmers' Fresh Mushroom Inc. (the "Tan Group"), on the other hand, regarding:
 - (a) the forgiveness of any debt or other obligation owed by PacSub to the Tan group or any member or affiliate thereof;
 - (b) the acquisition by Mr. Chi, or by a company controlled by Mr. Chi, of shares in PacSub from any member of the Tan Group; and
 - (c) Mr. Chi's election as a director of PacSub;

including but not limited to communications regarding the Material supplied, or to be supplied, by Revolution;

6. communications between PacSub and any of its accountants, including but not limited to Gordon Milne, regarding:

- (a) the business relationship between PacSub and Revolution;
 - (b) the quantities of Material supplied by Revolution to PacSub from early 2016 to present; and
 - (c) the sale or other disposition of the compost produced by the Facility from early 2016 to the present;
- 7. the technical consulting advice provided by Revolution to PacSub regarding the optimal operation of the Facility (as defined in the Notice of Civil Claim), including the composting of food scraps;
 - 8. communications between PacSub and potential and actual third party lenders and financing parties, including but not limited to Farm Credit Canada and Caterpillar Financial Services Limited, from early 2016 to the present;
 - 9. the joint marketing with Revolution, and the sale of, the compost produced by the Facility from early 2016 to the present;
 - 10. communications between PacSub and any third party regarding the sale or other disposition of the compost produced by the Facility from early 2016 to the present;
 - 11. the proceeds received by PacSub from the sale or other disposition of the compost produced by the Facility from early 2016 to the present;
 - 12. communications between PacSub and third parties regarding the supply, or potential supply, of Material to PacSub from early 2016 to the present, including but not limited to communications with:
 - (a) Metro Vancouver and any of its member municipalities;
 - (b) Enviro-Smart Organics;
 - (c) West Coast Instant Farms;
 - (d) Green for Life Environmental;
 - (e) DL Bins Ltd.;
 - (f) Waste Management and its affiliates;
 - (g) Waste Connections of Canada and its affiliates;
 - (h) Smithrite Disposal and its affiliates;
 - (i) Augustine Soil and Mulch Limited and its affiliates;
 - (j) Meadow Landscape Supply Limited and its affiliates;
 - (k) the City of Coquitlam;
 - (l) Valley Carriers Ltd.;

(m) D. Jones Trucking Ltd; and

(n) D. Jones Trucking 777 Ltd.

For clarity, "communications" is to specifically include, but not be limited to, text messages, as they were the main mode of communication between the principals of Revolution, PacSub, and other entities. Text messages and other communications are to be provided in their original form.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/08/2021BCSC0888.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/revolution-infrastructure-inc-v-pacific-substrate-ltd-2021>

Prepared on 29 October 2026 · Esheria