

CANADA / JUDGMENT

Smeets Law Corporation v. Pacific Substrate Ltd.

2022 BCSC 1008

COURT

Supreme Court of British Columbia

DECIDED

1 June 2022

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2022 BCSC 1008 Smeets Law Corporation v. Pacific Substrate Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Smeets Law Corporation v. Pacific Substrate Ltd.,

2022 BCSC 1008

Date: 20220601

Docket: S2110883

Registry: Vancouver

Between:

Smeets Law Corporation

Solicitor

And

Pacific Substrate Ltd.

Client

Before: Master Nielsen

Oral Reasons for Judgment

In Chambers

Counsel for the Solicitor:

L.W.O. Smeets

Appearing on behalf of the Client:

J. Chen

Z. Chi

Place and Dates of Hearing:

Vancouver, B.C.

February 24 and June 1, 2022

Place and Date of Judgment:

Vancouver, B.C.

June 1, 2022

Introduction

- [1] THE COURT: This is a lawyer-initiated review pursuant to the Legal Profession Act, S.B.C. 1998, c. 9 [LPA], seeking a certificate for unpaid fees in the amount of \$55,915.44. The \$55,915.44 is comprised of the August 27, 2021, bill in the amount of \$30,807.14, and the October 6, 2021, bill in the amount of \$25,108.30.
- [2] The total amount billed to the client over the three-year period was \$103,388.43. All the law firm's bills were reviewed.
- [3] At the review, Mr. Smeets, former counsel for the client, provided oral testimony and affidavit evidence on behalf of the law firm, and Ms. Chen and Mr. Chi provided oral testimony and unsworn affidavit evidence on behalf of the client, Pacific Substrate Ltd.

Background

- [4] The law firm was retained November 8, 2018, after an initial consultation concerning the legal action brought against the client by the plaintiff Revolution Infrastructure ("Revolution"). No formal retainer agreement was entered into.
- [5] The background to the legal dispute is described in detail by Master Taylor in *Revolution Infrastructure Inc. v. Pacific Substrate Ltd.*, 2021 BCSC 888 at paras. 3-15 where his honor states:
- [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.
- [6] The law firm represented the client over the course of three years, defending the client in the action brought by Revolution and advancing the client's counterclaim for \$84,000 in unpaid invoices, through to a settlement of both the legal action brought against the client, and the client's counterclaim. The settlement occurred on the third day of trial, September 1, 2021, after the testimony of the principal of Revolution completed his evidence. The trial was scheduled for nine days commencing August 30, 2021.
- [7] It is the lawyer's opinion that the case settled when Revolution realized the client was prepared to both vigorously defend the action and pursue the counterclaim. It was the lawyer's view that, had the action proceeded, Revolution's action would have been dismissed and the client's counterclaim would have succeeded. The lawyer advised the client of his opinion, in writing, well in advance of the trial.
- [8] Had Revolution's action succeeded, the client would have been pushed into bankruptcy. In the face of the potential contingencies, the client and Revolution both chose to settle.
- [9] It came to the lawyer's attention during the third day of trial that there had been prior direct negotiations in October of 2019 between the client and the principal of Revolution, and there had been a draft agreement prepared dated October 16, 2019. The agreement had never been finalized, as negotiations had broken down. The lawyer had not previously been aware of the negotiations or the draft agreement.

Position of the Parties

- [10] The client takes issue primarily with the result obtained. The client suggests the law firm did not have sufficient knowledge of business law, provided them with false information, and pressured them into accepting the settlement. The client alleges that, as a result, they lost \$927,828 in lost revenue.
- [11] The law firm takes the position that all the work done was in furtherance of the client's interest, and the end result was positive for the client and provided certainty as to outcome. The law firm denies any pressure having been put on the client and emphasizes that, in the lawyer's written opinion prior to trial, the client was advised it would likely succeed in having Revolution's action dismissed, and be successful on the counterclaim. The law firm submits, despite that advice, the client chose to settle.

Discussion

- [12] Pursuant to s. 71(2)(a) of the LPA, the registrar must allow fees, charges, and disbursements for those services which are reasonably necessary and proper to the conduct of the proceeding or business to which they relate.
- [13] On a review under the LPA, the registrar must consider all the circumstances and those factors specifically enumerated in s. 71(4). Those factors are:
- (a) the complexity, difficulty or novelty of the issues involved,
 - (b) the skill, specialized knowledge and responsibility required of the lawyer,
 - (c) the lawyer's character and standing in the profession,
 - (d) the amount involved,
 - (e) the time reasonably spent,
 - (f) if there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the rate was reasonable,
 - (g) the importance of the matter to the client whose bill is being reviewed, and
 - (h) the result obtained.

Application of the s. 71(4) factors

- (a) The complexity, difficulty or novelty of the issues involved
- [14] I find there was an element of complexity involved in the litigation. It was a contractual dispute involving a unique business model, where one party took the position that there was no contract, and the other took the position that there was indeed a contract with a step-in provision.
- (b) The skill, specialized knowledge and responsibility required of the lawyer

- [15] There was a requirement for a measure of skill and familiarity in the field of contract law and the lawyer was required to come up to speed on the unique nature of the business. In addition to defending the claim brought by Revolution, the lawyer crafted a counterclaim in order to recover the client's unpaid invoices. An experienced litigator was required to defend the action and prosecute the counterclaim.
- (c) The lawyer's character and standing in the profession
- [16] As with most reviews, I do not consider this to be a relevant factor in the circumstances of this case.
- (d) The amount involved
- [17] The stakes were significant. The counterclaim alleged \$84,000 in unpaid invoices, and in the event the lawyer was wrong in his assessment of the case, the client would have been forced into bankruptcy if Revolution's action had succeeded, as it would have resulted in a substantial judgment.
- [18] Further, the client's case was not strictly about a defined monetary amount. Despite the negative views of the client, settlement provided the certainty of a result the client could live with. It resulted in a five-year contract on terms more favourable than before. The client achieved an exclusive relationship with Revolution and the contract had no provisions giving Revolution potential control over the defendant as there was no step-in clause.
- [19] Further, the client saved six days of costs through settlement.
- [20] The law firm describes the benefit to the client as follows:
- i. The client was now paid \$30 per tonne for delivery of organics up to 40,000 tonnes per year, and \$25 per tonne for deliveries in excess of that amount, whereas previously the client was paid \$23 per tonne.
 - ii. If deliveries fell below 25 tonnes in any particular month, the client could recover a penalty of \$10,000 for each tonne of shortfall. This served as an incentive to Revolution to ensure that deliveries did not fall below a certain level.
 - iii. All indications were that the client's possessing capability will be fully used going forward. If the client was able to increase its capacity, indications were that Revolution would work with the client to take advantage of that increase.
 - iv. No provision was included in the agreement allowing Revolution to potentially take over the operation of the client; i.e., no existence of a step-in clause.
- [21] The client has a technical complaint with the settlement. It submits that the amount of non-organic material per tonne agreed to by way of settlement was disadvantageous, as it impacted their profit negatively. However, in the client's unsworn affidavit of Mr. Chi, a part owner of Pacific, he attests to his qualifications, including a bachelor's degree in microbiology, a master's degree in fermentation engineering, and more than 25 years of

experience in composting. Indeed, the client's qualifications gave him a unique understanding of the terms of settlement and any impact thereof on the business.

(e) The time reasonably spent

[22] The lawyer has extensive experience as a litigator in commercial disputes with 30 years' call. He prepared the pleadings, listed the client's documents, appeared on court applications within the proceeding, conducted the examinations for discoveries, obtained expert evidence, participated in settlement discussions, took witness statements, prepared for and attended three days of trial, and all this was done over a period of three years.

[23] The lawyer went over the bills in detail. The law firm uses juniors where appropriate to save the client money. The clients did not voice specific objection to bill entries. Their objections were more general in the sense that they did not feel they got the result they had hoped for. However, in this regard, they got exactly what they settled for.

[24] In my view, what the clients are experiencing now is settlement remorse, in part as a result of the costs of litigation. Having settled the case and paid legal fees to defend the action and prosecute the counterclaim, they simply do not want to pay any more money.

[25] The clients also feel the case could have been settled sooner. However, the lawyer could not force Revolution to settle. It was necessary to defend the lawsuit, otherwise default judgment would have been obtained and the nightmare scenario realized. In my view, the work performed was reasonably necessary and proper to the proceeding. Further, the amount of time taken in regards to the specific tasks are not unreasonable. The lawyer was efficient with his time. The billings were not unreasonable.

(f) If there has been an agreement that sets a fee rate that is based on an amount per unit of time spent by the lawyer, whether the time spent was reasonable

[26] There was no formal retainer agreement entered into which set rates per hour. When the lawyer began representing the client, he charged \$300 an hour. That rate increased to \$360 per hour by the end of the retainer three years later. The client was kept informed of the increases in the hourly rates.

[27] The lawyer has considerable experience with 30 years at the bar involved in litigation. The amount charged per hour, in my view, is not unreasonable and is in keeping with comparable rates by other lawyers with similar experience.

(g) The importance of the matter to the client whose bill is being reviewed

[28] The matter was of the utmost importance to the client. The continued existence of the client's business enterprise was at stake. If Revolution was successful, the client would become bankrupt. The successful defence of the action was critical.

(h) The result obtained

- [29] The client is not happy with the result obtained. However, as already stated above, the settlement provided the certainty of a result that the client could live with. It resulted in a five-year contract on terms more favourable than before. The client achieved an exclusive relationship with Revolution and the final contract did not have any provisions giving Revolution potential control over the client.
- [30] Finally, the client saved six days of trial costs through settlement. The client references an alleged financial loss of \$927,828. However, there is no evidence of such a loss or any explanation of how the figure was arrived at.

Disposition

- [31] The unpaid billings in the amount of \$55,915.44 are allowed.
- [32] As the billings have not been reduced by one-sixth, the law firm is entitled to its costs. I have had submissions put to me concerning the costs claimed. Section 73(2)(b) of the LPA allows the registrar to summarily assess those costs and I do so. I allow \$2,000 for lawyers' costs, and that is inclusive of taxes and disbursements.
- [33] I have signed a certificate and I am going to provide that to Mr. Smeets to have it filed.
- [34] We're adjourned.

"Master Nielsen"

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Prepared on 29 October 2026 · Esheria