

CANADA / JUDGMENT

Techlong Inc. v. Natural Glacial Waters Inc.

2025 BCSC 1713

COURT

Supreme Court of British Columbia

DECIDED

28 August 2025

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2025 BCSC 1713 Techlong Inc. v. Natural Glacial Waters Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Techlong Inc. v. Natural Glacial Waters Inc.,

2025 BCSC 1713

Date: 20250828

Docket: S210932

Registry: Vancouver

Between:

Techlong Inc.

Plaintiff

And

Natural Glacial Waters Inc.

Defendant

Before: The Honourable Mr. Justice Coval

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J. Poulsen

Appearing as Representative for the Defendant:

L. Lai

Place and Date of Summary Trial:

Vancouver, B.C.

August 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 28, 2025

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Introduction

- [1] In this Rule 9-7 summary trial, Techlong Inc. ("TL") seeks judgment against Natural Glacial Waters Inc. ("NGW") for US\$901,080, being the alleged balance owing under a written settlement agreement between the parties of November 8, 2022.
- [2] The settlement agreement resolved the parties' disputes about the purchase price and performance of an industrial machine sold by TL to NGW under an equipment supply agreement in 2019.

- [3] TL's position is that payment in full for the machine is due, NGW having signed two performance acceptance certificates and TL having fulfilled its obligations under the settlement agreement.
- [4] NGW resists payment on the basis that that machine never operated as promised and ceased functioning in January 2023, thereby excusing the monthly payments called for under the terms of the settlement agreement. In its application response, NGW takes the position that TL should repossess the machine and return NGW's payments made to date.
- [5] I find that, under para. 2 of the settlement agreement, NGW was obligated to pay TL US\$60,000 on January 16, 2023. However, I cannot find the facts to decide whether NGW was also obligated to make the monthly payments under para. 4 of the settlement agreement. Therefore, TL's summary judgment application for the amounts due under para. 4 is dismissed, with TL having liberty to re-apply for summary judgment on further and better evidence.
- [6] NGW having paid only US\$65,000 towards the machine's US\$840,000 purchase price, TL is at liberty to remove and re-possess the machine.

The Parties

- [7] TL is a supplier of machinery for the water bottling industry, with a head office in Suwanee, Georgia.
- [8] NGW is a water bottling company carrying on business in Fanny Bay, BC. It is incorporated under the laws of British Columbia.

Background Facts

NGW Buys the Machine

- [9] On July 24, 2018, TL quoted NGW a purchase price of US\$840,000.00, paid over 36 equal monthly payments, to supply the bottle-shaping machine in issue, known as a "blow molding machine". On August 9, 2018, NGW issued a purchase order for the machine at the US\$840,000.00 purchase price.
- [10] TL delivered the machine to NGW on February 19, 2019. On April 17, 2019, NGW signed an "Equipment Acceptance Certificate", confirming the machine's installation, commissioning and meeting of production requirements.
- [11] In September 2020, NGW asked TL to assist with improving the machine's line efficiency. The parties agreed that, upon a certain efficiency threshold being demonstrated, NGW would pay TL an initial US\$84,000.00 and then the balance of the purchase price by January 15, 2021. The parties further agreed that, if the machine did not achieve the requisite line efficiency, NGW could return the machine to TL with no further payment obligations. On October 30, 2020, NGW paid TL US\$35,000.

- [12] On November 2-3, 2020, TL's technician came to NGW's plant in Fanny Bay and performed adjustments, maintenance and parts replacement. On November 4, 2020, NGW signed a second "Equipment Acceptance Certificate", once again confirming that installation and commissioning were complete and that the machine met its production requirements. The Certificate said (typos in original):

Equipment installation and commission is complete. The equipment run normal. Efficiency meets contract requirement. Delivered to customer use.

Verification of the above Line Equipment supplied by Tech-Long has been successfully completed and passed the Site Acceptance Testing through both sides. The total system is now accepted by Plant for ongoing production activities. The supplier hands over the equipment to the customer for operation and maintenance since November 4, 2020.

TL Sues NGW

- [13] Despite the second acceptance certificate, NGW did not pay the outstanding balance by the January 15, 2021 deadline.
- [14] On January 26, 2021, TL filed this action, claiming US\$931,079.00 as the outstanding balance for the purchase price of the machine.

Settlement Agreement

- [15] As a result of negotiations between the companies' respective CEOs, on November 8, 2022, the parties agreed in writing to settle the lawsuit on the following terms ("Settlement Agreement") (typos in original):

Settlement Agreement

1. NGW will send good faith payment for USD\$30,000 to Tech Long (TL), in return, TL will send engineer to allow the blow molder (CPX 10) to resume production at NGW facility.
2. TL has 30 calendar days to allow blow molder to produce one single qualified bottle once the funding is completed received. Once TL produce produced one qualified bottle, NGW will pay additional USD 60,000 to Tech Long prior to the technician leaving the plant.
3. If 30 calendar days passed but TL cannot achieve the goal of blowing one qualified bottle, then \$30,000 should return to NGW while Tech Long accept all the cost to remove the blow molder and packer away from the facility and all liability between both parties are eliminated.
4. If Tech Long successfully blow a single qualified bottle, then remaining outstanding balance is payable by 10 monthly installments of \$84,108 commencing on Dec 1 2022 and completing on September 30th, 2023.

5. The warranty of CPX 10 is extended 12 months on the date it blows one single bottle. The warranty including all electronical and mechanical components.
 6. Tech Long is to service all existing equipment include CPX under COD basis. If there is completed break down of CPX (not able to produce) covered under warranty items, TL has 14 calendar days to resolve the issue or NGW can withhold that monthly payment.
- [16] TL's CEO, Mr. Keith Boss, signed the Settlement Agreement on November 8, 2022, and sent it to NGW's CEO, Mr. Lun (or Alan) Lai, for his signature. By text to Mr. Boss of November 9, 2022, Mr. Lai responded "I will send you my signature", but did not actually send back a signed copy. During this hearing, Mr. Lai acknowledged, on behalf of NGW, that he did intend to accept the terms of the Settlement Agreement at the time.
- [17] Pursuant to the Settlement Agreement, NGW paid TL US\$30,000.00 on January 9, 2023. TL then sent its field service engineer, Mr. Enhao Yang, to NGW's plant. Mr. Yang worked on the machine from January 12-18, 2023. It is undisputed that he was able to produce thousands of qualified bottles during his visit, including 50,000 bottles on January 16, 2023. His affidavit says this:
4. While I was at the Defendant's plant from January 12 to January 18, 2023, the Blower blew many qualified bottles on each of the days I was there, and in fact, on January 16, 2023, the Blower blew approximately 50,000 (fifty thousand) qualified bottles.
- [18] Mr. Lai's evidence is that, as Mr. Yang's visit came to an end, the machine stopped functioning. His affidavit says this:
4. Plaintiff has issued efficiency guarantee letter to the defendant to ensure additional pieces of equipment plus service contract will address the current efficiency issues. Performance guarantee letter is included in Exhibit A.
 6. Plaintiff was never able to reach efficiency target guaranteed by the supply contract.
 7. For the agreement proposed by the Plaintiff on November 8th, 2022, plaintiff's engineer left the facility with machine not able to produce as additional parts were required.
 8. Plaintiff engineer has put in writing that there are additional computer / software issues that will prevent machine from operating normally. Wechat conversation is listed at Exhibit B.
 9. The blower has less than 1,000 hours of operation since installation took place in defendant's facility in 2020.
- [19] Mr. Lai submitted that, to TL's knowledge, after Mr. Yang's visit the machine did not run from January to June 2023, due to clutch and alignment issues.

[20] As Mr. Boss pointed out in his response affidavit, the performance guarantee letter, referred to in Mr. Lai's para. 4 quoted above, was signed on April 17, 2019 and was part of the parties' original dispute, settled by the November 4, 2020 Equipment Acceptance Certificate and the Settlement Agreement.

[21] Mr. Boss's response affidavit also says this:

4. As set out in my Affidavit #1, the Plaintiff met its obligation under the terms of the Settlement Agreement by having the machine produce one qualified bottle (and in fact produced 50,000 bottles on one day, January 16, 2023) but the Defendant failed to make the payments required under the Settlement Agreement apart from the first payment of \$30,000.00, despite numerous promises to pay the 2nd payment of \$60,000.00, which it had agreed to pay once the machine produced one qualified bottle and prior to the Plaintiff's technician leaving the Defendant's premises, and despite repeatedly leading the Plaintiff to believe that payment was imminent, all as detailed in my Affidavit #1. Under the Settlement Agreement, the Plaintiff was at all times ready willing and able to honour the warranty and service the equipment on a COD basis as provided for in the Settlement Agreement, as is obvious from the correspondence attached to my Affidavit #1.

[22] In support of Mr. Lai's evidence in his para. 7 quoted above, during Mr. Yang's visit there are texts from Mr. Lai to Mr. Boss, saying that the machine is having issues with its chiller and clutch, including a text on January 18, 2023 saying that Mr. Yang cannot get the machine to work.

[23] On January 19, 2023, Mr. Boss wrote that TL was shipping a clutch from Atlanta, but the reason for the machine's failure was that it had not been running for years which did not fall under the warranty. Mr. Lai responded "Thanks - we will make payment as our intention for a new restart with your side."

[24] Over the next few months, Mr. Boss pursued payment and Mr. Lai repeatedly promised to pay, sometimes saying he would do so as soon as problems with the machine were fixed.

[25] By late February 2023, the parties were at an impasse. Mr. Boss insisted on payment of the US\$60,000 due under para. 2 of the Settlement Agreement. Mr. Lai promised payment once certain repairs were completed.

[26] On March 28, 2023, Mr. Boss wrote:

Alan, I am getting so much pressure from China and the auditors to resume the lawsuit. This is not a threat and not a road I want to take but without you sticking to our settlement agreement I have very little to say to them that has any credibility. Please send the money today so I can use it as evidence that we are on the right path. This is a desperate situation for me.

[27] Mr. Lai responded on March 30:

Money will be to your side - cpx 10 is not in operation due to mold station 4 lock-in pin not working. I have explain internally again that it will be under warranty and our intention is to fully purchased the machine by June so I can get a quote for 54000 bmp line from tech long so I need the money issue to be done once for all. Explain to my father as well.`

You need to back me up on service once money is at your side

The equipment is sitting again so my people are worry for the financial commitment that we are making

[28] On April 17, they wrote the following:

Alan Lai 2:32 PM

Keith we put the parts in last Friday but station 4 is still experiencing difficulties in open and close and new part we put in is already scratched

Alan Lai 2:33 PM

I am in position to send money in to you but can you have a guy here

Alan Lai 2:33 PM

My team believe we need tech that know the installation of the machine instead of Tony as it is more mechanical

Alan Lai 2:34 PM

We have not run machine much - maybe another 250-300 hours but station 4 is experiencing some issues

Keith Boss 2:40 PM

You send me the money and I will send you a guy.

Alan Lai 2:47 PM

Okay I will confirm shortly on exact amount

[29] On April 19-21, they continued:

Keith Boss 3:16 PM

How's that payment coming?

-----2023-4-21-----

Keith Boss 11:39 AM

If I do not see something real in regards to money coming I will restart lawsuit on Monday.

Alan Lai 1:37 PM

Can you give me until Wednesday - my guy is trying to get the machine resume and will need couple days and we will enter into production so my internal team can release the money

Alan Lai 1:39 PM

Station 4 has some issue but my guys is trying work around so we can prove machine is okay and your side will have money and tech here for further repair

[30] On May 12, Mr. Boss wrote that TL was returning the matter to its lawyers. Mr. Lai responded that NGW had run into too many problems with the machine.

[31] Further to para. 8 of Mr. Lai's affidavit, quoted above, his affidavit attaches a WeChat exchange of June 28, 2023, between the parties' respective technicians, in which the TL representative acknowledged a longstanding issue with the machine's break control that apparently was not yet resolved.

Litigation Resumes

[32] On June 28, 2023, TL filed an Amended Notice of Civil Claim to plead the terms of the Settlement Agreement and NGW's failure to make the agreed-upon payments. Paragraph 16 says this:

16. The Blower produced one qualified bottle within 30 days and Plaintiff has fulfilled all of its obligations under the Settlement Agreement but the Defendant has breached the terms of the Settlement Agreement and paid only the sum of \$30,000.000 (U.S.) required under paragraph 1 of the Settlement Agreement and, despite numerous promises to pay, has failed to pay the sum of \$60,000.00 (U.S.) required under paragraph 2 of the Settlement Agreement, and has failed to pay the monthly payments of \$84,108.00 (U.S) required under paragraph 4 of the Settlement Agreement due on each of December 1, 2022, January 1, 2023, February 1, 2023, March 1, 2023, April 1, 2023, May 1, 2023 and June 1, 2023, and accordingly the total sum of \$648,756.00 (U.S.) is past due and payable under the terms of the Settlement Agreement as of June 2, 2023, and the further sum of \$252,324.00 (U.S.) will come due over the next 3 months.

[33] On May 29, 2024, TL filed a Further Amended Notice of Civil Claim to claim additional payments that had since become due.

[34] NGW's Further Amended Response to Civil Claim, filed June 19, 2024, included these pleadings (typos in original):

5. By end of 2022, the defendant again sent additional 30,000 USD for plaintiff to send its technicians to resume the production of the blow molder, if it is successful, the defendant is willing to be on installment plan to pay off the remaining machine balance. No official settlement was never signed.

6. Plaintiff's technician arrive to defendant's facility but left the service call without machine in operation as it require more parts for the machine to operate. The total hour on the machine was less than 800 hours since installation at Feb 2019.
7. Plaintiff's technician also provided in writing at WeChat that the blow molder has malfunction from its computer system so the equipment were never in the position since 2019 for a full production.

Part 3: LEGAL BASIS

1. The plaintiff never achieve its equipment efficiency target guarantee by its supply contract

[35] NGW's Application Response, filed January 16, 2025, says:

6. The parties enter into a binding performance agreement in 2019 and the plaintiff has failed to carry out the term of the guarantee. Plaintiff should remove the equipment and return money at contract value to the Defendant.

Positions

- [36] TL submits that, on the undisputed evidence, it twice obtained the Equipment Acceptance Certificate from NGW and fulfilled its obligations in the Settlement Agreement to produce qualified bottles. It is therefore entitled to the payments under paras. 2 and 4 of the Settlement Agreement.
- [37] For NGW, Mr. Lai responds that the payments are not due because the machine stopped functioning from January to June 2023, at which point the parties ceased communicating, and it has operated for less than 1,000 hours since installation.

Analysis

Suitability for Summary Trial

- [38] When summary trials provide a fair and just process proportionate to the matters being litigated, they are an integral and necessary element of access to justice.
- [39] A settlement agreement may be summarily enforced within the original action (1001790 BC Ltd. v. 0996530 BC Ltd., 2020 BCSC 2270, para. 63). There is a strong public interest in resolving lawsuits by agreement, and the courts enforcing such agreements, as this reduces the personal and public expense of litigation and contributes to the effective administration of justice (Sable Offshore Energy Inc. v. Ameron International Corp., 2013 SCC 37, para. 11).
- [40] Cases are suitable for summary trial determination if the necessary facts can be found and summary determination is just in the circumstances. Gichuru v. Pallai, 2013 BCCA 60, provides guidance on suitability:

[30] In *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.), the Chief Justice identified a number of relevant factors to consider (at p. 215):

In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, *inter alia*, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

[31] To this list has been added other factors including the cost of the litigation and the time of the summary trial, whether credibility is a critical factor in the determination of the dispute, whether the summary trial may create an unnecessary complexity in the resolution of the dispute, and whether the application would result in litigating in slices: *Dahl v. Royal Bank of Canada et al.*, 2005 BCSC 1263 at para. 12, upheld on appeal at 2006 BCCA 369.

[41] When faced with conflicting affidavits, a summary trial judge should not simply choose between the differing version of events. Facts may be found in the face of such conflicts, however, based on other admissible evidence such as documents, independent witnesses, or undisputed facts (*Cory v. Cory*, 2016 BCCA 409, para. 10).

[42] In some circumstances, there may be good reason to determine select issues in a dispute by means of a summary trial, if doing so would not create confusion or give rise to potentially inconsistent findings (*Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83, paras. 27, 33-34).

Is the Settlement Agreement Valid and Binding?

[43] As mentioned above, in the hearing both parties took the position that they agreed to the terms of the Settlement Agreement in November 2022.

[44] I find the Settlement Agreement is legally valid and binding. The contemporaneous texts between Messrs. Lai and Boss, viewed objectively, indicate their mutual intention to agree on the terms in that document, and the essential terms of their agreement are set out clearly. Their mutual intentions are also confirmed by the parties' subsequent conduct and correspondence. There is no evidence to the contrary, and no reason for this issue not to be decided in this summary trial.

Is US\$901,080 Owed Under the Settlement Agreement?

[45] Mr. Yang's affidavit and the contemporaneous documentation between the parties confirm that the machine produced thousands of qualified bottles during his visit. There is no evidence to the contrary and NGW does not dispute this. I accept that this occurred.

[46] Therefore, under the straightforward meaning of the words in paras. 2 and 4 in the Settlement Agreement, NGW was obligated to pay TL:

- US\$60,000 before Mr. Yang departed (para. 2); and

· 10 monthly instalments of \$84,108, from December 1, 2022- September 30, 2023 (para. 4).

[47] I see no defence to TL's claim for payment of the US\$60,000 in para. 2. On the clear wording of the Settlement Agreement, that amount was owed once Mr. Yang produced one qualified bottle.

[48] The issue is whether para. 6 provides a defence to the monthly payments payable under para 4. Paragraph 6 says this:

6. Tech Long is to service all existing equipment include CPX under COD basis. If there is completed break down of CPX (not able to produce) covered under warranty items, TL has 14 calendar days to resolve the issue or NGW can withhold that monthly payment.

[49] On the evidence, I am unable to find the facts necessary to decide whether TL is entitled to judgment for the outstanding balance under para. 4 of the Settlement Agreement, or whether instead NGW was entitled to withhold its monthly payments under s. 6. Specifically, I am unable to find if and when the machine recovered from its apparent breakdown at the end of Mr. Yang's visit in January 2023, or whether the problems were with items under warranty.

[50] NGW's Further Amended Response does not plead a total breakdown of the machine. As set out above, the Legal Basis says only that "The plaintiff never achieved its equipment efficiency target guarantee by its supply contract". It does however plead that the machine was not operating when Mr. Yang departed because of requiring additional parts, and that it had been in production for less than 800 hours since installation in February 2019.

[51] Mr. Lai's affidavit evidence, sworn in January 2025, was that the machine ceased producing before Mr. Yang departed NGW "as additional parts were required", and that the machine has less than 1,000 hours of operation since its installation. The contemporaneous correspondence from January to June 2023 indicates various performance issues, including on June 28 when NGW is complaining that the machine will not run and TL's technician, checking remotely, surmises that their previous technician may have failed to save the correct programming changes two years earlier. Given that NGW has not had counsel, I am reluctant to prevent it from relying on this evidence even if it arguably goes beyond NGW's "Legal Basis" pleadings.

[52] TL provided no evidence, from Mr. Yang or otherwise, to counter Mr. Lai's evidence of non-performance from January to June 2023, when the parties' correspondence in the record stops. There is no evidence from either side about the machine's performance after June 2023, including for how long the alleged complete breakdown did or did not extend, or about what issues were or were not covered by TL's warranty which, under para. 5 of the Settlement Agreement, included all electronical and mechanical components.

- [53] My understanding from the evidence is that TL had remote access to information about the machine's output and performance, and so had visibility into whether it ran after January 2023 and, if not, why not. Even if TL did not have such remote visibility, it could have investigated these issues in the litigation through discovery or attendance by an expert.
- [54] Denying TL the amounts under para. 4 is problematic given that NGW has had the machine for five years, twice certified its acceptable performance, but has paid only a small portion of the purchase price. In these circumstances, I accept that TL should be at liberty to remove and re-possess the machine, as proffered in NGW's Application Response. However, I reject NGW's position that TL should return any funds paid thus far by NGW for the machine. Such repayment would be contrary to the terms of the Settlement Agreement.
- [55] I therefore dismiss TL's application for judgment under para. 4 of the Settlement Agreement. I give TL leave to bring a further summary application seeking judgment under para. 4 or any other relief, based on further and better evidence.
- [56] By deciding that NGW is obliged to pay TL the amounts under para. 2, but not whether it is obliged to pay under para. 4, I am deciding the litigation in slices. In my view, however, it is in the interests of justice to do so because the two issues do not overlap.
- [57] NGW's obligation to pay under para. 2 has been determined based on the clear wording of the Settlement Agreement and the undisputed facts regarding Mr. Yang's production of qualified bottles. Payment under para. 4 turns on whether the machine had a complete breakdown starting towards the end of Mr. Yang's visit and for how long that continued. On the clear wording of the Settlement Agreement, that issue does not give rise to a defence under para. 2. I therefore do not see a risk of confusion or inconsistent findings.

Conclusion

- [58] The written Settlement Agreement of November 8, 2022 is valid and binding.
- [59] Under para. 2 of the Settlement Agreement, NGW was obligated to pay TL US\$60,000 on January 16, 2023. TL is granted judgment for the amount of Canadian currency necessary to purchase US\$60,000 at a chartered bank in British Columbia on the conversion date stipulated by the Foreign Money Claims Act, R.S.B.C. 1996, c. 155.
- [60] TL is at liberty to remove and re-possess the machine.
- [61] TL's summary judgment application for the balance of the amounts owed under the Settlement Agreement, and to dismiss NGW's counterclaim, are both dismissed, with TL having liberty to re-apply for summary judgment on further and better evidence. If the parties wish, and if I am available, I will hear that application, otherwise it may be heard by another judge.
- [62] Subject to the parties wishing to make submissions on costs, TL is awarded its costs of this hearing, having succeeded on the para. 2 issue.

"Coval J."

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