

Second Amended Response to Civil Claim filed pursuant to Supreme Court Civil Rule 6-1(5) and further to the Order of Mr. Justice Milman made September 18, 2018
Amended Response to Civil Claim filed on January 29, 2018 pursuant to Supreme Court Civil Rule 6-1(5)
Original filed March 29, 2017



NO. S-172912
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

676083 B.C. LTD.

PLAINTIFF

AND:

REVOLUTION RESOURCE RECOVERY INC.

DEFENDANT

Brought pursuant to *The Class Proceedings Act*, R.S.B.C. 1996, c. 50

SECOND AMENDED RESPONSE TO CIVIL CLAIM

Filed by: The Defendant, Revolution Resource Recovery Inc.

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1—Defendants' Response to Facts

1. The facts alleged in paragraphs 2, 6, 7, 8, 9, and 10 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 3, 4, 5, 11, 12, ~~and~~ 13, 14, 15, 16, 17, and 18 of Part 1 of the Notice of Civil Claim are denied.

3. The facts alleged in paragraph 1 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2—Defendants’ Version of Facts

4. For ease of reference, Revolution adopts the defined terms used in the ~~Second~~ Third Amended Notice of Civil Claim filed by 676083 B.C. Ltd. on ~~January 25,~~ December 11, 2018, except where otherwise defined herein. The adoption of any defined term herein does not constitute an admission of facts.
5. Revolution denies each and every allegation of fact made in the ~~Second~~ Third Amended Notice of Civil Claim, except as expressly admitted herein, and puts 676083 B.C. Ltd. to the strict proof thereof.
6. In specific response to paragraph 3 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim, Revolution admits that it entered into a Customer Service Agreement with 676083 B.C. Ltd. on or around November 16, 2009. A new Customer Service Agreement (the “CSA”) was executed between Revolution and 676083 B.C. Ltd. on November 3, 2011. Revolution says that the CSA includes the following provisions material to the issues raised in the Notice of Civil Claim:

WEIGHTS: Solid waste pricing based on 50 Kgs per yard unless otherwise specified in “Special Instructions:

Customer agrees not to place any construction materials, white goods, mattresses, landscaping waste, bed frames, pallets or any other material not deemed by Northwest as standard material into the containers provided. Customer agrees to pay “additional charges” for any materials that requires [sic] special handling or exceed the special “kg’s per yard”...

FINES. *Customer agrees to be responsible for and pay to Northwest in addition to all other charges payable hereunder, any and all fines, surcharges or levies, including but not limited to overweight fines, container permit fees, municipal graffiti ordinances, mixed load surcharges, material ban surcharges incurred by Northwest in the course of providing the Services to the Customer.*

WASTE MATERIAL. *The solid waste and recyclable material to be collected and disposed of by Northwest pursuant to this Agreement are solid waste and recyclable material generated by Customer excluding radioactive, volatile, highly flammable, explosive, biomedical, toxic or hazardous material. The term “hazardous material” will include, but not be limited to, any amount waste listed or characterized as hazardous or special waste by any federal or provincial law. Northwest will acquire title to the solid*

waste and recyclable material when loaded into Northwest's trucks. Title to and liability for any waste excluded above will remain with Customer and Customer expressly agrees to defend, indemnify and hold harmless Northwest from and against any and all damages, penalties, fines and liabilities resulting from or arising out of such waste excluded above...

RATE ADJUSTMENTS. Northwest reserves the right to adjust rates hereunder based upon increases in fuel costs, insurance rates, disposal facility costs and transportation costs due to change in location of disposal facilities, decreases in the local market prices for recyclable material, changes in the composition, weight or volume of material disposed of by Customer, or contamination of recyclable material...

7. In specific response to paragraph 4 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim, Revolution acknowledges that 676083 B.C. Ltd. purported to terminate the CSA on or around April 14, 2016 and again on October 24, 2016 and that Revolution accepted this purported termination, but denies that termination was effected carried out by 676083 B.C. Ltd. in accordance with the terms and requirements of the CSA.

8. In specific response to paragraphs 6 and 7 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim, Revolution admits that the Organics Disposal Ban was introduced pursuant to the *Greater Vancouver Sewerage and Drainage District Tipping Fee and Solid Waste Disposal Regulation Bylaw No. 293, 2015* (the "2016 Tipping Fee Bylaw"), which has been subsequently repealed and replaced by the *Greater Vancouver Sewerage and Drainage District Tipping Fee and Solid Waste Disposal Regulation Bylaw No. 302, 2016* (the "2017 Tipping Fee Bylaw"). The 2016 Tipping Fee Bylaw and 2017 Tipping Fee Bylaw are referred to collectively herein as the "Tipping Fee Bylaws".

9. In specific response to paragraph 11 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim, Revolution denies that the General Conditions are standard for all proposed class members, as these General Conditions have been subject to amendment from time to time and also may be subject to negotiation with individual customers.

10. In specific response to paragraph 12 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim, Revolution says that the Organics Disposal Ban was only one specific example of surcharges levied by the GVRD (now Metro Vancouver Regional District) on persons, such as Revolution, who dispose of loads at disposal sites within its jurisdiction. Section 5 of the Tipping Fee Bylaws permits surcharges on loads of waste containing higher than permitted concentrations of many different types of materials, including:
- a) Recyclable Material (other than Food Waste or Clean Wood);
 - b) Contaminated Recyclable Paper;
 - c) Food Waste;
 - d) Clean Wood;
 - e) Source Separated Organic Waste; and
 - f) Hazardous and Operational Impact Materials or Product Stewardship Materials.
11. Revolution says in further response to paragraph 12 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim that surcharges and/or fines have been imposed on Revolution, and other commercial waste and recycling disposal providers, pursuant to the Tipping Fee Bylaws and repealed versions of similar regulations for many years prior to the introduction of the Organics Disposal Ban. The Government Surcharge/Material Ban (the “Government Surcharge/Material Ban”) was implemented by Revolution to address increased disposal facility costs generally, including those for which previous surcharges or fines had already been incurred and was never specific to the Organics Disposal Ban or the Tipping Fee Bylaws as alleged.

12. In further response to paragraph 12 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim, Revolution says that its implementation of the Government Surcharge/Material Ban was expressly or impliedly permitted by the CSA and/or any customer service agreements for the provision of waste and recycling disposal services during the Class Period.
13. In specific response to paragraph 13 of Part 1 of the ~~Second~~ Third Amended Notice of Civil Claim, Revolution admits that 676083 B.C. Ltd. was charged the Government Surcharge/Material Ban, but says that 676083 B.C. Ltd. and/or other proposed class members acquiesced, agreed and/or consented to the implementation of this charge, expressly or impliedly, and are not permitted to resile from this prior acquiescence, agreement and/or consent.
14. In specific response to paragraph 14 of Part 1 of the Third Amended Notice of Civil Claim, Revolution denies that its customer service agreements were presented to 676083 B.C. Ltd. and/or other proposed class members as standard terms. Contrarily, it is common for terms and conditions to be negotiated between Revolution and individual customers, such that individual terms or conditions are deleted, amended, or supplemented as a result.
15. In specific response to paragraph 15 of Part 1 of the Notice of Civil Claim, Revolution says that the “Term” and “Right to Re-Negotiate” clauses are not uniform across the different version of its customer service agreements applicable to the Class Period. Revolution further denies that any form of the “Term” or “Right to Re-Negotiate” clauses contained in the CSA, or any other applicable customer service agreement, results in an indefinite agreement by limiting the ability of 676083 B.C. Ltd. and/or other proposed class members to terminate these agreements, and/or to enter into contracts for the same or similar services with companies other than Revolution.

16. Alternatively, if the “Term” and Right to Re-Negotiate” clauses included in any of Revolution’s customer service agreements do limit the ability of 676083 B.C. Ltd. and/or any other proposed class members to terminate such agreements, which is not admitted but expressly denied, Revolution says that such limitations are standard in the waste disposal industry and these contractual terms are in all respects legitimate and enforceable.

17. In specific response to paragraph 16 of the Third Amended Notice of Civil Claim, Revolution says that the “Failure to Perform” clause was not standard across all versions of Revolution’s customer service agreements applicable to the Class Period, and further denies that this clause constitutes a penalty clause. Instead, Revolution says that the “Failure to Perform” clause represents a genuine pre-estimate of the lost income stream resulting from an early termination of a customer service agreement by 676083 B.C. Ltd. and/or other proposed class members, and is in all respects a legitimate and enforceable contractual term.

18. In specific response to paragraph 17 of the Third Amended Notice of Civil Claim, Revolution says that it took all steps, if any, required of it in ensuring that the terms and/or conditions of its Customer Service Agreements were brought to the attention of, and understood by, its customers.

19. In specific response to paragraph 18 of the Third Amended Notice of Civil Claim, Revolution denies that it implemented a retention policy to obstruct the ability of 676083 B.C. Ltd. and/or other proposed class members to terminate their customer service agreements, either as alleged or at all.

Division 3—Additional Facts

20. On various occasions prior to the commencement of the within proceeding, Revolution provided copies of the CSA to 676083 B.C. Ltd. and specifically drew

the terms and conditions of same to the attention of its principal, Amrit Toor, both during in-person meetings and through written correspondences.

21. Notwithstanding that Mr. Toor and/or other authorized representatives of 676083 B.C. Ltd. knew, or reasonably ought to have known, of the existence and alleged effects of the “Term”, “Right to Re-Negotiate” and/or “Failure to Perform” clauses contained in the CSA on the ability of 676083 B.C. Ltd. to terminate its contractual obligations to Revolution, 676083 B.C. Ltd. failed to commence a proceeding within the time limit required by the *Limitation Act*, [RSBC 1996], c. 266, or alternatively the *Limitation Act*, [SBC 2012], c. 13, seeking relief from these provisions of the CSA. For this reason, Revolution says that 676083 B.C. Ltd. is now statute barred from pursuing this relief in this proceeding.

Part 2: RESPONSE TO RELIEF SOUGHT

1. Revolution consents to the granting of the relief sought in paragraphs NONE of Part 2 of the ~~Second~~ Third Amended Notice of Civil Claim.
2. Revolution opposes the granting of the relief sought in paragraphs ALL of Part 2 of the ~~Second~~ Third Amended Notice of Civil Claim and specifically takes the position that the claims particularized in the ~~Second~~ Third Amended Notice of Civil Claim are not suitable for certification under *The Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the “CPA”).
3. Revolution takes no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the ~~Second~~ Third Amended Notice of Civil Claim.
4. Revolution says that this claim should be dismissed with costs payable to Revolution.

Part 3: LEGAL BASIS

1. Revolution denies that it breached the CSA, or the terms of any customer service agreement with its customers, and says that it is not liable to any of them for damages for breach of contract, either as alleged or at all.
2. Revolution was not unjustly enriched by receipt of amounts paid by its customers pursuant to The Government Surcharge/Material Ban, as any such charge was levied in accordance with the CSA and/or the terms of the applicable customer service agreements, related to surcharges payable by Revolution pursuant to the Organics Disposal Ban, the Tipping Fee Bylaws or other prior surcharges imposed by the GVRD, and/or was expressly or impliedly acquiesced, agreed and/or consented to by 676083 B.C. Ltd. and/or other proposed class members. The existence of the customer service agreements between Revolution and its customers constitutes a juristic reason for Revolution's enrichment, if any occurred.
3. Revolution denies that any terms in the CSA, or any other applicable customer service agreement, are unconscionable, amount to substantially improvident or unfair bargains, or are contrary to public policy. On the contrary, Revolution says that all terms and conditions of the CSA, or any other applicable customer service agreement, are legitimate and enforceable contractual terms.
4. ~~3.~~ Revolution disputes that the restitution and damages sought by 676083 B.C. Ltd. and/or other class members can be calculated on an aggregate basis as provided by ss. 29 and 30 of the *CPA*. More particularly, Revolution says that amounts recovered by Revolution pursuant to the Government Surcharge/Material Ban may vary significantly from customer to customer, and establishing the amount of liability, if any exists which is not admitted but specifically denied, will require weighing differing questions of fact or law.


- ~~5.~~ 4. Revolution denies the entitlement of 676083 B.C. Ltd., or anyone, to punitive damages.
- ~~6.~~ 5. Revolution pleads and relies upon the law of legal estoppel, equitable estoppel, and waiver.
- ~~7.~~ 6. Revolution pleads and relies upon the provisions of the *CPA*.
- ~~8.~~ 7. Revolution pleads and relies upon Rule 14-1 of the *Supreme Court Civil Rules* regarding its claim for costs.
9. Revolution pleads and relies upon the *Limitation Act*, [RSBC 1996], c. 266 and *Limitation Act*, [SBC 2012], c. 13.

Defendant's address for service: Kuhn LLP
100 – 32160 South Fraser Way
Abbotsford, BC
V2T 1W5
Attention: Andrew D. Delmonico

Fax number address for service (if any): NONE

E-mail address for service (if any): NONE

Dated ~~January 29, 2018~~
January 31, 2019



Signature of Andrew D. Delmonico
Lawyer for the Defendant
Revolution Resource Recovery Inc.

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

- (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.