# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *676083 B.C. Ltd. v. Good Guys Recycling Inc. (Revolution Resource Recovery Inc.),* 2025 BCSC 1013

Date: 20250505
Docket: S172912
Registry: Vancouver

Between:

**676083 B.C. Ltd.**

Plaintiff

And

**Good Guys Recycling Inc., formerly known as Revolution Resource Recovery Inc.**

Defendant

Before: The Honourable Mr. Justice Milman

## Oral Reasons for Judgment

In Chambers

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|---|---|
| Counsel for the Plaintiff: | J. Winstanley<br>O. Pulleyblank<br>B. Krause, Articled Student |
| Counsel for the Defendant: | A. Delmonico<br>J. Maryniuk<br>R. Deane |
| Counsel for the Attendee, Waste Connections of Canada Inc.: | C. Woodin<br>S. Day, Articled Student |
| Place and Date of Hearing: | Vancouver, B.C.<br>May 5, 2025 |
| Place and Date of Judgment: | Vancouver, B.C.<br>May 5, 2025 |

[1] **THE COURT:** This is an application seeking a variety of relief brought by the plaintiff in this certified class action. In particular, the plaintiff seeks a number of orders to facilitate the production of documents from a third party, Waste Connections of Canada Inc. (“Waste Connections”).

[2] It appears, based on the submissions that I have received, that the substantive portion of the application has largely been resolved through negotiations between the plaintiff and the third party. They have reached an agreement that contemplates the third party undertaking to produce those documents to the plaintiff. The third party has a concern about the costs that it will incur in complying with the agreement, and so that matter remains outstanding in the sense that the plaintiff seeks an order that the defendant pay those costs.

[3] The main topic of discussion for the day has been the two sides' competing requests for an award of special costs against the other. The plaintiff says that the defendant should be made to pay special costs both for this hearing and the previous one before me in March of 2024. The basis for that contention is that, in the plaintiff's submission, the defendant has been remiss in complying with its obligations, first, to preserve documents that are relevant to the litigation, second, in complying with its discovery obligations and finally, in presenting the plaintiff and the court with misleading information as to the true state of affairs with respect to the documents in issue.

[4] The defendant complains that in advancing that submission, the plaintiff has cast unjustified aspersion on counsel for the defendant, rather than just the defendant, and that was improper and in itself deserving of sanction.

[5] This application comes in the context of a certified class action and there is a general rule against awarding costs in class proceedings. There is an exception created by s. 37 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50. There is some dispute between the parties as to which of those specific provisions apply here, if any, but I think it is sufficient just to rely on s. 37(2)(a), which involves abusive conduct on the part of a litigant.

[6] I am satisfied that in the unusual circumstances of this case there has been conduct that I would go so far as to say is deserving of an award of special costs. In particular, the defendant refused, when asked, to share information that, in the

ordering course, the court would expect a litigant to share. Instead, the defendant sent the plaintiff on a wild goose chase seeking documents that are admittedly relevant to this proceeding. It has since emerged that the defendant disposed of those documents when it sold its business to Waste Connections.

[7] I appreciate, as defence counsel says, that a litigant has the right to play their cards close to their chest, but on the other hand, the failure to disclose information that the plaintiff has been seeking since January 2022, information which the plaintiff is ultimately entitled to receive, caused a great deal of mischief in this case. It has caused costs to escalate and needless applications to be heard, and in the end, the resulting problem is still not entirely resolved. This litigation has been stalled for quite some time, and, as I say, it seems to me that a good deal of the explanation for this sad state of affairs lies in the problem that we are addressing today.

[8] In my view, there should have been greater transparency about the fate of the documents. Had that occurred, the parties would have addressed the issue a long time ago. It is not enough for the defendant to say, "Well, these are applications that would've had to have been brought anyway." They would have been brought a long time ago and they probably would have looked very different and the parties and the court could have focussed on the real issues that divide the parties on the merits.

[9] In my view, this is conduct deserving of rebuke and sufficient to attract an award of special costs for both applications. I am, however, hesitant to make that award because I am also concerned about the suggestion by the plaintiff in the written notice of application that counsel for the defendant is personally responsible for what has occurred. I was told in oral submissions that the plaintiff is not really seeking to cast aspersions on counsel personally. It therefore appears that the allegations in the notice of application as written are, to that extent at least, overstated.

[10] In summary, I am satisfied that exceptional circumstances are present here and sufficient to justify an award of costs, but it will not be special costs.

[11] Rather, I am going to award the plaintiff its costs for both today's hearing and the March 12, 2024 hearing, but that will be at the ordinary tariff, and I am also

going to order that the defendant pay the reasonable costs of the third party in complying with the agreement that has been reached. I appreciate defence counsel's point that they had not been given proper notice of that aspect of the relief sought but we have also had a great deal of wasted court time. I do not want to impose the additional burden on the parties to have to come back to argue that point when it is clear to me that this is a problem of the defendant's making and it is therefore the defendant that is going to have to bear the cost of fixing it.

[12] I also agree that there should have been some effort made to preserve at least the plaintiff's ability to access the records in issue, even though the business was being sold. I am not satisfied with the defendant's submission that having sold the business knowing that it had been sued, it could simply wash its hands of it. This is not a matter of preserving records with a view to competing with the purchaser, as defence counsel argued. It is rather a matter of preserving relevant records so that they are available in the litigation and the court can get ultimately to the truth of the matter. As I said to counsel during submissions, that is a responsibility that lies with litigants and if they ignore it, these kinds of cases become far more difficult to resolve. It has taken far too long to get to the substance of the matter in this case. I trust that from here forward things will move with greater speed and efficiency.

[13] All right. Is there anything else we need to deal with today?

[14] CNSL A. DELMONICO: Not from my vantage point.

[15] CNSL J. WINSTANLEY: I just had one question and I might have missed it. The request was for costs payable forthwith and in any event of the cause?

[16] THE COURT: Yes, that is fine.

[17] CNSL J. WINSTANLEY: Okay.

[18] THE COURT: All right. If there is nothing else, I am going to return your materials to you, and we are adjourned.

"Milman J."