

Agri-Innovatech c. Dupont Cedars Inc., 2020 QCCQ 4380 (CanLII)

Date: 2020-09-24

File number: 400-32-701163-193

Neutral Citation: 2020 QCCQ 4380

COURT OF QUEBEC

“Small Claims Division”

CANADA

PROVINCE OF QUEBEC

DISTRICT OF THREE-RIVERS

LOCALITY OF THREE-RIVERS

"Civil Chamber"

No: 400-32-701163-193

DATE: September 24, 2020

Corrected on: October 22, 2020

Before: The Honorable Alain Trudel, JCQ

AGRI-INNOVATECH

Plaintiff

vs.

CÈDRES DUPONT INC.

Defendant

RECTIFIED JUDGMENT

[1] The plaintiff claimed \$12,242.54 from the defendant in fees following the completion of a research and development claim in agronomy.

[2] The defendant disputes the claim.

[3] She in no way calls into question the quality of the services provided by the plaintiff. In fact, the dispute is based on a difference in interpretation of clause 5 of the service contract entitled “Cost and method of payment for the service”.

[4] This clause reads as follows:

“5. Cost and method of payment for the service

The rate of 17% of the credit for eligible SR&ED expenditures of the projects submitted.

Payments are applicable upon receipt of invoice and report within 30 days. After this period, interest is 1.5% per month. (sic)

THE CONTEXT

[5] As part of the mandate, the plaintiff offers a service comprising both a scientific component including diagnosis and evaluation and innovation in the production of cedars for ornament, fencing and reforestation and secondly, the financial component which includes the calculation of eligible expenses for the research and development credit application for presentation to the tax authorities.

[6] For the 2017-2018 taxation year, the plaintiff is preparing, on behalf of its client, a claim for scientific research and experimental development (SR&ED) expenditures totalling \$62,638.

[7] This amount is used to calculate qualifying SR&ED expenditures for purposes of calculating the investment tax credit (ITC).

[8] After analyzing the request, the federal and provincial tax authorities issued tax credits totalling \$35,585.03 distributed as follows:

- Federal tax credits: \$33,418.03
- Provincial tax credits: \$2,167.00

[9] On August 15, 2018, the Plaintiff presented the Defendant with an invoice for fees for the work performed as part of its mandate in the amount of \$10,648 plus applicable taxes, i.e. \$12,242.54.

[10] The amount of fees represent 17% of the amount of \$62,638, i.e. the total SR&ED expenditures claimed for eligible SR&ED credits for the purposes of calculating the investment tax credit for this fiscal year.

[11] The defendant disagrees with this basis for calculating the fees agreed to in article 5 of the service agreement. She submits that the 17% charge should instead apply to the credits issued by the tax authorities which amount to \$35,585.03 for a bill of fees which thus totals \$6,955.36, all taxes included.

ANALYSIS AND DECISION

[12] With respect to the contrary opinion, the clause of the service contract establishing the costs and terms of payment for the service is clear and unambiguous.

[13] It provides that the 17% fee charge applies to the amount of the SR&ED eligible expenses credit for projects submitted for the client.

[14] There is nothing to establish the basis for calculating the fees based on the amounts of eligible expenses calculated by the plaintiff, as her representative claims. The clause in dispute, drafted by the plaintiff, does not give rise to such an interpretation. The percentage of the agreed fees applies to the credit of eligible expenses and not to the amount of eligible expenses established by the applicant herself.

[15] Even if the Court were to rule that this clause raised a doubt because of its ambiguity, which is not the case, the application of the general rules of interpretation of contracts would not be of any help to the plaintiff and do not allow us to conclude otherwise.

[16] The evidence shows that it was the common intention of the parties that the plaintiff's fees be established on the basis of the result of the SR&ED tax credits obtained by the defendant and not on the credit application submitted to the tax authorities.

[17] The Court adds that in doubt, the contract is interpreted in favour of the person who contracted the obligation and against the person who stipulated it [1], in this case, against the plaintiff.

FOR THESE REASONS, THE TRIBUNAL:

[18] Partially GRANTS the request.

[19] ORDERS the defendant to pay the plaintiff the sum of \$6,955.36 with interest at the rate of 18% per annum (...), starting August 15, 2018;

[20] ORDERS the defendant to pay the plaintiff the sum of \$308 as legal costs.

ALAIN TRUDEL, JCQ

Hearing date: July 21, 2020