

CITATION: Arctic Home Services Inc. v. Canadian Home Improvement Creditor Corporation,
2024 ONSC 3265

COURT FILE NO.: CV-22-00689979-0000

DATE: 20240606

ONTARIO SUPERIOR COURT OF JUSTICE

RE: Arctic Home Services Inc. and Jason Malhi, Applicants

-and-

Canadian Home Improvement Creditor Corporation, Respondents

BEFORE: Robert Centa J.

COUNSEL: Christopher Selby and Kayla Smith, for the applicants

John Philpott, for the respondent

HEARD: May 30, 2024

ENDORSEMENT

[1] Arctic Home Services Inc. rents water heaters and air conditioning systems to customers (mainly homeowners) and then services that equipment. On June 28, 2018, Arctic signed an agreement with Canadian Home Improvement Creditor Corporation whereby CHICC agreed to purchase the lease contracts that Arctic would place with consumers over the duration of the program. To oversimplify, CHICC paid \$1.7 million to Arctic to purchase a 10-year stream of future payments to be made by consumers under the lease agreements signed during the three years covered by the agreement.

[2] As time passed, some of the customers exercised their right to buyout the remainder of the lease. The parties do not dispute the legal right of the homeowners to do so. The sole question on this application is whether Arctic or CHICC is entitled to the money paid by homeowners to buy themselves out of these leases.¹ Arctic brought this application seeking a declaration that it was entitled to the end of term lease payments when a customer exercised her right to an early buyout.

¹ The enforceability of the lease contracts against the customers is not before me on this application and I express no view on that issue.

- [3] Despite the able submissions of counsel for Arctic, I find that the agreement gives the income from early buy-outs to CHICC alone. I dismiss the application.

Applicable legal principles

- [4] The parties agree on the applicable principles of contract interpretation. As stated by the Supreme Court of Canada in *Sattva*:

The overriding concern is to determine "the intent of the parties and the scope of their understanding." To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract.²

- [5] The court is concerned with the intent of the parties as expressed in the words used in the agreement, not the subjective intention of the parties at the time they entered into the agreement. In addition, the agreement contains an entire agreement clause.³ An entire agreement clause is retrospective and operates to exclude from the contract interpretation process statements made before the contract was signed.⁴ An entire agreement clause is generally intended to "lift and distill the parties' bargain from the muck of the negotiations."⁵ For these reasons, I will give no weight to paragraphs 21 to 28 of Mr. Malhi's affidavit, which describe earlier drafts of the agreement and Arctic's subjective understanding of certain clauses.

The agreement

- [6] This agreement is a bespoke contract, negotiated between sophisticated and experienced commercial entities, each pursuing its own economic interests. Both parties had the assistance of counsel during the four months the parties spent negotiating the terms of this agreement.
- [7] Before turning to the agreement between the parties, it is helpful to explain the structure of the relationship with the customers who leased the equipment. According to the Water Heater Rental Agreement included in the record before me, customers leased hot water heaters from CHICC. The agreement was on the letterhead of Arctic and the parties agree that they both agreed to the form of the rental agreement. The lease agreements were for an indefinite term, but customers had the right to seek an early buyout of the lease for a

² *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633, at para. 47 (citations omitted); *Bellwoods Brewery Inc. v 1896841 Ontario Limited*, 2023 ONSC 2845, at para 13-14, aff'd 2023 ONCA 851; *Shaun Developments Inc. v. Shamsipour*, 2018 ONSC 440, at para. 46, aff'd 2018 ONCA 707.

³ Section 1.05 Entire Agreement: This Agreement constitutes the entire agreement among the parties relating to the subject matter hereof and supersedes, and where applicable replaces any and all prior agreements, negotiations, discussions and understandings, written or oral, between CHICC and [Arctic].

⁴ *Grasshopper Solar Corporation v. Independent Electricity System Operator*, 2020 ONCA 499, at para. 77.

⁵ *Soboczynski v. Beauchamp*, 2015 ONCA 282, at paras. 43 to 53.

price that would reflect “among other things, the unpaid cost of the water heater and related installation, finance, and servicing costs.” The lease contract stated that, by exercising the right of early buyout, the customer was purchasing the equipment the customer had previously leased:

When you exercise the buyout option, you accept the Water Heater on an "as-is, where is" basis ... You also agree to pay the Buyout Price when invoiced by CHICC ... Once payment has been received by for the Buyout Price ... you will have no further obligation to pay rent and CHICC will have no further obligation to you.

- [8] The agreement between Arctic and CHICC concerned, among other things, the entitlement to the proceeds of those leases for 10 years. Reading the agreement as a whole, I find that Arctic sold, and CHICC bought, a 10-year stream of income called the Assigned Payments. This arrangement is described in s. 2.01(1), the most important part of which provides as follows:

2.01 Purchase and Sale Transactions

(1) During the Purchase Period, [Arctic] will sell to CHICC and CHICC will purchase from [Arctic], to the extent of the Maximum Commitment, Assigned Payments under certain Lease Contracts and the related HVAC and Water Treatment Equipment for a price equal in each case to the Purchase Price calculated with respect thereto.

- [9] CHICC, therefore, bought and was entitled to receive the Assigned Payments. As the capitalization suggests, the parties explicitly defined the meaning of Assigned Payments in the agreement. The parties agreed that Assigned Payments would include all regularly scheduled payments to be made by customers during the initial term of the agreement. Most importantly for the determination of this application, Assigned Payments also included “Other Receivables.” Section 1.01 of the agreement defined Assigned Payments as follows:

"Assigned Payments" means, with respect to a Lease Contract, unless otherwise specified in the related Assignment Agreement, all regularly-scheduled payments specified to be due during the initial term of such Lease Contract prior to the date (if any) on which the Customer thereunder may exercise an option to purchase the HVAC and Water Treatment Equipment thereunder, whether such regularly scheduled payments are ultimately paid on a regularly-scheduled date, on default, by acceleration, by optional prepayment or otherwise; for greater certainty, Assigned Payments shall include Other Receivables.

- [10] CHICC, therefore, bought and was entitled to receive the Assigned Payments, which included payments that fell within the meaning of Other Receivables. The agreement

defined Other Receivable to include all amounts payable by a customer including income derived from early buyouts. Section 1.01 of the agreement contains the following definition:

"Other Receivables" includes all amounts payable by a Customer under a Lease Contract other than the base rental payments and includes, without limitation, end of lease purchase options, income derived from early buyouts, rate increases and late interest payments.

- [11] CHICC bought the Assigned Payments, which specifically included “income derived from early buyouts.” I find that the phrase “income derived from early buyouts” is the amount set by CHICC and paid by a customer to obtain an early buy-out of the lease. An early buy-out for the purposes of this agreement is any buy-out that takes place before the end of the 10-year stream of payments purchased by CHICC.
- [12] Arctic submits that this interpretation would unfairly deprive it of the stream of payments it anticipated receiving after the end of the 10-year term and before the equipment stopped working. While Arctic could have bargained for a share of the income from early buyouts to reflect its contingent expectation of future income, it did not do so. The court will not refashion the bargain made by the parties simply because one party now wishes that it made a different deal.
- [13] I also do not accept any of the other arguments made by Arctic in support of its interpretation of the agreement.
- [14] First, contrary to Arctic’s submission, nothing in s. 7.14(1) suggests that Arctic is entitled to a share of early buyout income. That clause provides as follows:

7.14 Additional Consideration

(1) Subject to the receipt by CHICC of all amounts owing with respect to such Lease Contract, CHICC shall deposit into the account of [Arctic] any end of term lease payments made by the Customer (minus any reasonable administration fee for doing so).

- [15] Pursuant to s. 7.14(1), subject to certain preconditions, Arctic is entitled to “end of term lease payments.” In my view, end of term lease payments are different from income derived from early buyouts. This is confirmed by the definition of “Other Receivables” which distinguishes between “end of lease purchase options” and “income derived from early buyouts.” I see nothing the structure or text of the agreement to suggest that “end of term lease payment” is synonymous with or includes “income derived from early buyouts.”
- [16] Second, Arctic submits that it owned the equipment and CHICC could not unilaterally sell the equipment to customers without paying Arctic for the conversion of its property. I disagree.

- [17] First, sections 2.01(1) and 2.01(2) strongly indicate that Arctic sold the equipment to CHICC. The operative parts of those provisions provide as follows:

2.01 Purchase and Sale Transactions

(1) During the Purchase Period, [Arctic] will sell to CHICC and CHICC will purchase from [Arctic], to the extent of the Maximum Commitment, Assigned Payments under certain Lease Contracts and the related HVAC and Water Treatment Equipment for a price equal in each case to the Purchase Price calculated with respect thereto....

(2)...Subject to the receipt of the net amount of the applicable Purchase Price by [Arctic], [Arctic] shall be deemed to transfer, sell, convey, assign and deliver all of its right, title and interest in and to each such Lease Contract and HVAC and Water Treatment Equipment to CHICC as at the date on which such Lease Contract was submitted to CHICC as provided above.

- [18] Second, Arctic approved the lease contract with the customers. Section 5(j)(ii) of the lease contract states that “CHICC is the owner of the water heater and it is not being transferred to you.”
- [19] Third, there is nothing in the agreement that suggests that CHICC needs to consult with Arctic or to seek its approval before allowing a customer to execute an early buyout.
- [20] Arctic relies on a provision of the agreement that grants CHICC a security interest over the equipment, which it says makes no sense if title to the equipment passed to CHICC. I do not accept this argument. The security interest may protect CHICC if Arctic did not convey good title to the equipment, it may be the approach of overly cautious transaction lawyers, or it may be completely ineffective. In any event, this clause does not cause me to doubt that the parties agreed that Arctic would sell the equipment to CHICC for the agreed upon purchase price and, once Arctic received that amount, title in the equipment passed to CHICC.
- [21] In addition, I do not accept that either absence of a bill of sale or that the sticker affixed to the equipment stating that Arctic owned the equipment is sufficient to displace the clear meaning of s. 2.01.
- [22] The meaning of an agreement and the intent of the parties in entering into it must be derived from the words the parties used and the context in which they used those words. I find that the parties intended that if a customer triggered an early buyout, the income from that early buyout would accrue to CHICC. In my view, this interpretation is consistent with the text of the agreement read as a whole, giving the words their ordinary and grammatical meaning. I see nothing commercially absurd about this result.

Conclusion

[23] The application is dismissed.

[24] CHICC may email its costs submission of no more than three double-spaced pages to my judicial assistant on or before June 14, 2024. Arctic may deliver its responding submission of no more than three double-spaced pages on or before June 21, 2024. No reply submissions are to be delivered without leave.

Robert Centa J.

Date: June 6, 2024