



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 B.C. Ltd. dba Van Pro Disposal v. United Pallet's & Crate's Inc.*
2019 BCCRT 904

B E T W E E N :

0955824 B.C. Ltd. (Doing Business as Van Pro Disposal)

APPLICANT

A N D :

United Pallet's & Crate's Inc.

RESPONDENT

A N D :

0955824 B.C. Ltd. (Doing Business As Van Pro Disposal)

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. This is a dispute about a contract for waste disposal services. The applicant and respondent by counterclaim, 0955824 B.C. Ltd., doing business as Van Pro Disposal (Van Pro), says the respondent, United Pallet's & Crate's Inc. (United), owes it for unpaid waste disposal services.
2. Van Pro says that in 2017 it purchased assets and contracts from Housewise Construction Ltd dba Segal Disposal (Segal). United contracted with Segal for waste disposal services with a 5-year term starting on February 17, 2014.
3. The date the contract was terminated is in dispute. Van Pro claims \$2,081.46 in liquidated damages, \$1,417.39 in debt for services provided, and \$519.75 for bin removal fees and fuel surcharges.
4. United denies liability and counterclaims \$2,240 for disposing of waste itself, \$900 for bin removal, \$500 for waste clean-up and storage, and \$200 for time spent finding a new waste disposal service provider.
5. Van Pro is represented by Xia Fan, an employee or principal. United is represented by Satendra Dular, an employee or principal.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
7. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects,

both parties in this dispute call into question the credibility of the other. Credibility of witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not necessarily required where credibility is in issue. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Bearing in mind the tribunal's mandate that includes proportionality and a prompt resolution of disputes, I decided to hear this dispute through written submissions.

8. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under tribunal rule 9.3(2), in resolving this dispute the tribunal may make one or more of the following orders:
 - a. order a party to do or stop doing something;
 - b. order a party to pay money;
 - c. order any other terms or conditions the tribunal considers appropriate.

ISSUES

10. The issues in this dispute are:
 - a. Does United owe Van Pro for services performed?
 - b. Is Van Pro entitled to liquidated damages under the contract?
 - c. Does United owe Van Pro for bin removal?
 - d. Does Van Pro liable owe United for any reason?

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, each party must prove its claim on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. United signed a "customer service agreement" with Segal on February 17, 2014 (contract). The service location was an address on 134th Street in Surrey, BC. On June 1, the agreement was amended to add a second location at 111A Avenue in Surrey, which later moved to Timberland Road. The contract's relevant terms are as follows:
 - a. The monthly charge is \$50 for 1 waste bin pickup and \$25 for 1 cardboard bin pickup. The monthly charge for the additional 1 waste bin pickup at the 111A Avenue location was \$50.
 - b. Bin delivery is \$85 each, container exchange is \$150 each, and removal is \$150 each.
 - c. There is a fuel surcharge of "currently" 10% and a levy of 10% for something illegible.
 - d. The customer can cancel the contract with written notice by registered mail to Segal at least 90 days, but not more than 120 days, before the end of the existing term (the cancellation window).
 - e. Segal reserves the right to adjust its monthly rates.
 - f. Interest is payable on overdue accounts past 30 days at the rate of 2% per month or 24% per year.
 - g. If the customer attempts to terminate the agreement before the term's expiry, Segal may, at its option, accept the customer's repudiation. In that case the customer agrees to immediately pay liquidated damages of the greater of the previous 9 months of billing, or the balance of the term remaining on the agreement.

- h. Segal is entitled to assign the agreement at any time without the customer's consent.
13. Many of these terms and conditions are found on the back page of the two-page contract. United argued that the back page of the contract was not present when the contract was signed. Under the heading "Special Instructions" a note is handwritten: "Customer had read & accepted all terms & conditions at back." As well, above the signature for United's representative, the contract says
- This is a legal binding agreement subject to the Terms and Conditions specified on the reverse side. By signing this agreement, Customer acknowledges that he or she or its authorized signatory has read, understood and agreed to this Agreement and these terms and conditions.
14. The contract is signed by United's director, SD. I find that by having its director sign the front page of the contract, United agreed to all its terms and conditions.
15. Van Pro submitted a February 29, 2016 letter from United attempting to terminate the contract due to service problems. Although neither party explained the letter, I find that it did not have the effect of terminating the contract because waste removal services and payment for those services continued uninterrupted. I find nothing turns on the February 29 letter.
16. Effective February 1, 2018, Segal assigned its contracts with United to Van Pro, which was permitted by the contract as noted above. This is consistent with January 2018 correspondence from Segal announcing the name change to Van Pro.
17. For the 111A/Timberland location, Van Pro's records show that United paid for services to October 2017. Based on email correspondence, I find that United advised Segal that it wished to cancel services at that location in November 2017.
18. For the 134th Street location, Van Pro says Segal's records show that United paid up to January 2018. There are no records confirming when services were provided. From email correspondence, I have determined that United continued to require

service until April 2018. It is not clear whether any services continued after April 2018. United says it returned the bins to Segal or Van Pro in April 2018 as it was “fed up with them being non responsive.” Based on that, I find United attempted to terminate the contract in April 2018.

19. The parties’ contract states that if United attempts to terminate the contract other than during the cancellation window, Van Pro is entitled to liquidated damages.
20. On August 1, 2018, Van Pro sent United invoices for liquidated damages for each service location. For the 134th Street location, Van Pro charged the equivalent of 9 months of invoices plus GST, totaling \$559.91. For the 111A/Timberland location, Van Pro charged the equivalent of 9 months of invoices plus GST, totaling \$953.51.
21. Whether the liquidated damages clause is enforceable depends on whether it is a pre-estimate of damages or a penalty. The court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered virtually identical language and found the clause enforceable. I am bound by the court’s decision in *Tristar*. I cannot conclude that the damages estimated in the clause were oppressive, extravagant or so unreasonable as to justify interference with the parties’ contract. Van Pro is entitled to its liquidated damages in the amount of \$1,513.42.
22. I turn now to Van Pro’s debt claim for services provided. Van Pro submits that on February 23, 2018 it sent United a final invoice for the 111A/Timberland location with liquidated damages and a bin removal fee, but United refused to pay, so “the agreement [was] still not terminated properly and still valid.” If Van Pro is arguing that it had the right to continue invoicing for services it was not providing even after claiming liquidated damages, I disagree. Liquidated damages are a pre-estimate of the damages suffered by one party if the other party prematurely terminates the contract. Once Van Pro elected to consider the contract terminated, Van pro could not continue to invoice United.
23. The February 23, 2018 invoice that Van Pro referred to is not in evidence. Van Pro’s statement for 111A/Timberland shows a balance of \$0 as of October 2017. The

outstanding balance as of February 23, 2018 was \$298.40. I find United owes this amount. There is no evidence that any services were provided after that date. For the 134th Street location, the balance was \$0 as of January 30, 2018. I allow Van Pro's February invoice of \$125.92. The total amount is \$424.32.

24. The parties' contract permits a \$150 fee for bin removal. There is dispute over who removed the bins. On August 1, 2018, Van Pro invoiced United for removing three bins from the 134th Street location. United says it paid a third party to remove a bin, on 2 occasions, and Van Pro returned the unwanted bin. United submitted photos of a third-party tow truck loading a bin with Segal branding. One of the photos has a hand-written date of April 18, 2018. There are no invoices provided.
25. Based on the parties' correspondence and the lack of a dated towing invoice, I find the most likely explanation is that United paid a third-party towing company to remove a bin from its closed 111A/Timberland location and return it to Van Pro. Van Pro said that because United had agreed to pay for three bins, United was required to take the bin at its 134th Street location, so it delivered the bin there. I find this was an unreasonable response given Van Pro knew United did not require an additional bin at that location. I find that Van Pro should have accepted the returned bin, and therefore is only entitled to payment for the 2 bins it removed from the 134th Street location (\$346.50 including fuel surcharge and GST).
26. Turning to United's counterclaims, for the following reasons I dismiss the claims. United claimed \$2,240 for disposing of its own waste from the bins on 8 occasions. United provided no indication of when it performed those activities, and no documentation of the expenses incurred, such as invoices from a third party. This also conflicts with Van Pro's records of United's payments. In the absence of evidence of the dates the bins were not picked up and the costs incurred as a result, I decline to allow the claim.
27. United claimed \$900 to remove bins and deliver them to Segal. As described above, I have accepted that United returned one bin and I reduced Van Pro's charges for

bin removal to reflect that. Again, there are no invoices or receipts showing actual costs incurred, so I decline to allow this claim.

28. United claimed \$500 for waste not being removed and for storing waste or bins on its property, and for clean up due to overflow. There are no details regarding dates that the bins or waste were stored or invoices documenting any costs incurred, so I decline to allow this claim.
29. United claimed \$200 for time spent to find a new service provider. Given my finding that United decided to terminate the contract, I decline to allow this claim.
30. I find Van Pro is entitled to pre-judgment contractual interest at the rate of 24% per year on its invoiced amounts, as per the contract. Van Pro is also entitled to interest under the *Court Order Interest Act* (COIA) on the liquidated damages from August 1, 2018.
31. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find that Van Pro is entitled to reimbursement of \$175 in tribunal fees. I decline to grant Van Pro's requested order that United pay \$25 for the default decision fee that was cancelled at United's request. I allow Van Pro's claim for \$30 in dispute-related expenses for a company search to confirm United's legal name and address for service and \$50 for serving documents.

ORDERS

32. Within 30 days of the date of this order, I order United to pay Van Pro a total of \$2,800.35, broken down as follows:
 - a. \$770.82 in debt (\$424.32 for services + \$346.50 for bin removal),
 - b. \$235.40 in contractual interest on the debt,
 - c. \$1,513.42 in liquidated damages,

- d. \$25.71 in pre-judgment interest under the COIA on the liquidated damages award, and
 - e. \$255.00 for \$175.00 in tribunal fees and \$80.00 for dispute-related expenses.
33. Van Pro is entitled to post-judgment interest, as applicable.
34. United's counterclaim is dismissed.
35. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.
36. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member