



Civil Resolution Tribunal

Date Issued: April 22, 2020

File: SC-2020-000172

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Super Industries(2008) Ltd.*,
2020 BCCRT 437

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

SUPER INDUSTRIES(2008) LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a waste disposal contract. The applicant, 0955824 BC Ltd. dba Van Pro Disposal, says the respondent, Super Industries(2008) Ltd., breached the contract by failing to pay for services and failing to cancel in accordance with the contract's terms. The applicant claims a total of \$2,417.97: \$425.59 as a "garbage service fee", \$1,819.13 in liquidated damages, and \$173.25 for bin removal, fuel surcharges, and GST.
2. In 2017, the applicant bought certain assets and contracts from Housewise Construction Ltd dba Segal Disposal (Segal), including the 5-year July 2013 contract at issue in this dispute, which the applicant says was automatically renewed in July 2018 for an additional 5-year term.
3. The respondent says it terminated the contract "by mail". The respondent also says it never signed an "actual agreement" and that the contract's terms and conditions were "not clearly provided and not communicated at all".
4. The applicant is represented by a business contact, XF, along with a representative, WA, who is not a lawyer. The respondent is represented by an employee or principal, ST.

JURISDICTION AND PROCEDURE

5. 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* (CRTA). 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.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Bearing in mind the

tribunal's mandate of proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

7. 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.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is to what extent, if any, is the respondent obligated to pay the applicant for waste disposal services and liquidated damages.

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant must prove its claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision. The respondent filed a Dispute Response at the outset of this proceeding and provided responses to a submitted Statement of Facts. However, the respondent chose not to submit evidence or written submissions for this decision, despite being given the opportunity to do so.
11. As referenced above, the applicant says the respondent is bound by a 5-year agreement with Segal made on July 10, 2013, which automatically renewed for another 5-year term in July 2018. I address this below.
12. The parties agree that the cost of waste removal services began at \$130 plus taxes in 2013, and increased to \$192.50 plus taxes by 2018. I infer these figures refer to monthly rates. The parties also agree that dump fees were additional and varied

based on weight. The parties further agree that the respondent paid in full for the applicant's services from July 2013 until June 2018.

13. The contract's other relevant terms included:

- a. The agreement will be renewed for successive 5-year terms unless the customer gives Segal written notice by registered mail not more than 120 days and not less than 90 days before any renewal date (also known as a cancellation window).
- b. Interest is payable at 24% per year on amounts overdue past 30 days.
- c. If the customer purports to terminate the agreement before the term's expiry, Segal can accept the purported termination and end the agreement, in which case the customer agrees to pay Segal liquidated damages, either the sum of the customer's monthly billing for the most recent 9 months or the sum of the balance of the remaining term. For "hook-lift" accounts, which the applicant also calls "roll-off" accounts, there is an additional "nine times service charge on top of the nine months rental fee". This contract was for "roll-off" service.
- d. The agreement is legally binding on both Segal and the customer and their respective successors and permitted assigns.
- e. Segal was entitled to assign the agreement at any time without the customer's consent.

14. Since the respondent does not dispute it, I accept that Segal assigned this contract to the applicant.

15. First, the parties disagree about whether there is a binding contract, as the respondent says it did not sign anything and the contract's terms and conditions were not clearly communicated. However, the copy of the contract in evidence shows on its first page a person with initials WKT signed on behalf of the respondent. Bearing in mind the respondent chose not to provide evidence or submissions, I accept the respondent signed the July 10, 2013 contract, which on

the first page it says the customer has read and accepted all the terms on the back page.

16. Second, the parties disagree about whether the applicant breached the contract's terms when it increased its fees. The respondent says it is not liable for fees after July 2018, although I note the applicant's submission is that the respondent stopped paying in October 2018. In any event, the contract's "Terms & Conditions" page, which I accept the respondent agreed to, allows for fee increases under its "Rate Adjustments" clause. I find the evidence before me does not show the applicant breached the parties' contract when it increased the fees.
17. Third, the parties disagree about whether the respondent properly terminated the contract in accordance with its terms. As noted, the respondent provided no evidence. In the Statement of Facts, the respondent only says it terminated the contract "through mail". The respondent does not say it terminated by registered mail within the cancellation window, as required by the contract. I find the respondent did not terminate the contract as required by the contract.
18. The applicant did not provide copies of the invoices it sent the respondent. Ordinarily, I might conclude the applicant has failed to prove its claimed damages where the applicant provided only a statement of account, which is what it did here. However, in this case the applicant's statement coincides with its undisputed submission that the respondent stopped paying in October 2018. In particular, the statement shows the respondent's last payment was on September 6, 2018, leaving a \$404.27 balance owing.
19. The statement then refers to an October 1, 2018 invoice, due on October 16, 2018, for \$1,840.45. Most importantly, the statement provides a breakdown: \$472.50 is for bin rental and service, and \$1,260 is for liquidated damages (9 months x \$140), plus \$21.31 in contractual interest and \$86.63 in GST. The statement then shows an October 2, 2018 invoice for \$173.25, for bin removal, and fuel surcharge, and GST. The statement's \$2,417.97 balance matches the applicant's total claim in this dispute.

20. Again, the respondent did not provide any evidence or submissions for this decision. He did not say the services were not provided and he did not say the calculations were incorrect. I have addressed above that rate increases were permitted. I have also rejected above the respondent's arguments that it did not sign the agreement or that the terms were not explained to it.
21. I find the applicant is entitled to its debt claim as set out in the statement. This amounts to the \$404.27 balance owing as of September 6, 2018, plus \$21.32 in contractual interest at 24% yearly as of January 31, 2020. It is also entitled to the \$173.25 bin removal claim.
22. I also find the applicant is entitled to liquidated damages as set out in the statement, which total \$1,732.50 plus \$86.63 GST, for a total of \$1,819.13, the amount claimed.
23. The applicant claims 24% contractual interest, which I find applies to the \$404.27 and the \$173.50 claims. For the \$404.27, it runs from February 1, 2020 (\$21.53), as I have already allowed the claimed \$21.32 above. For the \$173.25, it runs from November 2, 2018 (\$61.17), the date the bin removal invoice was due. Together, with the \$21.32 noted above, the applicant's total contractual interest award is \$104.02.
24. The *Court Order Interest Act* (COIA) applies to the tribunal and applies to the liquidated damages claim. This equals \$50.86, calculated from November 1, 2018, the date the liquidated damages invoice was due.
25. Under section 49 of the CRTA and tribunal rules, as the applicant was successful I find it is entitled to be reimbursed for \$125 in paid tribunal fees. The applicant also claims \$11.20 for a company search fee, which I find is reasonable and I allow it.

ORDERS

26. Within 21 days of this decision, I order the respondent to pay the applicant a total of \$2,687.98, broken down as follows:

- a. \$577.77 in debt,
- b. \$1,819.13 in liquidated damages,
- c. \$104.02 in 24% annual contractual interest on the \$577.77,
- d. \$50.86 in pre-judgment interest under the COIA on the \$1,819.13, and
- e. \$136.20, for \$125 in tribunal fees and \$11.20 in dispute-related expenses.

27. The applicant is entitled to post-judgment interest as applicable.

28. Under section 48 of the CRTA, 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. The Minister of Public Safety and Solicitor General has issued Ministerial Order No. M086 under the *Emergency Program Act*, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

29. Under section 58.1 of the CRTA, 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.

