Civil Resolution Tribunal

Date Issued: May 4, 2020

File: SC-2019-008553

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 B.C. Ltd.DBA Van Pro Disposal v. Quick Global Logistics Ltd.*, 2020 BCCRT 484

B E T W E E N :

0955824 B.C. LTD.DBA VAN PRO DISPOSAL

APPLICANT

A N D :

QUICK GLOBAL LOGISTICS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kathleen Mell

INTRODUCTION

1. This dispute is about a waste disposal contract. The applicant, 0955824 BC Ltd. dba Van Pro Disposal, says the respondent, Quick Global Logistics Ltd., breached the contract by failing to pay for its services and failing to cancel in accordance with the contract's terms. The applicant claims a total of $2,817.86: $1042.52 for services it says it provided until April 2019, $346.50 for 2 bin removals and $1,428.84 for liquidated damages.

2. The respondent says that the applicant provided bad service. It also says that the applicant provided inaccurate invoices and that the contract was unfair. The respondent also states that the bin removal cost should have been $150.00 each and questions why the applicant is charging $346.50.

3. The applicant is represented by a company manager, XF. The respondent is represented by an organizational contact.

JURISDICTION AND PROCEDURE

4. 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.

5. 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, this dispute amounts to a "it said, it said" scenario with both sides calling into question the credibility of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a

speedy resolution of disputes, I find that an oral hearing is not necessary. I also note the decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. I therefore decided to hear this dispute through written submissions.

6. 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.

7. 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

8. 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

9. In a civil dispute 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.

10. The respondent entered into a contract with Segal Disposal (Segal) on May 14, 2016 which stated that the respondent's garbage would be picked up once a month and cardboard would be picked up every two months. The agreement indicated that it was a legal binding agreement and that the respondent was subject to the terms and agreements specified on the reverse side. A representative of the respondent signed the agreement.

11. The contract's relevant terms stated that:

a. There was a monthly charge of $60 for 1 waste bin pick-up per month and $15 for cardboard pick-up once every two months. Bin removal was $150 per bin.

b. The agreement would be renewed for successive 5-year terms unless the customer give Segal written notice by registered mail not more than 120 days and not less than 90 days before and renewal date (also known as a cancellation window).

c. Interest was payable at 2% per month on amounts overdue past 30 days.

d. Suspension of service due to slow or non-payment was not Segal's termination of the agreement. The customer was responsible for payments during a suspension period.

e. If the customer purported to terminate the agreement before the term's expiry, Segal could accept the purported termination and end the agreement, in which case the customer agreed to pay Segal liquidated damages, either the sum of the customer's monthly billing for the most recent 12 months or the sum of the balance of the remaining term.

f. The agreement was legally binding on both Segal and the customer and their respective successors and permitted assigns.

g. Segal was entitled to assign the agreement at any time without the customer's consent.

12. I accept that Segal assigned its accounts receivable to the applicant as of February 1, 2018, which is permitted by the contract as noted above.

13. I turn now to the relevant chronology.

14. The respondent submits that it called the applicant to complain continuously before September 2018 about its lack of service and that some months the applicant did not pick up the garbage at all. The respondent says that it made complaints by phone call but then began to send emails.

15. The respondent submitted emails beginning in October 2018. The respondent has also provided emails it sent to the applicant with pictures of garbage and cardboard that was not picked up. The applicant replied to the email saying it picked up the garbage on October 4, 2018 and then again on November 1, 2018. The respondent points out that the applicant's pick-ups are for the month that has already passed and that they are not picking up the garbage or cardboard on time.

16. The respondent also noted in the emails that the applicant only performs pick-ups after it calls and emails to complain. The respondent ultimately told the applicant multiple times by email in November 2018 that it considered the agreement at an end. The difficulty for the respondent is that its emails requesting termination did not comply with the contract's requirement that the respondent customer terminate by registered mail, within the cancellation window. The respondent does not suggest it ever sent a termination notice by registered mail, as required by the contract. However, that is not the end of the matter.

17. The respondent also submits that after November 2018 the applicant did not pick up the garbage or cardboard although the applicant states that it provided service into April 2019 and has provided two employees' affidavits saying this.

18. First, I accept the respondent's evidence that in the fall of 2018 the applicant did not pick up the garbage or cardboard as scheduled and that it did not pick up the garbage or cardboard from December 2018 onward. My reasons follow.

19. The applicant submitted a brief affidavit of AWY, sworn February 11, 2020. AWY said they were the applicant's driver. AWY swore that from May 26, 2016, Segal (and later the applicant) serviced the respondent "on time and follows the schedule", which AWY said was waste service once per month and cardboard service once every two months. AWY does not explain how they can recall every month or twice-monthly service for this one customer, dating back to 2016, nor did AWY provide any supporting documentation such as contemporaneous customer records or trip sheets. Given these concerns, I place no weight on AWY's evidence.

20. The applicant provided a February 11, 2020 affidavit from MS, who also said they were "the driver" for the applicant. BD's affidavit is virtually identical to AWY's, and similarly has no supporting documentation. For the same reasons as above, I place no weight on BD's affidavit.

21. The applicant did not provide any invoices from October 2018 until April 2019. It did not submit any written record in evidence, such as contemporaneous pick-up trip sheets or similar documents, in response to the respondent's November 2018 express complaint and submission that the applicant had not provided services as per the contract. The applicant bears the burden of proof in this dispute and I find it is in the best position to prove that it provided once monthly garbage service and the twice monthly cardboard service as agreed, rather than the respondent proving no service was provided. I find the applicant has not met that burden.

22. The question then becomes whether the applicant's service was so poor such that it can be said the applicant fundamentally breached the parties' contract first.

23. As set out in *Super Save Disposal Inc. v. 315363 B.C. Ltd*., 2019 BCCRT 190, a non-binding tribunal decision that I find persuasive, not every breach of a contract is a fundamental breach. Where a party fails to fulfill a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract, it is a fundamental breach. See *Hunter Engineering Co. v. Syncrude Canada Ltd.,* 1989 CanLII 129 (SCC). Put another way, a fundamental breach is a

breach that destroys the whole purpose of the contract and makes further performance of the contract impossible. See *Bhullar v. Dhanani*, 2008 BCSC 1202.

24. Whether a breach of contract is a fundamental breach matters because there are different remedies available to the wronged party. For most breaches of contract, the wronged party can claim against the other party for damages arising from the breach. For a fundamental breach, the wronged party can terminate the contract immediately. If the wronged party terminates the contract because of a fundamental breach, they do not have to perform any further terms of the contract. See *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BC CA).

25. Applied to this case, if the applicant fundamentally breached the contract, the respondent was entitled to terminate the contract and be relieved from any further performance of the contract. Because the applicant's monetary claims are all based on the contract, the applicant would not receive any money if it fundamentally breached the contract.

26. The respondent essentially submits that the applicant's failure to pick-up the garbage was a fundamental breach because the heart of the contract is regular garbage and cardboard pick-up. I agree.

27. The test for whether a breach of contract is a fundamental breach is an objective test. That means that I must assess the nature of the breaches from the perspective of a reasonable person in the respondent's position. I find that a reasonable person would consider the contract to be completely undermined because the applicant repeatedly failed to pick up the garbage and cardboard, and after November 2018 did not perform any pick-up service at all, although it claims it did.

28. In the *Super Save* decision cited above where the tribunal member found there was no fundamental breach, the waste hauler had only missed garbage pick-up for 5 days. Here, the applicant has not proved that it picked up the garbage and cardboard in September 2018 and that it continued to pick up after November 2018. Again, there are no emails or invoices from after November 2018 onward showing

that the applicant was providing the contracted services it claims it did. I find the applicant fundamentally breached the waste disposal contract and so I find the respondent is not bound by its terms. On that basis, I dismiss the applicant's claims.

29. Even if I had not found the applicant had fundamentally breached the parties' contract, I would dismiss the applicant's claims. While the applicant makes separate claims for specific dollar amounts, it did not provide supporting evidence. The applicant did not submit copies of any invoices dated later than April 2018. For the most part I cannot tell what the outstanding balances were for. Further, the applicant does not adequately explain the dates it provided service for which the respondent allegedly did not pay. The applicant does not adequately explain the period of time for which it claims liquidated damages, other than to say it is entitled to charge the most recent 12 months service charge as liquidated damages for a total of $1,428.84. Overall, on balance I find the applicant's claimed damages unproven.

30. Given my conclusions above, I find the applicant's claims must be dismissed.

31. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. The successful respondent did not pay any fees or claim expenses.

ORDER

32. I dismiss the applicant's claim and this dispute.

Kathleen Mell, Tribunal Member