



Civil Resolution Tribunal

Date Issued: June 1, 2020

File: SC-2020-000371

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC LTD. (dba Van Pro Disposal) v. Safari Auto Tires Ltd.,*
2020 BCCRT 598

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

SAFARI AUTO TIRES LTD.

RESPONDENT

A N D :

0955824 BC LTD. DBA VAN PRO DISPOSAL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for garbage disposal services.
2. The applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Safari Auto Tires Ltd. (Safari), failed to pay for garbage disposal services and breached their contract for those services. Van Pro claims \$583.52 for unpaid garbage disposal fees, and \$965.66 for liquidated damages and a garbage bin pickup fee. This totals \$1,549.18.
3. Safari says Van Pro breached the contract by failing to pick up garbage as agreed, and so it terminated the contract and does not owe the claimed amounts. Safari counterclaims for a refund of \$418.18 for garbage pickups that it says did not occur plus a \$100 security deposit on a garbage bin. Van Pro denies owing any refund or deposit.
4. The parties are each represented by an employee or principal.

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. This dispute involves an "it said, it said" scenario in some respects, with each side calling into question the credibility of the other. Credibility of witnesses cannot be determined solely by the test of whose personal demeanour appears to be the most truthful in a courtroom or tribunal proceeding. In the decision *Yas v. Pope*, 2018 BCSC 282, the

court recognized that oral hearings are not necessarily required where credibility is in issue. Keeping in mind that the tribunal's mandate includes proportionality and a speedy resolution of disputes, I find I can properly assess and weigh the written evidence and submissions before me, and that an oral hearing is not necessary. Therefore, I decided to 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.

ISSUES

9. Does Van Pro owe Safari a refund for failing to pick up garbage as agreed and for a garbage bin security deposit, and if so, how much?
10. Is Safari liable for unpaid garbage disposal fees, and liquidated damages for breaking the garbage contract, and if so, how much does it owe?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Van Pro must prove its claim on a balance of probabilities, and Safari must prove its counterclaim to the same standard. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

Does Van Pro owe Safari a refund for failing to pick up garbage as agreed and for a garbage bin security deposit, and if so, how much?

12. The parties signed a garbage contract on September 10, 2018. The contract included the following terms:

- a. Van Pro would pick up garbage from Safari once per month, for \$55 plus GST.
- b. Van Pro would deliver a garbage bin to Safari for \$85. Other bin exchange and bin removal fees were crossed out.
- c. A 10% fuel levy, and a 10% environmental levy, applied to the services.
- d. Safari accepted all terms written on the back of the 1-page contract.
- e. Safari was required to keep garbage bins accessible to Van Pro vehicles.
- f. Van Pro could change the rates it charged based on increases in disposal facility costs.
- g. Safari agreed to pay Van Pro monthly, within 15 days of Van Pro's invoices sent by regular mail, email, or fax. Interest was charged after 30 days.
- h. The contract was for a 5-year term. It would automatically renew for further 5-year terms unless terminated by Van Pro or Safari.
- i. Safari could only terminate the contract by providing written notice to Van Pro, by registered mail, between 90 and 120 days before the expiry of the contract term (the cancellation window). In this case, that would be around May 2023 and June 2023.
- j. If Safari purported to terminate the contract before it expired, Van Pro could either affirm the contract and continue to provide its services, or could accept the termination. If the termination was accepted, Safari agreed to pay Van Pro liquidated damages as compensation, that were the greater of:

- i. the sum of Van Pro's monthly billing to Safari in the most recent 12 months, or if none, the projected billing for the first month following termination times 12, and
 - ii. the sum of the billings for the remainder of the contract term.
13. Safari says the garbage contract was for "month to month" service, which I infer to mean Safari expected it could terminate the contract at any time with no further obligation. However, the contract says it was for a 5-year term. I find there is no evidence that the parties agreed to a different term, or that Safari ever terminated the contract in accordance with its terms, which required written notice by registered mail within the cancellation window. I find the contract's term was 5 years from September 10, 2018, and Safari was not allowed to terminate it before 2023.
14. Although the contract said that Van Pro would send written monthly invoices to Safari, none are in evidence. Van Pro submitted a Safari account statement dated April 30, 2020, which I find shows Van Pro's records of all Safari billings and payments.
15. Safari's description of the payments it made agrees with the Van Pro statement. Safari says it paid \$167.48 to a Van Pro truck driver when he first emptied the bin in early October 2018. Safari says this was for one month of garbage services and fees, plus a \$100 deposit on the garbage bin that it had not initially expected to pay.
16. The contract says there is an \$85 bin delivery charge, which Van Pro's statement says came to \$98.18 after taxes and fees. There is no evidence that this delivery charge was a security deposit, as Safari says, or that it would be refunded. The \$98.18 for bin delivery plus \$69.30 Van Pro's statement says was charged for October garbage service and fees equals the \$167.48 paid by Safari.
17. However, according to Van Pro's account statement, Safari also owed \$46.43 for the period from September 10, 2018 to September 30, 2018, which it did not pay. I find the Van Pro monthly fees were based on the months of service provided, which

included one pickup per month and the use of a Van Pro garbage bin, and were not a per-pickup fee. So, I find Safari needed to pay \$46.43 for September 2018.

18. Safari says it paid \$69.30 on November 10, 2018. Safari says this was an increased fee that Van Pro charged due to Van Pro's increased disposal costs. I disagree, and I find the contract provided for a \$55 fee plus two 10% levies and GST, which totals \$69.30. According to Van Pro's account statement, it increased Safari's monthly fee to \$57.17 plus levies and GST starting in January 2019, and to \$62.89 plus levies and GST in January 2020, due to increased tipping fees it needed to pay. This is supported by 2019 and 2020 tipping fee documents submitted by Van Pro that show tipping fee increases. I find the contract permitted Van Pro's fee increases.
19. Safari says Van Pro did not pick up any garbage after November 2018, until May 2019. Van Pro denies this, and provided statements from two of its drivers saying that Van Pro followed its schedule and serviced Safari on time, and that they continued to "provide service" until January 13, 2020. However, no schedule or pickup verification documents are in evidence, and there is no evidence that Van Pro suspended Safari's service for non-payment. I find the drivers' statements do not show that any particular pickup was made or attempted between November 2018 and May 2019.
20. To prove its counterclaim, Safari must show that its garbage was not picked up during this period. The parties disagree about whether these pickups occurred. I find there is no evidence showing that Van Pro missed these garbage pickups, such as witness statements or correspondence complaining of or confirming missed pickups.
21. Further, Safari acknowledges that when Van Pro again picked up its garbage on June 10, 2019, it paid Van Pro \$475.93. This amount equals the unpaid monthly fees of \$46.43 for September 2018, \$69.30 for December 2018, and \$72.04 for January 2019 to May 2019. I find this payment brought Safari's account with Van Pro up to date.

22. I find it unlikely that Safari would have paid Van Pro on June 10, 2019 if Van Pro had missed several months of garbage pickups as Safari says. Safari says it made the June 10, 2019 payment because Van Pro agreed to terminate its service, pick up the garbage bin, and refund the alleged \$100 bin deposit. I find the parties did not mutually approve a termination agreement, because there is no evidence that Van Pro agreed to that arrangement. I find the contract's written terms about how termination must occur are inconsistent with an undocumented verbal agreement to terminate with more lenient terms. I find that Safari's June 10, 2019 payment is evidence either that Van Pro picked up the garbage as agreed, or that Safari did not take issue with any missed garbage pickups before that date.
23. On balance, I find Safari has failed to prove that Van Pro missed any garbage pickups between November 2019 and May 2019. Further, I find the contract allowed the \$98.18 delivery charge for the garbage bin, which the parties agree was delivered, and that there was no \$100 deposit for the bin. So, I find Van Pro does not owe Safari the amounts claimed for missed garbage pickups and a garbage bin deposit. I dismiss Safari's claims against Van Pro.

Is Safari liable for unpaid garbage disposal fees, and liquidated damages for breaking the garbage contract, and if so, how much does it owe?

24. First, I will address whether Van Pro continued to pick up Safari's garbage after June 10, 2019. Van Pro says it continued to provide the contracted garbage service after June 10, 2019, and tried to contact Safari several times about payment. Safari says Van Pro did not pick up its garbage bin after that date, although it called and sent emails to Van Pro about it several times. No correspondence between the parties is in evidence. I find these unsupported, conflicting stories alone do not persuade me that Van Pro continued to pick up garbage after June 10, 2019.
25. The parties agree that Van Pro picked up the garbage bin in mid-January 2020. Photos show that the bin was surrounded by stacks of car tires and unplowed snow, and was not accessible until two people removed the tires and snow. However, Van

Pro did not say that the bin was inaccessible during previous pickup attempts, so I find nothing turns on this.

26. Van Pro's account statement for Safari says Van Pro continued to charge Safari for garbage services until January 14, 2020, when Van Pro accepted Safari's purported termination of the contract. I will address the termination below. Van Pro's drivers also said they continued to provide service to Safari until January 13, 2020. However, the drivers do not say exactly when they picked up garbage after June 10, 2019. Van Pro provided no records showing that any garbage pickups were attempted or when. Van Pro provided no evidence that it sent any invoices or other written payment requests to Safari after June 10, 2019. Safari says Van Pro did not visit Safari at all until it picked up the garbage bin in mid-January 2020. On balance, I find the Van Pro has failed to prove that it attempted any garbage pickups in July 2019 or later.
27. Turning to the contract termination, I find that Safari was not permitted to terminate the contract before 2023. I also accept Safari's evidence that as of June 10, 2019, it expected Van Pro to retrieve the garbage bin and end its garbage service. So, I find that Safari broke the contract by treating it as terminated on June 10, 2019. I find that Safari broke the contract before the dates in July 2019 and after that Van Pro was required to make further garbage pickups.
28. Van Pro says it later accepted Safari's purported termination of the contract on January 14, 2020, as it could do under the contract. Van Pro says this means it is entitled to liquidated damages from that date. However, Van Pro failed to prove it provided any service under the contract in July 2019 or later, and I find there is no evidence that it issued any invoices or made any payment demands to Safari after June 10, 2019. As a result, I find that Van Pro effectively accepted Safari's purported termination as of June 10, 2019, and not January 14, 2020. This means that Safari only failed to pay the \$72.04 monthly fee from June 1, 2019 to June 10, 2019, which equals \$24.01. I find Safari still owes this amount to Van Pro.

29. I find Van Pro is entitled to liquidated damages under the contract. Van Pro claims \$965.66, which the account statement says is 12 months of fees at January 2020 rates plus a \$150 bin removal fee with fuel surcharge and GST. I find Van Pro is not entitled to a bin removal fee, as that charge was crossed out in the contract. I find that Van Pro declined to seek an amount equal to the total monthly fees remaining under the contract, as was permitted. Instead, Van Pro claims 12 months of fees. Since the contract was terminated less than 12 months after it began, I find that under the contract, Van Pro is entitled to 12 months of projected billing based on the fees in the first month following termination. This is $\$72.04 \times 12$, which equals \$864.48.
30. As a result, I allow Van Pro's claims in part. Safari owes Van Pro \$24.01 in debt for unpaid monthly fees, and \$864.48 in liquidated damages, for a total of \$888.49.

TRIBUNAL FEES, EXPENSES, AND INTEREST

31. Van Pro claims 26.82% annual interest on amounts owed to it, as set out in the contract. I find this contractual interest is owed on the \$24.01 in debt, which I find was due 30 days after the June 10, 2019 garbage pickup. So, I find contractual interest applies from July 10, 2019 until the date of this decision. This equals \$5.79.
32. Van Pro is also entitled to pre-judgment interest on the \$864.48 in liquidated damages under the *Court Order Interest Act*. There is no evidence before me that Van Pro ever sent Safari an invoice or request for those damages. I find the first evidence that Van Pro communicated its liquidated damages claim to Safari was in Safari's Dispute Response, which said the Dispute Notice was provided on January 28, 2020. The contract had a 30-day payment term. So, I find pre-judgment interest on the liquidated damages is calculated from February 27, 2020 until the date of this decision. This equals \$4.43.
33. 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. Van Pro was partially successful in its claims, so I order

Safari to reimburse half of Van Pro's tribunal fees, which equals \$62.50. Safari was unsuccessful in its counterclaims, so I order no reimbursement of its tribunal fees. Van Pro claimed a company search fee expense of \$11.20, but provided no documentation showing this expense was paid, so I decline to order its reimbursement. No other dispute-related expenses were claimed.

ORDERS

34. Within 30 days of the date of this order, I order Safari to pay Van Pro a total of \$961.20, broken down as follows:

- a. \$24.01 in debt for unpaid garbage disposal fees,
- b. \$864.48 in liquidated damages,
- c. \$5.79 in contractual interest on debt,
- d. \$4.43 in pre-judgment interest on liquidated damages under the *Court Order Interest Act*, and
- e. \$62.50 in tribunal fees.

35. Van Pro is entitled to post-judgment interest, as applicable.

36. I dismiss Safari's counterclaims.

37. 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 a Ministerial Order 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.

38. 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.

Chad McCarthy, Tribunal Member