



# Civil Resolution Tribunal

Date Issued: July 2, 2020

File: SC-2020-000212

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Kim's Glasswork Co. Ltd.*,  
2020 BCCRT 732

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

**APPLICANT**

A N D :

KIM'S GLASSWORK CO. LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about a waste hauling agreement. The applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Kim's Glasswork Co. Ltd. (Kim), breached their waste hauling agreement, by refusing service and repudiating

the contract. Van Pro claims a total of \$4,307.69: \$2,118.44 in debt, \$2,016 in liquidated damages, and \$173.25 for bin removal and a fuel surcharge fee. Van Pro also claims contractual interest at 26.8% annually.

2. Kim's August 31, 2017 1-year contract (2017 contract) was with Housewise Construction Ltd. dba Segal Disposal (Segal). Van Pro says Segal's contracts were assigned to Van Pro as of February 2018.
3. Kim says Van Pro's claim is "made up" and that Kim properly cancelled the 2017 contract by registered letter. Kim denies signing a new contract with Van Pro on April 21, 2019 (2019 contract), as alleged by Van Pro.
4. Van Pro is represented by its manager WA. Kim is represented by Mill Chu, who I infer is a principal.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. The CRT 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 CRT 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 CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.
9. Kim submitted late 3 additional evidence items. Van Pro objects, and says it was denied an opportunity to respond to them. However, the evidence shows 1 of these late items is a duplicate of a previously submitted item that Van Pro did make submissions about. The other 2 late items are March 21 and 25, 2019 emails from Kim to Van Pro, which I find substantially reiterate evidence already provided. So, I find nothing turns on these 3 late items and there is no need for Van Pro to make further submissions about them.
10. Kim says that in its Dispute Response filed at the outset of this proceeding, it asked for all copies of “purchase conditions of contract from House Wise Construction DBA Van Pro”, but never received them. I infer Kim is referring to Van Pro’s purchase of Segal, documentation of which is not in evidence. However, as discussed below, Kim’s contract allows for assignment by Segal and on balance I accept that is what occurred, and I also note Van Pro’s purchase of Segal is mentioned in past non-binding CRT decisions (see for example *0955824 BC Ltd. dba Van Pro Disposal v. New Millenium Tire Centre Ltd.*, 2020 BCCRT 700 at paragraph 13). However, in its Dispute Response Kim also requested all copies of its “pay methods and invoices” along with all documents on how Van Pro calculated its claim, but Van Pro did not submit them in evidence. I address this below.

## **ISSUES**

11. The issues in this dispute are:
  - a. Did Kim properly cancel the 2017 contract?
  - b. Did Kim sign the 2019 contract and is there a contract in force beyond August 31, 2018?
  - c. Is Van Pro entitled to the claimed debt and liquidated damages?

## EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Van Pro bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

### ***The 2017 contract***

13. On August 31, 2017, on Kim's behalf a Ken Chu signed the 2017 contract with Segal. Service was effective September 1, 2017, and a handwritten notation on the first page said, "the first term is one year". This meant the 2017 contract expired on August 31, 2018, subject to renewal. The handwritten portion also noted that the customer Kim had read and accepted the terms "at back". The service frequency for 2 waste bins was "on call", at a price of \$100 per pick-up. It is undisputed Ken Chu is Kim's sole director.

14. The submitted "Terms & Conditions" page for the 2017 contract included the following relevant terms:

- a. The agreement will be automatically 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 the end of the existing term (the cancellation window).
- b. Interest is payable at 2% per month on amounts outstanding over 30 days. This figure is not expressed as an annual rate.
- c. If the customer tries to end or repudiate the agreement before the term's expiry, Segal can accept the customer's repudiation and the customer agrees to pay liquidated damages, based on:
  - i. 12 months of the customer's most recent monthly billings or projected billings, or
  - ii. the sum of the balance of the existing term.

- d. Segal is entitled to assign the agreement at any time without the customer's consent.
15. Kim says it cancelled the 2017 contract in August 2018. However, despite submitting a number of registered mail letters to Segal, dated from November 28, 2018 and later, there is no letter in evidence from Kim to Segal (or Van Pro) in August 2018. Van Pro denies receiving a letter in August 2018. More importantly, there is no evidence that Kim sent Segal a registered mail letter in the cancellation window, which was between February 28, 2018 and May 31, 2018. Kim also does not say it sent the cancellation within that cancellation window.
16. On balance, I find Kim did not terminate the 2017 contract as required by its terms. Based on the 2017 contract, it automatically renewed for a 5-year term, which would have ended August 31, 2022. However, that is not the end of the matter, as discussed below.

### ***The 2019 contract***

17. Van Pro says that around January 1, 2019, Kim asked to change its service from "on call" to "EOW", which I infer means "every other week". Van Pro says the change in service is why the 2019 contract was updated and signed on April 21, 2019, with a January 1, 2019 effective date. The relevant change from the 2017 contract was that the billings changed to \$168 monthly rather than \$148.84 monthly when it was "on call" service. Van Pro does not explain the delay in the contract being signed. Van Pro also says the 2019 contract was on Segal letterhead because Segal still "runs the business every day" and because Van Pro's sales department was not yet set up properly. I find this argument unpersuasive, given the 2019 contract was allegedly signed on April 21, 2019 and yet Segal assigned its contract to Van Pro in February 2018. If anything, Van Pro's argument supports a conclusion that its evidence is not reliable.
18. On its face, the 2019 contract is signed by Mill Wong with a stated position of manager. Kim's representative in this dispute, Mill Chu, denies signing this 2019

contract on April 21, 2019, and argues the date on the 2019 contract has been tampered with. Based on the evidence before me, including other signed waste hauling agreements, I infer Mill Chu and Mill Wong are the same person. I also infer Mill Chu and Ken Chu are somehow related and both are Kim representatives in business dealings.

19. On balance I find the signatures on the various agreements in evidence are not sufficiently similar when allegedly signed by the same person. I also agree with Kim that the 2019 contract's April 21, 2019 date appears to be altered, as the "9" looks darkened and appears to have been a 7 changed to a 9. I find Van Pro did not adequately address the alteration issue, which Kim expressly raised. All this supports my conclusion Van Pro has not proved Mill Wong signed the 2019 contract.
20. In summary, I find Van Pro has not proved Kim signed the 2019 contract. This means the terms of the 2017 contract were in force, unless and until either party breached the agreement or the contract was properly cancelled.

### ***Claimed remedies***

21. As noted above, Van Pro claims \$2,118.44 as a "garbage service fee", which I infer refers to a debt claim for services it says it provided. Van Pro also claims \$2,016 in liquidated damages, and a \$173.25 bin removal and fuel surcharge fee.
22. The evidence shows that at least since early 2019 Kim has consistently disputed the alleged debt and service, and as noted above asked that Van Pro produce copies of its invoices and payment records.
23. However, the only evidence Van Pro submitted in support of its claimed remedies was a July 1, 2019 document titled 'Statement' and a June 17, 2019 invoice for \$2,189.25. The invoice is for the liquidated damages claim, based on 12 months of service at \$168 per month, and \$173.25 for the bin removal and fuel surcharge fees, all rates including GST.

24. Kim says Van Pro failed to provide timely and professional services. Kim also says that Van Pro stopped providing disposal services as of late 2018, but “abandoned” their bins on Kim’s property. There is no supporting evidence from Van Pro that it provided timely service under the 2017 contract or under the 2019 contract, such as contemporaneous delivery records. In fact, apart from Van Pro’s submissions and the Statement, there is no evidence that Van Pro provided service at all after August 31, 2018.
25. I will deal with the debt claim first. Based on the Statement, as of September 1, 2018, Kim owed a \$27.56 balance for an August 1, 2018 invoice that replaced an earlier invoice. I find Van Pro has not established Kim owes that \$27.56, as there is no explanation for why the replacement invoice was necessary.
26. Next, the Statement shows 4 charges of \$148.84, for the months between September 1 and December 1, 2018, and 1 payment of \$148.84 on October 24, 2018. I infer Kim’s payment was for services provided before August 31, 2018. In the circumstances, given the absence of invoices and records supporting the alleged service, for the relevant 2018 period I find that Van Pro has not proved that it provided the services, particularly bearing in mind the 2017 contract was “on call” and yet the Statement indicates the same billing every month.
27. As of January 1, 2019, Van Pro’s billing shifted to \$160 per month, plus GST, for a total of \$168, consistent with the 2019 contract’s terms. However, I found above Van Pro has not proved Kim signed the 2019 contract, and again I find Van Pro has not proved it actually provided the services it claims for the period after January 1, 2019. On balance, I dismiss Van Pro’s \$2,118.44 debt claim. Given this, I do not need to consider the relevant interest calculation on the debt claim.
28. I turn then to the liquidated damages claim. According to the Statement, Van Pro issued invoice #18011 on June 17, 2019 for \$2,189.25, which included \$1,920 for 12 months at \$160 plus GST, for a total of \$2,016, the amount claimed in this dispute. Below the invoice #18011 reference, the Statement includes a line “VOID: continue the service”. I do not understand what this line means, and I find this

ambiguity does not support Van Pro's position that Kim had breached the contract or that Van Pro is entitled to liquidated damages.

29. I found above that Kim failed to cancel the 2017 contract within the cancellation window as required by that contract. However, as noted I have also found Van Pro has not proved it provided waste hauling services after August 31, 2018. If Van Pro fundamentally breached the parties' 2017 contract first by failing to provide timely service as required, then Kim is no longer bound the contract and does not have to pay liquidated damages.

30. I find Van Pro was in the best position to prove it provided the 2017 contract's services as required, and as noted above I find it did not do so. So, I find Van Pro has not proved it is entitled to the liquidated damages claimed. For the same reason, I find Van Pro has not proved it is entitled to the bin removal and fuel surcharge fees.

31. I dismiss Van Pro's claims. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their tribunal fees. Here, Van Pro was unsuccessful so I dismiss its claim for reimbursement of tribunal fees. Kim did not pay fees or claim dispute-related expenses.

## **ORDER**

32. I dismiss Van Pro's claims and this dispute.

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Shelley Lopez, Vice Chair