Civil Resolution Tribunal

Date Issued: July 23, 2020

Files: SC-2020-000395 and SC-2020-001764

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Pacific Organic Meat Ltd.*, 2020 BCCRT 816

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

PACIFIC ORGANIC MEAT LTD.

RESPONDENT

A N D :

REVOLUTION RESOURCE RECOVERY INC.

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member: Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about a waste hauling agreement. In dispute SC-2020-000395, the applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Pacific Organic Meat Ltd. (Pacific Organic), breached their waste hauling agreement by refusing service and improperly terminating the contract. Van Pro claims $4,586.95 in liquidated damages.

2. Pacific Organic's September 23, 2012 contract (2012 Contract) was with Housewise Construction Ltd. dba Segal Disposal (Segal), which business Van Pro bought in around 2017. As discussed below, the 2012 Contract was renewed in 2017 and Van Pro assumed Segal's rights under it.

3. Pacific Organic says its agreement was with Segal and that Pacific Organic reasonably relied on its subsequent waste hauler, Revolution Resource Recovery Inc. (RRR), to send the required cancellation notice by registered mail within the applicable cancellation window set out in Pacific Organic's contract with Segal. Pacific Organic filed a third party claim against RRR (dispute SC-2020-001764). RRR is in default, as discussed below.

4. Van Pro is represented by its principal, XF. Pacific Organic is represented by SK, an employee or principal, and by PJ, its property manager.

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 CRT considers appropriate.

9. After this dispute was assigned to me for a decision, it came to my attention that inadvertently Van Pro had not been given the opportunity to review Pacific Organic's evidence and submissions in the related third party claim against RRR. I directed CRT staff to provide the material to Van Pro. Both Van Pro and Pacific Organic had the opportunity to provide further evidence and submissions, with extensions granted. The relevant evidence and submissions are discussed below.

ISSUE

10. The issue in these disputes is whether Pacific Organic properly cancelled its waste hauling agreement, and if not, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

11. In a civil claim such as this, the applicant Van Pro bears the burden of proof, on a balance of probabilities. Pacific Organic bears this same burden in its third party claim against RRR. I have only referenced the evidence and submissions as necessary to give context to my decision.

12. At the outset, I will address RRR's default status. The CRT served RRR by regular mail, in accordance with the CRT's rules which say service is deemed complete 10 days after mailing. Here, RRR was deemed served on March 8, 2020 and did not file a Dispute Response as required. So, RRR is in default. Generally, liability is assumed where a party is in default and so Pacific Organic's position in its third party claim against RRR is accepted to be true. However, in a third party claim the respondent (here, RRR) can only be liable to the extent the main claim's respondent (Pacific Organic) is liable to the applicant Van Pro. More on this below.

13. Based on Van Pro's "Statement" in evidence referring to a November 1, 2019 invoice for $4,901.95, I infer Van Pro's liquidated damages claim is based on 5 years of service. The Statement shows a $315 credit for bin removal (which was originally part of Van Pro's claim against Pacific Organic). This leaves a $4,586.95 balance, the amount Van Pro claims against Pacific Organic.

14. I turn to the relevant chronology.

15. On February 4, 2012, Pacific Organic's representative SK signed the 2012 Contract with Segal, with Pacific Organic's former name "Pacific Exotic Meat Ltd." listed as the customer. The parties agree the 2012 Contract, effective September 23, 2012 was with Pacific Organic. Segal's address at the top of the 2012 Contract was at a Surrey, BC address.

16. The "Terms & Conditions" page for the 2012 Contract contains the following relevant terms:

    a. The agreement was for a 5-year term (so, it ended on September 22, 2017).

    b. 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 a contract renewal date (the cancellation window).

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 9 months of the customer's most recent monthly billings or projected billings or the sum of the balance of the remaining term, whichever is greater.

d. Segal is entitled to assign the agreement at any time without the customer's consent.

17. On April 19, 2017, Pacific Organic's SK signed a renewal agreement with Segal, effective October 1, 2017 (2017 Contract). Other than the 2-year term instead of 5-years, the relevant terms and conditions in the 2017 Contract are the same as in the 2012 Contract. The cancellation window for the 2017 Contract was between June 3 and July 3, 2019. Segal's address is also the same as in the 2012 Contract.

18. As detailed below, I find this dispute turns on whether Pacific Organic properly terminated the waste hauling agreement. Pacific Organic says it did, by RRR's sending cancellation notices on its behalf to Segal within the cancellation window. Van Pro says Pacific Organic did not, because Pacific Organic "knew or ought to have known" there was an ownership change from Segal to Van Pro in 2017. In its later-submitted evidence and submissions, Van Pro provided January 23, 2018 correspondence that RRR sent on another customer's behalf, to show that RRR knew Van Pro's address, which was different from Segal's.

19. Van Pro submitted a December 20, 2017 "To Whom It May Concern" letter signed by XF, which said that Segal was assigning its waste hauling agreements to Van Pro, effective February 1, 2018. Significantly, the letter did not set out a return address for Van Pro or note that it had a different address than Segal. In any event, Pacific Organic says it did not receive that letter which I infer was sent by regular mail as Van Pro did not say otherwise. Pacific Organic says it did not know Van Pro had taken over from Segal until it received a November 23, 2019 letter from Van Pro that complained about RRR's bins being on Pacific Organic's property. In its

later submissions, Pacific Organic says it was not aware Segal was "shut down" by the City of Surrey in 2018, and there is no evidence before me that it did know.

20. On balance, I find the weight of the evidence shows that Pacific Organic did not know Segal had sold its business to Van Pro and that Van Pro operated at a different address, at least not before November 23, 2019. Pacific Organic's correspondence to Van Pro at that time is also consistent with that conclusion. I find the fact that RRR may have otherwise known that Van Pro had a different address than Segal does not mean Pacific Organic should have known.

21. Why does it matter when Pacific Organic knew about the sale of Segal to Van Pro? It matters because Pacific Organic submits that in June and July 2019 RRR sent Segal letters within the cancellation window: 2 by registered mail, 1 by courier, and 1 by email. RRR's January 27, 2020 email in evidence confirms this history, which was submitted by Pacific Organic in its third party claim against RRR, which I address below. RRR stated that it sent the letters to Segal's registered company address. An August 2019 "sole proprietorship summary" for Segal shows its address is the same as on the 2012 and 2017 Contracts. In later-submitted evidence, Pacific Organic provided copies of RRR's cancellation letters, courier slips, registered mail receipts, and related emails. Included is a June 15, 2019 cancellation letter to Segal, sent by registered mail, which I find met Pacific Organic's obligation under the 2017 contract.

22. In short, I find that Van Pro never provided Pacific Organic with its new address for correspondence. The termination clause in the 2012 and 2017 Contracts is onerous, requiring the customer to only terminate by registered mail. The 2012 and 2017 Contracts are on their face between Segal and Pacific Organic's former business name. The fact that Segal never picked up the registered mail is not relevant. At the material time, I find Pacific Organic reasonably believed it should send its cancellation letter by registered mail to Segal.

23. While I acknowledge both contracts allow for Segal to assign its rights, in order to succeed in its claim for liquidated damages I find Van Pro must prove Pacific

Organic knew it was required to send its termination letter to Van Pro by registered mail. Here, I find Van Pro did not do so and so I find Van Pro cannot successfully argue Pacific Organic failed to comply with the 2017 Contract's termination provisions. So, I find Van Pro cannot rely on the liquidated damages clause. I dismiss Van Pro's liquidated damages claim. It follows that I dismiss its claim for contractual interest, though it is not clear to me that contractual interest would actually apply to the liquidated damages claim.

24. Given I have dismissed Van Pro's claim against Pacific Organic, it follows that Pacific Organic's third party claim against RRR is also dismissed. As noted above, Pacific Organic's claim against RRR is for whatever Pacific Organic might be held liable to pay Van Pro. Since I have found Pacific Organic has to pay nothing, RRR owes nothing. Given this, I do not need to address the fact that RRR was technically in default in the third party claim, though as noted above its evidence supports Pacific Organic's position against Van Pro.

25. 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 CRT fees. Pacific Organic paid $150 for its third party claim against RRR, an expense I find it reasonably incurred in order to defend itself against Van Pro's unsuccessful claims. CRT rule 9.5 says that the unsuccessful party usually must reimburse the successful party. So, I order Van Pro to reimburse Pacific Organic the $150.

ORDERS

26. I dismiss Van Pro's claims against Pacific Organic.

27. I dismiss Pacific Organic's third party claims against RRR.

28. Within 21 days of this decision, I order Van Pro to pay Pacific Organic $150 as reimbursement of CRT fees paid for Pacific Organic's third party claim against RRR.

29. Pacific Organic is entitled to post-judgment interest on the $150, as applicable.

30. Under section 48 of the CRTA, the CRT 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 CRT'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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

31. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the BC Provincial Court.

Shelley Lopez, Vice Chair