



Civil Resolution Tribunal

Date Issued: September 9, 2020

File: SC-2020-003756

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. RKS' House of Dosas Ltd.*,
2020 BCCRT 1012

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

RKS' HOUSE OF DOSAS LTD.

RESPONDENT

REASONS FOR DECISION

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, RKS' House of Dosas Ltd. (RKS), breached their waste hauling agreement. Van Pro agreed to pick up its bins

as RKS requested, but says by ending the contract early RKS breached the agreement. Van Pro claims \$5,000 in liquidated damages.

2. RKS' December 10, 2016 five-year contract was with Housewise Construction Ltd. dba Segal Disposal (Segal). It is undisputed Segal's contracts were assigned to Van Pro as of February 1, 2018.
3. In the Dispute Response filed at the outset of this proceeding, RKS says Van Pro took its bins back, as agreed by the parties, and that RKS had hired a different waste hauler.
4. Van Pro is represented by an employee WY. RKS is represented by one of its partners, UK.

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.

ISSUES

9. The issues in this dispute are:
 - a. Did RKS properly cancel its contract with Van Pro?
 - b. Is Van Pro entitled to liquidated damages, given it picked up its bins at RKS' request?

EVIDENCE AND ANALYSIS

10. 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. I note RKS did not submit any evidence or make submissions, despite the opportunity to do so.
11. The parties' December 10, 2016 contract, signed by Van Pro's manager SA and RKS' owner (whose initials appear to be SU), included the following relevant terms:
 - a. The 5-year agreement with a December 12, 2016 effective date, was for one "split bin", to hold both waste and organic matter, for a combined total of \$233 per month. The first term would end December 11, 2021. The 1st page notes the customer RKS read and accepted all the "terms at the back". RKS was to cancel its existing service on its own.
 - b. Prices were firm for the first year, but subject to increase without notice in future years.
 - c. The agreement would be automatically renewed for successive 5-year terms, unless the customer gave 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).

d. If the customer tried to end or repudiate the agreement before the term's expiry, Segal could accept the customer's repudiation and the customer agreed 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.

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

12. Van Pro submitted a December 15, 2016 proof of Canada Post delivery, for RKS' cancellation of its existing service with RRR, another waste hauler. I find nothing turns on that service's cancellation, since RKS made its agreement with Van Pro and there is no evidence before me in this dispute that Van Pro agreed to assume responsibility for cancellation of RRR's service. In any event, as noted above, the contract's terms were to the contrary, that RKS would cancel that prior service itself.

13. Van Pro submitted a photo that it says show RRR's bins on RKS' property in 2020. I cannot tell this from the photo, but I accept this evidence since RKS did not dispute it.

14. In its Dispute Response filed at the outset of this proceeding, RKS said its property manager RBM was hired to "look after the property" and that RBM had "contacted" Van Pro on April 13, 2020 to pick up all their bins. RKS appears to argue that because Van Pro picked up its bins on April 14, 2020 and that RKS had paid the bin removal fee, that RKS is not liable for cancelling the Van Pro contract early. Van Pro agrees RBM contacted it to pick up the bins and that RKS would pay the bin removal fee. More on this below.

15. As noted above, RKS chose not to submit any evidence or submissions, and in particular it submitted no evidence or statement from RBM. In any event, RKS' Dispute Response does not indicate that it cancelled its contract with Van Pro by registered mail within the cancellation window, as agreed.
16. Van Pro says that RKS called it in early March 2020 "many times", and that RKS said that it wanted to cancel the agreement and for Van Pro to remove its "totes", which I infer refers to bins. Van Pro says it attended at RKS to explain there was a valid agreement in place. Van Pro says RKS refused to send a termination letter by registered mail and threatened to throw Van Pro's bins into the street. Van Pro says that at that time, they had witnessed RRR's bins on the property. Van Pro says as it had lost small totes before without recovering them, it agreed to the bin removal and then pursued its liquidated damages claim in this dispute.
17. While RKS said in its Dispute Response that Van Pro had made no attempt to contact it, I do not accept that evidence, given Van Pro's statement showing the invoices it issued. I draw an adverse inference against RKS, since it chose not to provide evidence or submissions to refute Van Pro's evidence, and find RKS repudiated the contract in early March 2020, as Van Pro alleges. Again, what matters is whether RKS cancelled the agreement in accordance with its terms, and there is no evidence before me that RKS did so.
18. Next, I find nothing turns on the fact that Van Pro agreed to pick up its bins from RKS' property. There is no evidence before me that suggests that in doing so Van Pro waived its right to rely on the contract's agreed terms about cancellation, and in particular the liquidated damages clause.
19. I turn then to the \$5,000 amount claimed. Van Pro says this is for 12 months of service, which as summarized above is permitted under the contract. In 2019 and 2020, RKS' monthly billings had risen to \$561.81, and $12 \text{ months} \times \$561.81 = \$6,741.72$. However, Van Pro reduced its claim to the CRT's small claims \$5,000 limit. Given my conclusions above, I allow the \$5,000 as claimed.

20. The *Court Order Interest Act* (COIA) applies to the CRT. Van Pro is entitled to pre-judgment interest under the COIA on the \$5,000, from March 1, 2020, the date of its invoice to RKS for liquidated damages. This equals \$5.04. I note the CRT's \$5,000 small claims limit is exclusive of COIA interest, CRT fees, and dispute-related expenses.
21. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees and reasonable dispute-related expenses. I find Van Pro is entitled to reimbursement of \$175 in paid CRT fees. Van Pro is also entitled to \$15 as reimbursement of a corporate records search, which I find is reasonable.

ORDERS

22. Within 21 days of this decision, I order RKS to pay Van Pro a total of \$5,195.04, broken down as follows:
 - a. \$5,000 in liquidated damages,
 - b. \$5.04 in pre-judgment COIA interest,
 - c. \$190, for \$175 in CRT fees and \$15 as a dispute-related expense.
23. Van Pro is entitled to post-judgment interest, as applicable.
24. 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 Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-

day timeline at any time. 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.

25. 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 Provincial Court of British Columbia.

Shelley Lopez, Vice Chair