



# Civil Resolution Tribunal

Date Issued: September 11, 2020

File: SC-2020-003677

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. New Millenium Tire Centre (2017) Ltd.*, 2020 BCCRT 1021

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

**APPLICANT**

A N D :

NEW MILLENIUM TIRE CENTRE (2017) LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Sherelle Goodwin

## INTRODUCTION

1. This dispute is about a waste disposal contract.
2. The applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro) says the respondent, New Millenium Tire Centre (2017) Ltd. (New Millenium), breached the

contract by failing to pay for services and cancelling the contract before the end of the 5-year term. Van Pro claims \$1,253.40 as a “garbage service fee” and \$3,054.24 in liquidated damages, plus applicable contractual interest.

3. New Millenium says it was not bound by the contract as it did not sign it. New Millenium also says Van Pro increased its prices and so New Millenium cancelled the waste disposal services. New Millenium asks that the dispute be dismissed.
4. Van Pro is represented by manager, WY. New Millenium is represented by MK, an owner or employee.

## **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. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
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, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

## **ISSUE**

9. The issue in this dispute is whether New Millenium must pay Van Pro for waste disposal services or liquidated damages and, if so, how much?

## **EVIDENCE AND ANALYSIS**

10. In a civil claim such as this one the applicant, Van Pro, must prove its claim on a balance of probabilities. I have reviewed all submissions and evidence provided, but I will only refer to that which explains and gives context to my decision.
11. WY says he initially spoke with B, an owner of New Millenium, on December 21, 2017 about waste disposal services. WY says he left an unsigned contract with B. New Millenium does not dispute that this conversation occurred. Based on the unsigned December 21, 2017 agreement submitted in evidence by New Millenium, I accept that WY spoke with B and left the unsigned contract with him. In the December 21, 2017 contract Van Pro offered to dispose of 3 cubic yards of waste for \$114 per month.
12. New Millenium denies signing the contract. It says only B had the authority to enter into an agreement with Van Pro.
13. However, WY says he returned to New Millenium on February 21, 2018 and spoke with an employee, L. WY says B was speaking to L on the phone at the time. WY says L asked him for pricing for 6 cubic yards of waste disposal, which WY wrote into the contract, then L signed the 6 cubic yard contract for New Millenium.
14. The February 21, 2018 contract's relevant terms are:
  - a. \$190 per month cost for 6 cubic yards of waste disposal plus a 7% fuel surcharge,
  - b. Van Pro may adjust its rates based upon increases in disposal facility costs, weight or volume of material, contamination of recyclable material, and for other reasons unrelated to this dispute,

- c. New Millenium will pay additional charges for any materials that require special handling or exceed the weight limit,
  - d. The parties agree to a contractual interest rate of 26.82% on balances over 30 days,
  - e. New Millenium can cancel the agreement, in writing, no earlier than 120 days prior to the end of the 5-year term of the agreement, and
  - f. If New Millenium cancels the agreement early it must pay Van Pro, as liquidated damages, the greater of a) the sum of the most recent 12 months of billing or b) the sum of the balance of the remaining 5-year term.
15. New Millenium denies that anyone ever spoke to B about the contract but provided no statement from B or L about the February 21, 2018 meeting with WY, and no explanation for the absence of such evidence. The face of the February 21, 2018 contract says the person signing it on behalf of the customer, New Millenium, is authorized to sign.
16. I find the contract supports WY's version of events. As New Millenium has not provided any evidence to the contrary, I find L was authorized to sign the February 21, 2018 contract on behalf of New Millenium.
17. Next, I do not accept that New Millenium was unaware of the contract's terms. I find B received a copy of the contract on December 21, 2017. Based on invoices submitted by New Millenium and statements submitted by Van Pro, I find New Millenium had the benefit of waste disposal services from February 2018 to April 2020. The invoices and statements show that New Millenium was billed, and paid, \$190 per month plus applicable surcharges in 2018. That price is consistent with the February 21, 2018 contract, and not the December 21, 2017 contract. I find that New Millenium agreed to be bound by the contract's terms, which is supported by the fact that new Millenium accepted and paid for the waste disposal services.

18. New Millenium says Van Pro continuously raised its monthly fees above the \$114 initially agreed to. As noted above, I find New Millenium agreed to a \$190 monthly fee. I find Van Pro charged that monthly fee, plus the applicable fuel surcharge, in 2018.
19. I find Van Pro was entitled to increase its monthly waste disposal fee under the contract's terms. Based on the 2019 and 2020 municipal tipping fees schedule submitted by Van Pro, I find the disposal facility costs increased at the beginning of each year. Based on the invoices and statements in evidence, I find Van Pro increased its monthly disposal rate by 10% each year, to \$209 in 2019 and to \$229.90 in 2020. I find Van Pro did not breach the contract by increasing the monthly fee each year.
20. I find Van Pro was also entitled to increase its rate for contamination of recyclable material in New Millenium's waste bin. Van Pro submitted violation notices dated August 22 and December 16, 2018 and March 11, 2019, showing that Van Pro had to pay a penalty for an unacceptable level of cardboard. Van Pro says that was from New Millenium's bin and New Millenium does not dispute it. So, I find Van Pro did not breach the contract by adding an additional \$20.90 monthly to New Millenium's waste disposal rate for contamination of recyclable material.
21. However, I find Van Pro breached the contract on June 1, 2019 by increasing New Millenium's monthly rate for sharing their garbage bin with another business. Although the contract allows for increased rates due to an increase in the weight or volume of the garbage, Van Pro has not proven that there was any increase in New Millenium's volume or weight of waste. There is no term of the contract that prohibits New Millenium for sharing the bin. So, I find Van Pro is not entitled to the bin sharing increase. The question is whether Van Pro's rate increase is a fundamental breach of the contract.
22. 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.

23. 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).
24. 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 breach from the perspective of a reasonable person in New Millenium's position. I find that a reasonable person would not consider the contract to be completely undermined because Van Pro imposed a bin sharing penalty. I find the waste disposal contract can continue with Van Pro reducing its monthly charge to exclude the bin sharing penalty. Although Van Pro breached the contract, I find it was not a fundamental breach. So, New Millenium was not entitled to immediately terminate the contract and be relieved of any future payments or liquidated damages.
25. The parties agree that New Millenium terminated the contract. Although New Millenium says it cancelled the contract in January 2020 and told Van Pro to pick up its bins, there is no supporting evidence such as a statement or a copy of a letter or email. Based on Van Pro's May 1, 2020 statement I find Van Pro accepted New Millenium's cancellation on May 6, 2020.
26. Based on Van Pro's statements provided in evidence, I find New Millenium failed to pay Van Pro's January, February, March and April 2020 of \$302.64 each. There is

no suggestion that Van Pro failed to provide waste disposal services and so I find Van Pro is entitled to payment for those services.

27. As noted above, I find Van Pro is not entitled to an additional \$20.71 monthly charge for bin sharing. So, I find Van Pro is entitled to payment of \$280.80 per month for 4 months which equals \$1,123.20. Van Pro also claims finance charges. Based on the terms of the contract I find these charges are the calculated the contractual interest for the 2020 outstanding invoices. As I have reduced the monthly charges Van Pro is entitled to, I will calculate the contractual interest for those amounts below. To avoid Van Pro being compensated twice for contractual interest, I find it is not entitled to payment of the finance charges.
28. I find Van Pro is entitled to liquidated damages under the contract's terms. Van Pro claims \$2,758.80 in liquidated damages, which is 12 months of its basic \$229.90 rate for 2020 waste disposal. This is less than what Van Pro is entitled to under the terms of the contract and so I allow Van Pro's claim for \$2,758.80 for liquidated damages. I also find Van Pro is also entitled to payment of its \$150 bin removal rate under the terms of the contract. Allowing for applicable taxes, I find Van Pro is entitled to \$3,054.24 for liquidated damages and bin removal.
29. Van Pro claims 26.82% contractual interest, which I find applies to the monthly total fee of \$280.80, 30 days after the invoice dates of January 4, February 4, March 4, and April 1, 2020. I find the combined interest on each of these invoices, calculated from 30 days after the invoice date to the date of this decision, totals \$145.97.
30. The *Court Order Interest Act* applies to the CRT and applies to the liquidated damages claim. I find Van Pro is entitled to pre-judgement interest on the \$3,054.24 in liquidated damages and bin removal from the date of the May 6, 2020 invoice to the date of this decision. This equals \$11.89.
31. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general

rule. As Van Pro was substantially successful in this dispute, I find it is entitled to reimbursement of \$175 in CRT fees. Van Pro did not claim any dispute-related expenses.

## ORDERS

32. Within 30 days of the date of this order, I order New Millenium to pay Van Pro a total of \$4,510.30, broken down as follows:

- a. \$1,123.20 in debt,
- b. \$145.97 in 26.82% annual contractual interest on the debt,
- c. \$3,054.24 in liquidated damages and bin removal fee,
- d. \$11.89 in pre-judgment interest under the *Court Order Interest Act*, and
- e. \$175 in CRT fees.

33. The applicant is entitled to post-judgment interest, as applicable.

34. 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.



35. 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.

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Sherelle Goodwin, Tribunal Member