



# Civil Resolution Tribunal

Date Issued: September 14, 2020

File: SC-2020-000333

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC LTD. dba Van Pro Disposal v. Metrogain Enterprises Ltd.*,  
2020 BCCRT 1029

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

**APPLICANT**

A N D :

METROGAIN ENTERPRISES LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

David Jiang

## INTRODUCTION

1. This dispute is about an agreement for waste disposal services. The applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Metrogain Enterprises Ltd. (Metrogain), improperly ended the parties' contract. It seeks \$2,944.90 for a combination of liquidated damages, bin removal fees, fuel

surcharge fees, and GST. It also seeks contractual interest at an annual rate of 26.8%.

2. Metrogain says it was entitled to cancel the contract as Van Pro provided poor service.
3. Van Pro's manager, AY, represents Van Pro. KLL represents Metrogain. KLL is related to one of Metrogain's principals or employees.

## **JURISDICTION AND PROCEDURE**

4. 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.
5. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.
6. 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.

7. 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 CRT considers appropriate.

### ***The Unsigned Affidavit of AY***

8. AY provided an unsigned affidavit. He explained in an email that he uploaded the incomplete version by accident. For the purposes of this dispute I have considered it as part of his submissions.

## **ISSUES**

9. The issues in this dispute are as follows:
  - a. Did Metrogain properly end the parties' contract?
  - b. If not, does Metrogain owe Van Pro \$2,944.90 for liquidated damages, bin removal fees, fuel surcharge fees, and GST?

## **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 addressed the evidence and arguments to the extent necessary to explain my decision.
11. As discussed below, I find that Van Pro fundamentally breached the parties' contract. As such, Metrogain was entitled to end the parties' contract without being obliged to pay liquidated damages. My reasons follow.

### ***The Parties' Contract***

12. On December 12, 2012, Metrogain and Housewise Construction Ltd dba Segal Disposal (Segal Disposal) signed a contract. Segal Disposal agreed to provide Metrogain waste disposal services.

13. The agreement had the following relevant terms:
- a. The contract was for a term of 5 years, starting from July 1, 2014.
  - b. Segal Disposal would pick up waste twice a month.
  - c. The contract would renew automatically on July 1, 2019 for another 5 years, unless Metrogain provided written notice by registered mail, not more than 120 days and not less than 90 days prior to the expiration of the 5 years (cancellation window).
  - d. If Metrogain tries to end the agreement before the term expires, Segal Disposal can accept the termination. Metrogain would then agree to pay liquidated damages under a formula.
  - e. The agreement is binding on both Segal Disposal, Metrogain, and their respective heirs, successors and permitted assigns.
  - f. Segal Disposal is entitled to assign the agreement at any time without the consent of Metrogain.
14. I find the parties' dispute is governed by this contract, as Segal Disposal assigned the contract to Van Pro on February 1, 2018. Metrogain says it was not provided notice of the assignment, but the contract does not require such notice.
15. Invoices show that Segal Disposal also charged for providing and emptying 2 organic waste bins twice a month. I find from the parties' conduct that this was also part of their agreement, though it is not mentioned in the contract.
16. Some of the evidence relates to the conduct of Segal Disposal rather than Van Pro. I find nothing significant turns on this as the personnel involved are the same. The evidence and submissions indicate that, both before and after the assignment, Metrogain dealt with AY and another person, XF. AY says, and I accept, that he is the driver and dispatch manager for both Van Pro and Segal Disposal. AY also

submits that XF reviewed the text messages in this dispute. I find XF worked for both Segal Disposal and Van Pro.

***Did Metrogain properly end the contract?***

17. Metrogain sent Segal Disposal a notice of cancellation by registered mail on June 7, 2018. Metrogain wrote that it was cancelling the contract because Segal Disposal had not fulfilled its service obligations. Metrogain obtained a new garbage disposal service provider later that month.
18. I find that nothing turns on the fact that the notice was addressed to Segal Disposal. The correspondence shows Van Pro received it, and Van Pro did not provide an alternative address for such notice.
19. More importantly however, I find that Metrogain did not provide its termination notice within the cancellation window, described above. It sent the notice in June 2018. Under the terms of the contract, Metrogain had to cancel between March 3 and April 2, 2019. As such, Van Pro would normally be entitled to seek liquidated damages under the contract. I must therefore consider whether Metrogain was entitled to end the contract because Van Pro provided poor service that amounted to a fundamental breach, as alleged.
20. Metrogain says that Segal Disposal was obligated to empty the regular waste bin every 14 days and an organic waste bin every 7 days. However, in the winter of 2016, Segal Disposal decided to provide a second bin and emptied all bins every 14 days instead. Metrogain says it did not consent to this change and submits it led to unpleasant odours and pest problems. Metrogain also says Segal Disposal and Van Pro often picked up waste late, which resulted in waste both rotting and overflowing from the bins.
21. Van Pro disagrees. AY says the parties agreed that Segal Disposal and Van Pro would empty the bins every 14 days. He says from reviewing his records that Segal Disposal and Van Pro emptied the bins on time.

22. On balance, I find it more likely than not that the parties originally agreed for Segal Disposal to pick up organic waste every week. I find that Van Pro then reduced its pickup schedule and provided a second bin, to which Metrogain reluctantly agreed. This finding is most consistent with Van Pro's submission that it originally provided Metrogain only 1 organic waste bin and provided another later. It is also consistent with the fact that Metrogain continued to use Van Pro after the change for a period of time. However, I also conclude that this increased the likelihood that late pickups would cause the waste problems Metrogain complained of.
23. Overall, I find the evidence shows that Segal Disposal and Van Pro failed to pick up waste on time. Metrogain provided a May 7, 2020 statement from RL, a neighboring business owner. RL wrote that Segal Disposal was very irregular in picking up waste. He wrote that there were times where a waste container would be overflowing, causing putrid odours and attracting rats.
24. Consistent with the above, Metrogain provided photos of the organic waste bins. A July 16, 2018 photo shows a significant number of what it says, and I find, to be maggots on and in the bin. In addition to appearing unpleasant, from the photos I find the waste would likely smell unpleasant and attract the pests Metrogain complains of, which included rats, flies, and crows.
25. Metrogain also provided text messages between its employee or principal to XF, which I rely on. Van Pro objects to the text messages. It says Metrogain translated them incorrectly and XF does not recall reading any of the text messages. However, as Van Pro provided no translation of its own and no explanation for the absence of direct evidence from XF, I accept that the text messages and translations provided by Metrogain are accurate.
26. The text messages are dated from January 18, 2017 to March 25, 2018. As noted above, Segal Disposal assigned its contract to Van Pro in February 2018. The text messages consist generally of complaints about Segal Disposal and Van Pro's failure to empty the garbage bin and 2 organic waste bins on time. XF replied to some of these messages and in one instance said she would tell her driver to pick

up the waste, which was not picked up on time. She did not refute any of Metrogain's allegations in the text messages.

27. In comparison, there is limited evidence before me that Segal Disposal or Van Pro performed their obligations in a timely manner. In the unsigned affidavit, AY says he reviewed records showing he picked waste up in a timely manner, but he did not provide a copy of these records. As the records are not before me and the affidavit is unsigned, I place little weight upon this statement.
28. Van Pro also says that Metrogain breached the parties' contract by sharing its garbage disposal services with a neighboring business. Metrogain acknowledges it did this, but says the parties expressly discussed and agreed to this when the parties signed the contract.
29. I am not satisfied that Metrogain breached the parties' agreement by sharing the bins. Van Pro does not claim for a breach of this term and provided little evidence on the matter. Neither Van Pro nor Segal Disposal complained about any bin sharing in the correspondence or text messages before me. I find the contract is silent on the matter. In any event, the sharing arrangement is not directly relevant to whether Van Pro picked up waste on time.
30. In summary, I find that Segal Disposal and Van Pro breached the parties' agreement by providing irregular and untimely service. The next question is whether Van Pro's service was so poor that Van Pro fundamentally breached the parties' contract.
31. As set out in *Super Save Disposal Inc. v. 315363 B.C. Ltd.*, 2019 BCCRT 190, which is not binding but 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: *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC) and *Bhullar v. Dhanani*, 2008 BCSC 1202.

32. 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: *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA).
33. I find that Van Pro's failure to pick up garbage on time is a fundamental breach because the heart of the contract is regular garbage pickup. In this dispute, Metrogain was substantially deprived of the benefit of its contract. It had to deal with unpleasant odours and pest problems, which regular garbage removal would have addressed. I also find that the bins would become so unsightly from late pickups that this also contributed to a fundamental breach of the contract by Van Pro.
34. I note that other CRT decisions have made similar findings about the substance of waste disposal contracts that involve Van Pro. See, for example, the non-binding CRT decision of *0955824 BC Ltd. dba Van Pro Disposal v. New Millenium Tire Centre Ltd.*, 2020 BCCRT 700.
35. I find that Metrogain was therefore entitled to terminate the contract and without any obligation to further perform the terms of the contract. Metrogain is therefore not liable to pay the claimed liquidated damages because Metrogain did not breach the contract. Van Pro did.
36. I dismiss Van Pro's claims.
37. 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. Metrogain is the successful party. As it did not pay any CRT fees or claim any dispute-related expenses, I order none.



## **ORDER**

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

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David Jiang, Tribunal Member