



Civil Resolution Tribunal

Date Issued: September 17, 2020

File: SC-2020-003709

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 B.C. Ltd. dba Van Pro Disposal v. Jiuhe Food Ltd.*,
2020 BCCRT 1044

B E T W E E N :

0955824 B.C. LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

JIUHE FOOD LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. This dispute is about payment for waste disposal services.
2. The applicant, 0955824 B.C. Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Jiuhe Food Ltd. (Jiuhe), broke their 5-year contract for Van Pro's waste

disposal services. Van Pro claims \$4,935.86: \$338.50 for unpaid waste disposal fees, \$346.50 for bin removal fees, and \$4,250.86 for 12 months of liquidated damages. Van Pro also claims contractual interest and reimbursement of its Civil Resolution Tribunal (CRT) fees, but abandons any amount over the \$5,000 maximum CRT small claim amount.

3. Jiuhe says it never agreed to a 5-year contract term with Van Pro. Jiuhe says it terminated the contract because Van Pro failed to pick up waste as agreed and charged more than market rates, so Jiuhe owes nothing.
4. Van Pro is represented by an employee or principal. Jiuhe is represented by an owner.

JURISDICTION AND PROCEDURE

5. These are the formal written reasons of the CRT, which 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. Although the parties' submissions each call into question the credibility of the other party in some respects, I find I can properly assess and weigh the written evidence and submissions before me without an oral hearing. In the decision *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always needed where credibility is in issue. Keeping in mind that the CRT's mandate includes proportional and speedy dispute resolution, I find I can fairly hear this dispute through written submissions.

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 CRT considers appropriate.
9. Parties are told during the CRT's facilitation stage to provide all relevant evidence, as required by CRT rule 8.1. After having an opportunity to provide its evidence, Jiuhe argued that it had extra, supplementary evidence it wished to submit. But I find Jiuhe did not sufficiently describe what that evidence was, what it proved, or why Jiuhe did not submit it earlier. Van Pro then argued that if Jiuhe provided further evidence, Van Pro also had additional evidence it would submit, such as letters, photos, and video. I find Van Pro also did not explain why it did not submit this evidence earlier, or exactly how the evidence could prove or disprove an issue in this dispute. I find that neither party sufficiently explained why its poorly described additional evidence was necessary for this dispute. So, I find that the parties are not entitled to an opportunity to file further evidence. On balance, I am satisfied that I can fairly decide the issues on the evidence before me.

ISSUE

10. Did Jiuhe break the waste disposal contract, and if so, what does it owe for unpaid disposal fees, bin removal fees, and liquidated damages, if anything?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, Van Pro, as the applicant, must prove its claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.

12. It is undisputed that the parties agreed Van Pro would pick up waste from Jiuhe's premises twice a week in Van Pro-provided bins. The parties disagree about other aspects of this arrangement, including whether Jiuhe signed up for a 5-year term of waste collection, as described below.
13. An individual, QT, signed a Van Pro waste disposal contract on Jiuhe's behalf during a May 3, 2019 meeting with Van Pro's director, XF. The evidence shows the parties verbally arranged for waste pickup to begin in July 2019, and Jiuhe paid a bin rental fee until then. After the services began, Jiuhe expressed concern with their price and the reliability of Van Pro's pickups.
14. The written contract signed by QT was two pages long, and the second page said the term was for 5 years after the waste collection services began. The contract said it may only be terminated by written notice between 90 and 120 days before its expiry (known as a cancellation window), which in this case would fall in the year 2024. The contract also said that if Jiuhe tried to terminate the agreement before its term expired, Van Pro could accept the termination, in which case Jiuhe would owe liquidated damages. In this dispute, Van Pro seeks liquidated damages for 12 months of projected billings, as set out in the contract.
15. After failing to negotiate a new price for Van Pro's services in July 2019 and August 2019, Jiuhe told Van Pro in September 2019 that it was terminating the waste disposal contract, and that Van Pro should remove its bins by December 31, 2019. Van Pro continued to collect waste under the agreement until December 31, 2019. Jiuhe does not deny that it hired a different company to collect its waste after that date.
16. When Jiuhe said it was terminating the contract, Van Pro reminded Jiuhe by email that the contract was for 5 years of waste disposal, and that Jiuhe would owe liquidated damages if it terminated the contract early at the end of 2019. Jiuhe confirmed that it was terminating the contract effective January 1, 2020.

17. Jiuhe says that it did not agree to everything in the written contract. First, it suggests that QT was not authorized to accept the agreement, and was not a Jiuhe employee. Van Pro says, and Jiuhe does not deny, that QT is a “direct family member” of a Jiuhe director, and that QT met with XF for the purpose of discussing waste disposal services. In later email correspondence, Jiuhe refers to QT as an “employee”. Further, I find Jiuhe did not suggest that QT lacked the authority to sign the agreement until months after it was signed, and many weeks after Jiuhe began accepting Van Pro’s waste disposal services. On balance, I am satisfied that QT appeared to have authority to sign the written contract on Jiuhe’s behalf, and signed it as Jiuhe’s authorized agent.
18. Jiuhe says that QT was “tricked” into signing the contract, and that QT did not agree to a 5-year term. Jiuhe also suggests there was a language barrier, although it admits that discussions between QT and XF were in a language both knew. Significantly, Jiuhe did not provide a statement from QT about whether he was tricked, whether he rejected a 5-year term, whether he knew what he was signing, or his English skills. I place limited weight on Jiuhe’s hearsay evidence of what QT did and said. In contrast, Van Pro provided a signed statement by XF saying that QT understood English well, and that QT read and accepted all the terms on the second page of the single-sheet agreement. The second page included the 5-year term, and provisions about termination and liquidated damages.
19. I find that QT signed the contract immediately below the following text: “This is a legal binding agreement subject to the Terms and Conditions specified on the reverse side. By signing this agreement, Customer acknowledges that he or she or its authorized signatory has read, understood and agreed to this Agreement and these terms and conditions.” I find QT also signed the agreement beside handwritten “Special Instructions” which read, in part, “The Customer read & accept terms & conditions at the back of the agreement” (reproduced as written). Further, I find that the evidence fails to show the parties agreed to a term of less than 5 years, or any changes to the contract’s termination or liquidated damages provisions.

20. On balance, I find QT was aware of the second-page terms and conditions, including the 5-year term and liquidated damages and termination provisions, when he signed the contract for Jiuhe. The parties disagree about whether Van Pro gave Jiuhe a copy of the signed contract, but I find this does not affect whether Jiuhe agreed to it. I find Jiuhe agreed to the written contract, and that it was binding on the parties.
21. The evidence shows that after the waste disposal services began, the parties negotiated about the prices Van Pro charged. But, apart from some minor price adjustments and undisputed additions, I find the parties never agreed to amend or replace the original written contract.
22. I find that Van Pro accepted Jiuhe's January 1, 2020 contract termination, as shown in its February 1, 2020 invoice for liquidated damages. I find that the contract required Jiuhe to pay liquidated damages for such an early termination. But that is not the end of the inquiry. Jiuhe also says that Van Pro provided poor service and failed to pick up waste as agreed, which justifies its termination of the contract.
23. I find this is an allegation that Van Pro fundamentally breached the contract. A fundamental breach is where a party fails to fulfill a primary obligation in a contract, in a way that deprives the other party of substantially the whole benefit of the contract (*Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC) and *Bhullar v. Dhanani*, 2008 BCSC 1202). If there is a fundamental breach, the wronged party may terminate the contract immediately, and does not have to perform any more terms of the contract (*Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraph 23).
24. So, were Van Pro's waste disposal services so poor that they destroyed the contract's commercial purpose, causing a fundamental breach? I note that other CRT decisions have found that Van Pro fundamentally breached similar waste collection contracts by missing pickups and collecting garbage irregularly and late. For example, see *0955824 BC LTD. dba Van Pro Disposal v. Metrogain Enterprises Ltd.*, 2020 BCCRT 1029, *0955824 BC Ltd. dba Van Pro Disposal v. New Millenium*

Tire Centre Ltd., 2020 BCCRT 700, and *0955824 BC Ltd. dba Van Pro Disposal v. Walltek Storage Ltd.*, 2020 BCCRT 433. However, I find that although Van Pro's services to Jiuhe were not perfect, they were not so deficient as to cause a fundamental breach, for the below reasons.

25. Jiuhe says Van Pro failed to pick up waste on several occasions. This appears to be based on the alleged existence of waste in Van Pro's bins following expected collection dates. However, there is only one set of undated, emailed photos in evidence showing the contents of waste bins, which are not full. Jiuhe provided little other evidence showing actual or missed collection dates, but says that Van Pro failed to collect waste in July, and again missed a pickup in late September.
26. Van Pro provided a signed statement from its driver, BD, as well as BD's signed waste collection records for Jiuhe pickups in July 2019, August 2019, and September 2019. BD said that he collected waste from Jiuhe every 2 weeks, except that sometimes Jiuhe's driveway was blocked, in which case he would try again as soon as possible. A photo in evidence shows that the driveway to the Jiuhe bins is only wide enough for one vehicle. I accept that BD's pickup records are accurate, as the evidence does not show that there were any errors.
27. The pickup records show that the driveway was blocked on the first waste pickup attempt on July 15, 2019. BD did a makeup collection on July 23, 2019. A pickup attempt on July 31, 2019 was again blocked, but BD successfully picked up waste on August 2, 2019, followed by pickups on August 16, August 31, September 16, and September 28, 2019. On balance, I find that Van Pro picked up waste approximately every 2 weeks as agreed, and that it performed extra collections if a blocked driveway prevented pickup. As a result, I find Van Pro generally met its pickup obligations, and did not fundamentally breach the contract. Therefore, I find Jiuhe was not entitled to terminate the contract for a fundamental breach.
28. Jiuhe also says that Van Pro tried to "force" Jiuhe to break the contract by providing poor service and through other behaviours such as allegedly lying, cheating, and "making conflicts," to obtain liquidated damages. I find the evidence before me fails

to show that Van Pro engaged in such behaviours or provided unacceptably poor service in the circumstances. I find that Van Pro did not induce or compel Jiuhe to break the contract.

29. So, under the contract, I find Van Pro is entitled to an amount of liquidated damages equal to the projected billing for the first month following contract termination, times 12. Van Pro's calculation of these damages includes an unexplained February 1, 2020 price increase in the monthly waste charge, which Jiuhe did not previously pay. I find the evidence fails to show that this increase was of a type permitted under the contract, so I find the liquidated damages should be based on the last monthly rate charged, in December 2019. This monthly rate is \$149.91 for waste collection, \$132.47 for organic collection, and \$40 for cardboard collection, plus GST, which equals \$338.50. Multiplied by 12 months, the total liquidated damages are \$4,062.
30. Van Pro also claims \$338.50 for one unpaid monthly service charge. Van Pro's payment records, which Jiuhe does not dispute, show that Jiuhe failed to pay \$338.50 for one month of service. It appears this unpaid month was the disputed July 2019 payment. In any event, I find Van Pro provided adequate service in July 2019, and Van Pro applied Jiuhe's payments to the oldest outstanding invoices. So, I find Jiuhe owes \$338.50 in debt for an unpaid monthly fee, which was due 15 days after the unpaid December 1, 2019 invoice, on December 16, 2019.
31. Van Pro also claims bin pickup fees. The contract says bin removal would cost \$150 for each bin. Van Pro invoiced Jiuhe for 2 waste bin removals of \$150 each, plus 2 organic tote removals of \$15 each. However, the written contract was for 1 waste bin and 1 organic tote, so on balance I find Jiuhe only owes Van Pro for those removals, which equals \$173.25 including GST.
32. I allow Van Pro's claim, and I find that Jiuhe owes \$4,573.75 for liquidated damages, unpaid waste disposal services, and bin removal fees.

CRT FEES, EXPENSES, AND INTEREST

33. Van Pro claims contractual interest on both the unpaid monthly fee and bin removal debts, and the liquidated damages. I find that contractual interest only applies to the debt amounts, not the liquidated damages. The contract gives an annual interest rate of 26.82% and a monthly interest rate of 2%. I infer that the monthly rate is compounded, so I find that the 26.82% annual rate applies here. The contract says interest is charged on any amounts that remain outstanding for more than 30 days after the amounts become due.
34. I find that interest on the \$173.25 in bin removal fees is calculated starting 31 days after the February 1, 2020 bin removal invoice due date, on March 3, 2020, until the date of this decision. Interest on the unpaid \$338.50 monthly service fee is calculated starting 31 days after the December 16, 2019 due date noted above, on January 16, 2020, until the date of this decision. Total contractual interest equals \$86.52.
35. Van Pro is also entitled to pre-judgment interest under the *Court Order Interest Act* on the \$4,062 in liquidated damages. I find that pre-judgement interest is calculated starting 31 days after the February 1, 2020 liquidated damages invoice due date, on March 3, 2020, until the date of this decision. This equals \$30.
36. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Van Pro was successful in its claims, so I order Jiuhe to reimburse Van Pro \$175 for CRT fees. No CRT dispute-related expenses were claimed.

ORDERS

37. Within 30 days of the date of this order, I order Jiuhe to pay Van Pro a total of \$4,865.27, broken down as follows:
 - a. \$4,062 in liquidated damages,

- b. \$338.50 in debt for unpaid garbage disposal fees,
- c. \$173.25 in debt for unpaid bin removal fees,
- d. \$86.52 in contractual interest on debt,
- e. \$30 in pre-judgment interest under the *Court Order Interest Act* on liquidated damages, and
- f. \$175 in CRT fees.

38. Van Pro is entitled to post-judgment interest, as applicable.

39. 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.

40. 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.

Chad McCarthy, Tribunal Member