Civil Resolution Tribunal

Date Issued: September 24, 2020

File: SC-2020-003927

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Sea to Sky Furniture Inc.*, 2020 BCCRT 1078

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

SEA TO SKY FURNITURE INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Shannon Salter, Chair

INTRODUCTION

1. This dispute is about payment for waste disposal services. The applicant, 0955824 B.C. Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Sea to Sky Furniture Inc. (Sea), wrongfully terminated its contracts with Van Pro, and failed to

pay the claimed $6,093.93 for garbage disposal service fees. Van Pro abandons any amount over the $5,000 maximum CRT small claims limit.

2. Sea says it properly terminated its contracts with Van Pro, in accordance with their terms. Sea also says it terminated the contracts because Van Pro failed to pick up waste as agreed and repeatedly made invoicing errors, and therefore owes some, but not all of the claimed amount.

3. Van Pro is represented by its employee WY. Sea is represented by its employee or principal, RR.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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, email, or a combination of these. In some respects, both parties to this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision in *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate, which includes proportionality and the speedy resolution of disputes, I decided to 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.

ISSUE

8. Did Sea improperly terminate one or both waste disposal contracts, and if so, what, if anything, does it owe Van Pro?

EVIDENCE AND ANALYSIS

9. 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.

Were the waste contracts properly terminated?

10. It is unclear from the parties' submissions whether they agree that their contracts have been properly terminated. Van Pro submits that Sea was required to sign a new contract, though it appears to acknowledge that Sea terminated the existing contracts. Meanwhile, Sea argues that the purported termination of the contracts means it does not owe Van Pro the claimed amount. I infer from the parties' submissions that the status of the contracts is in dispute, and I have therefore decided this issue below.

11. It is undisputed that in 2012, Sea signed one or more contracts with Segal Disposal (Segal) which are not at issue in this dispute. The parties also agree that on May 19, 2015, Sea renewed its contract for waste disposal services with Segal for a five-year term (2015 contract). The 2015 contract shows that a warehouse employee, JO, signed on Sea's behalf as the "Authorized Signatory." While Sea argues that JO had no authority to bind Sea, I note that Sea nevertheless accepted Van Pro's

services and there is no evidence it attempted to cancel the 2015 contract at that time. In its submissions, Sea acknowledges that despite its view that JO lacked signing authority, “they had done [their] best to make this work”, from which I infer that Sea accepts it was bound by the 2015 contract. I therefore find that JO was Sea’s authorized agent, and that the 2015 contract was valid.

12. The services in the 2015 contract were for Sea’s Simpson Road location, specifically waste collection at $580.40 per month and cardboard collection at $78.30 per month, plus fuel surcharge and environmental fees.

13. The written contract signed by JO is two pages long, and the second page states the term was for 5 years, starting after the waste collection services began on May 19, 2015. 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 be May 19, 2020. The contract also said that if Sea tried to terminate the agreement before its term expired, Van Pro could accept the termination, in which case Sea would owe liquidated damages, which are not claimed in this dispute.

14. On November 1, 2017, Segal assigned its contract with Sea to Van Pro. There is no dispute that this assignment was valid.

15. In June and July 2018, Sea expressed concerns to Van Pro about its service, including issues relating to incorrect or absent invoicing, irregular or forgotten bin service at both of Sea’s locations, and overflowing bins, among other issues. In several emails, Van Pro acknowledged invoice problems, though in its submissions it also blamed Van Pro for them. As compensation, Van Pro offered a discount and some interest relief, although it is unclear which amount this offer applied to. Sea accepted the offer but reiterated earlier statements that it intended to end the contract as soon as possible. Van Pro reminded Sea that the contract had a 5-year term, but Sea disputed this on July 10, 2018, arguing the contract only applied to its Simpson Road location, and not a second location it acquired, on River Road.

16. Despite these frustrations, Sea signed a further contract with Van Pro on August 21, 2018 for service at its Simpson Road location (2018 contract). This contract was for a cardboard hooklift "on call" at $220 per month, waste disposal every 2 weeks at $108 per month and cardboard disposal once every 3 weeks at $36.00 per month. Under special instructions, there is a notation that, "customer had read and accepted all terms at back. Term is one year then month-to-month. This agreement no affect the previous signed on May 19, 2015 which current is service [River Road location] (reproduced as written except as noted.) The special instructions also copied the waste service details and prices from the 2015 contract.

17. Sea argues that the 2018 contract was intended to replace all prior contracts with Van Pro. It also argues that it had no contract with Van Pro for the River Road location. However, based on the language in the special instructions in the 2018 contract, I find the parties' intention was to contract for the additional services at the Simpson Road location outlined above for a one year, then month to month term. I therefore find that the earliest date on which Sea could terminate the 2018 contract is August 22, 2019.

18. I also find based on the language in the special instructions in the 2018 contract, that the parties intended to amend the 2015 contract's service location by changing it to River Road, but maintain all other terms of the agreement. For this reason, I do not find that the 2018 contract changed the term of the 2015 contract. Therefore, the earliest date on which the 2015 contract could be terminated is May 20, 2020.

19. On April 24, 2019, Sea sent a notice to Segal by registered mail, stating that its service agreement for the River Road location expires on July 31, 2019, and that its new provider would be providing equipment on August 1, 2019. It is unclear where the July 31, 2019 date originated, or why the notice was sent to Segal rather than Van Pro. I note that while Segal provided a notice advising Sea that its contract was assigned to Van Pro, it did not provide Sea with an updated address for service. However, it is undisputed that regardless of the incorrect addressee, Van Pro received this notice. I infer from the dates in the termination notice that Sea was

attempting to terminate the 2018 contract. I find that the special instruction in the 2018 contract that the term was for one year, then month-to-month, meant that Sea could terminate the contract anytime after one year, with no notice. I make this finding because the provision that the contract could continue “month-to-month” after the one-year period is inconsistent with Van Pro’s standard termination provisions, which require termination notice be given at least 90 days and not more than 120 days before the expiry of the contract. In the absence of replacement notice provisions, I find that Sea was free to terminate the 2018 contract with no notice at the one-year mark, or with no notice on completion of any additional month thereafter. For this reason, I find that Sea’s April 24, 2019 notice was sufficient to alert Van Pro of its intention to terminate the 2018 contract at the end of the one-year period, and I find that the 2018 contract was terminated on August 22, 2019.

20. On January 20, 2020, Sea sent an identical notice to “Segal/Van Pro”, and addressed to the Van Pro office, by registered mail, stating that its service agreement for the Simpson Road location expires on May 19, 2020, and that its new provider would be providing equipment on May 20, 2020. I do not find that anything turns on the reference to the Simpson Road location, rather than the River Road location referenced in the amendment in the 2018 contract. The 2015 contract originally listed Simpson Road as a service location, and the date of the contract is correct. The termination provision does not require a service location to be included in the notice. Further, it is undisputed that Van Pro received the notice to terminate the 2015 contract by registered mail on February 5, 2020, which is between 90 and 120 days before the expiry of the 5-year term on May 20, 2020, as required by the 2015 contract. For these reasons, I find the termination notice complies with the requirements in the terms of the 2015 contract. I therefore find the 2015 contract was terminated on May 20, 2020.

What, if anything, does Sea owe Van Pro?

21. Having found that the 2015 contract was terminated on May 20, 2020 and the 2018 contract was terminated on August 22, 2019, I turn to what, if anything, Sea owes Van Pro for outstanding waste disposal services fees.

22. Van Pro did not provide a breakdown of how it arrived at the claimed $6,093.93 for "garbage disposal service fee." Van Pro provided a "statement" dated August 7, 2020 which lists several pages of charges dating from July 2018 until May 2020. However, Van Pro agrees that Sea paid its invoices regularly until September 2019. Van Pro has also not submitted monthly invoices detailing the services it provided to Sea, the dates of those services, and the related amounts claimed. I am unable to reconcile the $6,093.93 claimed in this dispute with the charges in the statement, especially given the payments to September 2019 and the August 22, 2019 and May 20, 2020 termination dates of the 2018 and 2015 contracts, respectively.

23. Van Pro is a sophisticated and frequent applicant before the CRT. Having failed to provide a reasonable, comprehensible breakdown of its debt claim, on balance I am unable to find that Van Pro has proved its damages. In making this finding, I acknowledge that in its submissions Sea admits that it owes Van Pro some money but "nowhere near the amount claimed." To the extent Sea agreed to pay $3,000 at some point before Van Pro started the CRT dispute, I find it is not bound by that offer given the matter proceeded through adjudication and given that Van Pro failed to prove the amount of its debt claim.

24. As noted, applicants have the burden of proving their damages on the balance of probabilities. In the absence of evidence supporting damages in the amount claimed, or even some quantifiable portion of this, Van Pro has failed to prove its claimed damages, and I dismiss its claim.

25. Finally, I note that the CRT's mandate includes the speedy, efficient and proportionate resolution of disputes. This mandate would not be furthered by having tribunal members spend considerable time and resources to parse non-specific

evidence to reach likely speculative conclusions about entitlement to claimed damages.

26. 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. Here, Van Pro was unsuccessful so I dismiss its claim for reimbursement of CRT fees. Sea made no claim for CRT fees or expenses, and so I order none.

ORDER

27. I dismiss Van Pro's claim and this dispute.

28. 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.

29. 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.

Shannon Salter, Chair