Civil Resolution Tribunal

Date Issued: November 18, 2020

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File: SC-2020-004061

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Prime Time Chicken Ltd.*, 2020 BCCRT 1301

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

PRIME TIME CHICKEN LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Richard McAndrew

INTRODUCTION

1. This dispute is about a waste disposal contract. The applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Prime Time Chicken Ltd. (Prime Time), breached the contract by improperly canceling it. Van Pro claims liquidated

damages in excess of $5,000. However, Van Pro has reduced their claim to $5,000 to comply with the Civil Resolution Tribunal's (CRT) monetary maximum for small claims disputes. Van Pro also argues that, if its claim for liquidated damages is not successful, it alternatively requests damages of $2,781.83 for unpaid waste disposal fees, $472.50 for bin removal fees and contractual interest of $852.39.

2. Prime Time denies Van Pro's claims. Prime Time says it properly cancelled the contract.

3. Both parties are represented by business representatives.

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the CRT. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.

5. Section 39 of the CRTA says 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. Section 42 of the CRTA says 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.

ISSUES

8. The issues in this dispute are:

    a. Is Prime Time obligated to pay Van Pro liquidated damages? If so, how much?

    b. Does Prime Time owe a debt to Van Pro for unpaid waste disposal services and fees? If so, how much?

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant Van Pro must prove its claim, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. Prime Time entered a 5-year waste disposal contract with Housewise Construction Ltd. dba Segal Disposal (Segal) on July 28, 2010 As discussed below, Segal later assigned the contract to Van Pro.

11. It is undisputed that Segal and Prime Time renewed the contract. However, Van Pro and Prime Time provided different renewal contracts. Van Pro provided a renewal agreement dated January 10, 2015 with an effective start date of February 1, 2015 (January 2015 contract). Prime Time provided a renewal agreement dated April 1, 2015, with a start date of July 1, 2015 (April 2015 contract). The service rates and contract durations differ between the January 2015 contract and April 2015 contract.

12. Van Pro says the April 2015 contract is not genuine. Van Pro says Segal's representative did not sign this document and it has never seen it before. However, Van Pro has not provided expert handwriting analysis to show that Segal's representative's signature is not genuine. In the absence of such expert evidence I am unable to determine whether the Segal's representative signed the contract. Further, I have reviewed the signatures on these documents and I note that Segal's representative's signature looks similar on the January 2015 contract, the April 2015 and the December 15, 2017 assignment letter discussed below. Based on the lack of expert handwriting analysis and the apparent similarity of these signatures, I find that, Van Pro has not proved that the April 15 contract is not genuine. So, I find that the April 15 contract is a valid, binding agreement.

13. Contracts may be modified by mutual agreement (see *BCCA People's Construction Ltd. v. Excellentia Builders Ltd.*). I find that Segal and Prime Time replaced the original 2010 contract with the January 2015 contract when that agreement was signed. I further find that the January 2015 contract was replaced with the April 2015 contract when that agreement was signed. So, I find that the April 2015 contract became the effective agreement between the parties.

14. The April 2015 contract's relevant terms are:

    a. The monthly charge for an organic bin was $500, a waste bin was $195 and a cardboard bins was $130. Bin removal was $150 each.

    b. Interest is payable at 24% per year on amounts overdue past 30 days.

    c. On the front page of the agreement, a handwritten, initialed provision says the agreement has a 3-year term, starting on July 1, 2015. Boilerplate language on the back page of the agreement says the term is 5 years. I find the specific, handwritten provision expresses the parties' intent to change the boilerplate provisions on the back page. I find the agreement had a 3-year term, starting on July 1, 2015.

d. c. The agreement will be renewed for successive 5-year terms unless Prime Time gives Segal written notice by registered mail not more than 120 days and not less than 90 days before any renewal date (also known as a cancellation window). I find the cancellation window consisted of the dates from March 2, 2018 to April 1, 2018.

e. d. If Prime Time receives an offer or enters a contract with a different waste disposal provider, Prime Time must send the contract to Segal. Segal will then have 30 days to match the offer and continue the waste disposal contract on those terms.

f. d. If Prime Time tries to end the agreement before the term's expiry, Segal can accept the termination of the agreement, in which case Prime Time agrees to pay Segal liquidated damages, either the sum of Prime Time's monthly billing for the most recent 9 months or the sum of the balance of the remaining term.

g. f. The agreement is legally binding on both Segal and Prime Time and their respective successors and permitted assigns.

h. g. Segal was entitled to assign the agreement at any time without Prime Time's consent.

15. I accept that Segal assigned its accounts receivable to Van Pro as of February 1, 2018, which is permitted by the contract as noted above. This is consistent with a December 15, 2017 letter signed by both Segal's representative SA and by XF for Van Pro. Based on Prime Time's submissions, I infer Prime Time was aware of the assignment.

Van Pro's claim for liquidated damages

16. Prime Time sent a cancellation letter to Segal dated March 25, 2018 by registered mail, with service ending on June 30, 2018 (cancellation letter). Van Pro says the cancellation letter was mailed on March 23, 2018 and returned to Prime Time by Canada Post. Prime Time says Canada Post notified Van Pro of the mailing but Van Pro did not pick up the letter from Canada Post. I do not find it necessary to determine

whether the cancellation letter was picked up by Van Pro or returned to sender. To cancel the contract, Prime Time is only required to send the cancellation notice by registered mail. The contract does not require receipt of the cancellation letter.

17. Based on the registered mail receipt and the date of the cancellation letter, I find that the letter was sent by registered mail to Segal on March 25, 2018. Further, I find that the cancellation letter was mailed 99 days before the expiration of the contract on June 30, 2018, which is within the cancellation window stated in the contract.

18. Van Pro argues that the cancellation letter should have been sent to Van Pro's address rather than Segal's because Prime Time knew the contract was assigned to Van Pro effective February 1, 2018. However, I note that the contract specifically says Prime Time must mail the cancellation notice to Segal and Segal's address is stated on the contract. I also note that the December 15, 2017 assignment letter does not provide a different mailing address for Van Pro. Van Pro provided an April 1, 2020 statement of account that shows that Van Pro's mailing address differs from Segal's mailing address in 2020. However, there is no evidence before me that Van Pro's mailing address was different from Segal's mailing address in 2018, and that Van Pro notified Prime Time of the new mailing address, when the cancellation letter was sent. In the absence of evidence that Van Pro notified Prime Time of a new mailing address, I find that Prime Time properly delivered the cancellation letter by sending the letter to the address stated in the contract.

19. Van Pro also argues that Prime Time must comply with the contract's right to re-negotiate provision before ending the contract. However, for the reasons that follow, I find that this provision is not relevant to Van Pro's claim for liquidated damages.

20. The right to re-negotiate provision says that, if Prime Time receives a service offer from another waste disposal provider, Prime Time must send Van Pro a copy of the offer and Van Pro will have 30 days to match the offer and continue the waste disposal contract on those terms. However, there is no evidence before me that Van Pro decided to match another waste disposal provider's offer in this dispute. Although Van Pro argues that Prime Time did not comply with this provision, the right to re-

negotiate clause does not state that the contract will be extended if Prime Time does not comply. Rather, the re-negotiate provision only extends the contract if Van Pro decides to do so. I find that Van Pro has not exercised its right to extend the contract by matching another service provider's offer so the contract was not extended.

21. For the above reasons, I find that Prime Time properly cancelled the contract at the expiration of its term on June 30, 2018 by providing notice within the cancellation window. So, I find that Van Pro is not entitled to an award of liquidated damages and I dismiss this claim.

Van Pro's claim for unpaid services and fees

22. Van Pro also asks for payment of unpaid invoices for waste disposal services and bin removal fees. I note that Van Pro did not provide copies of unpaid invoices which are normally expected when a party seeks compensation for unpaid invoices. However, I find that Van Pro's and Segal's statements of account adequately describes the service charges and Prime Time's payment history.

23. Van Pro's statement of account shows that Prime Time owed a balance of $2,781.83 in unpaid waste disposal fees when the contract ended on June 30, 2018. Prime Time did not dispute Van Pro's statement of account or the amount owed. Based on the statement of account, I find that Prime Time owes Van Pro a debt of $2,781.83 for unpaid waste disposal services.

24. It is undisputed that Van Pro picked up its 3 waste disposal bins in July 2018. Van Pro claims that Prime Time owes a bin removal fee of $472.50. Van Pro's statement of account itemizes 3 bin removal fees of $150, plus tax, totaling $472.50. I find these fees are payable under the contract. So, I find that Prime Time owes Van Pro $472.50 for bin removal fees.

25. Based on the above, I find that Prime Time owes Van Pro a debt of $3,254.33 for waste disposal services and bin removal fees.

26. On the debt of $3,254.33, I find Prime Time must pay Van Pro contractual interest at the rate of 24% per year, calculated from July 31, 2018, the due date of Van Pro's invoice for the bin removal fees, to the date the Dispute Notice was issued on May 25, 2020. While my calculation of the contractual interest is $1,420.85, I only award the lower amount of $852.39 as claimed by Van Pro. I find that Van Pro is also entitled to contractual interest from the date the Dispute Notice was issued, to the date of this decision. This totals $378.75. So, I find that Prime Times owes Van Pro total pre-judgment contractual interest in the amount of $1,238.14.

27. 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. Since Van Pro was generally successful, I find Van Pro is entitled to reimbursement of $175 in CRT fees. Since neither party requested reimbursement of dispute-related expenses, none are ordered.

ORDER

28. Within 30 days of the date of this order, I order Prime Time to pay Van Pro a total of $4,667.47, broken down as follows:

    a. $3,254.33 for unpaid waste disposal services and fees,

    b. $1,238.14 in pre-judgment contractual interest at 24%, and

    c. $175 in CRT fees.

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

30. Van Pro's claim for liquidated damages is dismissed.

31. 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.

32. 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.

Richard McAndrew, Tribunal Member