



Civil Resolution Tribunal

Date Issued: December 30, 2020

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Lee*, 2020 BCCRT 1466

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

JONG SUNG LEE

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about a waste disposal contract. The applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro), says the respondent, Jong Sung Lee, breached the contract by improperly canceling it. Van Pro claims \$4,905.68 for liquidated damages plus \$94.32 contractual interest.

2. Mr. Lee says he never agreed to a 5-year contract term with Van Pro. He also says he was entitled to terminate the contract because Van Pro provided poor service and charged him more than it charged neighboring businesses.
3. Van Pro is represented by an employee and Mr. Lee is self-represented.

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). 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, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
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.

Late evidence

8. Van Pro objects to late evidence submitted by Mr. Lee, which included photographs, invoices, and 2 witness statements. In particular, Van Pro objects to a 2018 invoice and the 2 witness statements.
9. Van Pro says the CRT acted unfairly by not permitting it to submit another invoice in response to the 2018 invoice submitted by Mr. Lee. Van Pro described the contents of the invoice it wanted to submit and its significance. As discussed below, I find nothing turns on the 2018 invoice submitted by Mr. Lee and I am able to make my decision based on the evidence and submissions before me.
10. Van Pro also objects to the admissibility of the 2 witness statements submitted by Mr. Lee. One statement was signed by 8 of Mr. Lee's employees and the other by the of 3 neighbouring business owners. Van Pro says the witnesses did not provide their contact information or phone numbers. It also says it is involved in legal proceedings with one of the businesses. I find the employees can all be contacted at Mr. Lee's business and the owners can be contacted at their respective businesses. As for the business that Van Pro has ongoing legal proceedings, I find there is nothing in the statement that indicates a bias since the statement was signed by 3 different individuals.
11. As noted above, the CRT's mandate includes flexibility. Since Van Pro had the opportunity to review and respond to the late evidence submitted by Mr. Lee as described above, I find it should be admitted.

ISSUES

12. The issues in this dispute are:
 - a. Whether Mr. Lee properly ended the parties' contract, and
 - b. If not, whether Mr. Lee must pay Van Pro \$4,905.68 for liquidated damages.

EVIDENCE AND ANALYSIS

13. 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.
14. On April 19, 2017, Mr. Lee and Housewise Construction Ltd dba Segal Disposal (Segal Disposal) signed a contract (2017 contract). Segal Disposal agreed to provide Mr. Lee doing business as NR Food Services waste disposal services.
15. The 2017 contract had the following relevant terms:
 - a. The contract was for a 5 year term, starting from May 1, 2017.
 - b. Segal Disposal would pick up waste, organic materials, and cardboard once a week.
 - c. Mr. Lee would grant Segal Disposal unobstructed access to place the equipment, provide service under the contract, and remove the equipment after the contract terminated. The containers would be accessible to Segal Disposal's vehicles at all times. Service may still be invoiced even if waste could not be collected.
 - d. The contract would renew automatically on May 1, 2022 for another 5 years, unless Mr. Lee 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).
 - e. If Mr. Lee tried to end the contract before the term expired, Segal Disposal could accept the termination. Mr. Lee would then agree to pay liquidated damages under a formula.
 - f. The contract is binding on Segal Disposal, Mr. Lee, and their respective heirs, successors and permitted assigns.

- g. Segal Disposal is entitled to assign the contract at any time without Mr. Lee's consent.
16. I find the parties' dispute is governed by this contract, as Segal Disposal assigned the contract to Van Pro effective December 1, 2017.
17. Van Pro named Mr. Lee as the respondent in this dispute even though the 2017 contract was with Lee Jong Sung dba NR Food Services. There is no evidence before me that NR Food Services is the name of an incorporated company or partnership. As a result, Mr. Lee is the sole proprietor of NR Food Services and so is personally liable for contracts signed on behalf of NR Food Services, even though NR Food Services was not named as a respondent in this dispute. Since Mr. Lee did not deny that he was personally responsible as a contracting party, I find he was properly named as a respondent in this dispute.
18. Mr. Lee says in 2019 his business name changed to Samsoonie Ltd. but although he notified Van Pro, the parties did not sign a new contract naming Samsoonie Ltd. as a contracting party. Mr. Lee did not deny that Van Pro continued to provide waste disposal services. I find the name change did not change the contractual relationship between Van Pro and Mr. Lee.
19. Mr. Lee says he was not aware that the 2017 contract was for a 5 year term until May 2017, 2 weeks after he signed it. Mr. Lee says the previous 2 contracts between the parties were for 1 year terms and based on their business history, he assumed the 2017 contract was also for a 1 year term. Van Pro says Mr. Lee was aware of the length of the term since he continued to receive services and pay invoices until it was terminated in February 2020.
20. Mr. Lee submitted the first page of 2 previous contracts between the parties, one dated July 31, 2014 and the other dated April 2, 2015 that he says were for 1 year terms. Since neither page contained the contracts' term, I have no evidence before me that they were 1 year contracts. In any event, based on my reasons below, I find

whether the previous contracts were for shorter terms does not affect the outcome of this dispute.

21. Mr. Lee signed the 2017 contract on page 1 which contained handwritten “Special Instructions” that stated that “The Customer already read & accept all items of the agreement, already read and accept terms & conditions at the back of the agreement” (reproduced as written). The length of the contract was on page 2, which I infer was on the back of page 1. Mr. Lee did not dispute the statement under the Special Instructions. He also did not state whether Van Pro represented the 2017 contract was for a 1 year term, or that he was not given an opportunity to read the 2017 contract before signing it. There is no claim that there was fraud, duress, mistake or illegality involved in Mr. Lee’s decision to sign the 2017 contract. It is also not unjust in such a way that I would find it unconscionable. So, I find that it is binding on both parties.
22. Mr. Lee also says that Van Pro did not renew the waste disposal contracts after exactly 1 year. I find the parties were not obligated to renew on a particular date and that not signing a renewal contract on the same day each year does not affect the 2017 contract’s enforceability.

Did Mr. Lee properly end the 2017 contract?

23. The parties agree that Mr. Lee sent Van Pro notice that he wanted to cancel the contract. Neither party submitted a copy of the notice or stated the date it was sent to Van Pro. Van Pro notified Mr. Lee in a February 15, 2020 letter that it was not accepting the termination. It also informed Mr. Lee that if he terminated the contract before it expired, he would have to pay Van Pro \$7,705.03 for 12 months of liquidated damages plus \$1,380.36 for his outstanding balance.
24. Since the 2017 contract term ended on April 30, 2022, under its terms the cancellation window was from January 1 to January 31, 2022. I find that Mr. Lee sent the notice before February 15, 2020 and so Mr. Lee did not provide notice within the cancellation

window. Under the 2017 contract, Van Pro would be entitled to seek liquidated damages.

25. Mr. Lee says he terminated the 2017 contract because Van Pro's drivers did not pick up garbage every week, overcharged for its services, drained liquid from the trucks into the drains outside Mr. Lee's location, and parked over the drains. I must consider whether Mr. Lee was entitled to end the contract because Van Pro provided poor service that amounted to a fundamental breach, as alleged.
26. When a party fails to perform a primary obligation of a contract in a way that deprives the other party of substantially the whole benefit of the contract, it is called a fundamental breach. (See *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC)). 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.)
27. 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 damages against the other party for a breach of contract. For a fundamental breach, the wronged party can end 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).)
28. Mr. Lee says even though the 2017 contract stated garbage would be picked up once per week, Van Pro "often" picked it up once every 2 weeks. He says when he notified Van Pro, he was told the driver would come the next day but then that did not occur. Mr. Lee says he had to transport waste to his other location to dispose of it.
29. As discussed above, Mr. Lee submitted 2 different statements. The first was signed by 8 of Mr. Lee's employees and stated that garbage was not picked up on the same day every week because cars were parked in front of the bins on "many instances". I infer this meant that cars blocked Van Pro's access to the bins. Further, it stated that

Van Pro did not come the next day despite saying it would. It also stated that the bins were overflowing with garbage which attracted animals. It also stated that the “owner” of Samsoonie Ltd., who I infer is Mr. Lee, had to dispose of the garbage himself by taking it to his dumpling factory.

30. Mr. Lee also submitted a statement signed by 3 neighbouring businesses that stated they had ended their contracts with Van Pro due to poor service. They stated that on several occasions Van Pro did not pick up garbage according to the schedule. Also, that Van Pro mixed general garbage and organics in the same truck.
31. Van Pro says it picked up cardboard, waste and organics from Mr. Lee’s location on separate days and so made 3 separate trips each week. It submitted affidavits from 2 of its drivers, AY and BD. AY stated that he was a driver and dispatch manager. He stated that he reviewed the records for picking up cardboard. In his affidavit, AY listed the dates from May 2, 2017 to February 25, 2020, each 7 days apart, that he “personally” picked up cardboard.
32. Likewise, BD stated that he was a driver and reviewed the records for picking up organics and waste. BD listed dates from May 2, 2017 to February 27, 2020 that he stated he personally picked up organics or waste, resulting in 2 separate trips each week. For each type of garbage, the trips were also 7 days apart.
33. Mr. Lee says that the affidavits are misleading. He says there were at least 5 different drivers that picked up garbage from his business location and so AY and BD could not have picked up the garbage each week. Mr. Lee did not provide the names or descriptions of these other drivers. Van Pro did not dispute that other drivers may have also picked up garbage.
34. I give little weight to the drivers’ statements. Neither AY or BD provided a copy of the records they reviewed showing the dates they picked up garbage from Mr. Lee’s location. I also find it unlikely that each driver made trips each week for over 2 years without any vacation or time off.

35. Likewise, I give limited weight to the statements submitted by Mr. Lee. Since Mr. Lee submitted a photograph of the bins blocked by several cars, I accept that on some days, Van Pro was unable to pick up the garbage. However, neither statement contained details about dates or how often Van Pro was unable to access the bins. Also, if Van Pro failed to pick up garbage weekly, I find it was because Mr. Lee failed to make the bins accessible to Van Pro's trucks at all times as required under the 2017 contract.
36. Mr. Lee also submitted 2 invoices that he says show Van Pro picked up cardboard every 2 weeks. In an August 1, 2018 invoice, Van Pro charged \$66 for 2 yards of cardboard "1/2week". I infer this to mean Van Pro charged Mr. Lee \$66 to pick up 2 yards of cardboard once every 2 weeks. Likewise, in a March 31, 2020 invoice that showed Van Pro charged \$85 for 2 yards of cardboard "1/2week".
37. Van Pro denies it issued the August 1, 2018 invoice and says that it is fraudulent. It says its records show it had amended and resent the invoice. Van Pro says it was unable to submit its copy of the invoice. Van Pro also says the invoice showed a balance owing of \$4,245.78, which would be the equivalent of 7 months unpaid services. It says Mr. Lee always paid in full and was never 7 months in arrears. This is consistent with Mr. Lee's testimony that he always paid Van Pro's invoices in full.
38. Van Pro submitted an affidavit from XY, its assistant accountant who stated they made an error in an invoice they prepared around February 14, 2020 and wrote that the service item was for cardboard pick up "1/2week". They say it should have been weekly. In addition, AY also stated in his affidavit that the March 2020 invoice was "wrongly printed" to show service every 2 weeks.
39. I find the invoices do not prove that Van Pro only picked up cardboard once every 2 weeks. Based on XY's affidavit and BD's affidavit, I accept that it is likely the invoices contained errors. Mr. Lee also submitted a photograph that he says showed 6 invoices from 2018 where Van Pro also allegedly wrote that pickup was once every 2 weeks. I give no weight to this photograph since, as pointed out by Van Pro, the print was too small to read.

40. I find Mr. Lee has not proved that Van Pro regularly failed to pick up garbage as required under the 2017 contract terms.
41. Mr. Lee also says that although he paid for cardboard and organic compost pickup on 2 separate bills, Van Pro picked up both together in the same truck. Mr. Lee did not explain the significance of picking them up separately. I find the 2017 contract required cardboard, organics, and waste to be picked up weekly, but it did not require the different types of waste materials to be picked up separately.
42. Mr. Lee says Van Pro's truck parked over the drains and drained liquid waste from the compost into the road drains. He submitted photographs of Van Pro's truck in the parking lot behind his business that showed the truck parked or stopped near a drain and a puddle on the ground. Mr. Lee admits that the drivers stopped doing this immediately after his wife reported it to Van Pro and it has not happened since.
43. Van Pro denies that its drivers were draining waste liquid into the city's drains. It says even if they were, Mr. Lee should have reported it to the city to address.
44. I reviewed the 2017 contract and there is no clause prohibiting Van Pro from emptying into the drains, although I suspect doing so likely violates municipal bylaws or possibly environmental laws. In any event, I find the 2017 contract was not breached.
45. Van Pro says in one of the invoices, Van Pro charged \$85 instead of \$60 for cardboard removal. Van Pro admits this happened but says it was an accounting error and that it issued a new invoice. I find that overcharging on 1 invoice does not constitute a fundamental breach.
46. Mr. Lee says Van Pro raised its rates by 300%, although he "didn't complain". Van Pro says it raised its rates by 30% in 3 years after increases in Metro Vancouver's garbage and recycling fees in 2018 and 2019 and the cost of recycling cardboard. The 2017 contract allows Van Pro to adjust rates based on factors such as increased fuel and disposal facility costs, and decreased market prices for recyclable materials. It also allows Van Pro to adjust rates in excess of percentage increases with the customer's consent if it gives at least 21 days' notice before the increase. It also

states that the customer's consent can be evidenced by the practices and actions of the parties.

47. Based on evidence provided by Van Pro, I find it increased its rates by 8% to 46% from 2017 to 2020, although Metro Vancouver's rates increased by approximately 10% annually from 2018 to 2020. Although Van Pro submitted evidence that the value of cardboard decreased from 2017 to 2019, it did not state by how much. Mr. Lee did not deny that he received a notice of price increases. Since Mr. Lee says he did not "complain" about the rate increases, I find that he consented to them and there was no fundamental breach.

Other issues

48. Mr. Lee says another reason for terminating the contract was that Van Pro charged him more than it charged other neighbouring businesses who produced more garbage than his business. Mr. Lee did not state that Van Pro represented its rates were competitive or comparable to what it charged nearby businesses at the time the 2017 contract was signed. So I find the rates Van Pro charged other businesses is not relevant in this dispute.
49. Van Pro submitted an undated form letter about cancelling Van Pro's contract with "Noodles & Rice" effective March 1, 2020 that it says was sent by Mr. Lee's wife. Mr. Lee denies his wife signed the form and says Van Pro falsified the letter. There is no evidence that "Noodles & Rice" is affiliated with Mr. Lee. I find Van Pro mistakenly submitted the form as evidence and that it relates to a company that is not involved in this dispute.
50. Based on my reasons above, I find Van Pro did not fundamentally breach the contract. I find Mr. Lee breached the contract since he tried to terminate it outside the cancellation window. Under the 2017 contract's terms, Van Pro is entitled to liquidated damages equal to the greater of the sum of the most recent 9 months of monthly billings or the sum of the balance of the contract's remaining term.

51. Since the contract was terminated on February 15, 2020, there were approximately 26 months remaining under the contract's term. However, Van Pro seeks liquidated damages of \$584.01 per month plus GST for 8 months, which is \$4,905.68.
52. In January 2020 and February 2020, Van Pro billed Mr. Lee \$584.01 per month plus GST and so I accept it is entitled to \$584.01 per month. Since GST is not payable on liquidated damages, I award Van Pro liquidated damages of \$584.01 per month for 8 months, which is \$4,672.08.
53. According to Mr. Lee, Van Pro denied that it charged bin removal fees, but he paid \$378 for that cost. I find Mr. Lee misunderstood Van Pro. In its submissions, Van Pro acknowledged that Mr. Lee paid the bin removal fees and so those were not claimed in this dispute. I find this is consistent with the relief claimed in the Dispute Notice.

INTEREST, CRT FEES, AND EXPENSES

54. Although Van Pro claims contractual interest, I find that contractual interest does not apply to liquidated damages. However, Van Pro is entitled to pre-judgment interest under the *Court Order Interest Act*. The 2017 contract states that interest is charged on any amount that remain outstanding for more than 30 days. Van Pro's invoice for liquidated damages was dated February 15, 2020. I find pre-judgment interest is calculated starting 31 days after February 15, 2020, which is March 19, 2020, until the date of this decision. This equals \$36.46.
55. 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 find Van Pro is entitled to reimbursement of \$175 in CRT fees. Van Pro is also entitled to \$15 it claimed for a company search fee.

ORDERS

56. Within 14 days of the date of this order, I order Mr. Lee to pay Van Pro a total of \$4,898.54, broken down as follows:

- a. \$4,672.08 in liquidated damages,
- b. \$36.46 in pre-judgment interest under the *Court Order Interest Act* on liquidated damages, and
- c. \$190, for \$175 in CRT fees and \$15 in dispute-related expenses.

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

58. 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.

59. 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.

Rama Sood, Tribunal Member