



Civil Resolution Tribunal

Date Issued: April 29, 2021

File: SC-2020-006729

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Axon Cabinets Ltd.*,
2021 BCCRT 453

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

AXON CABINETS LTD.

RESPONDENT

A N D :

0955824 BC LTD. DBA VAN PRO DISPOSAL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. The applicant (and respondent by counterclaim), 0955824 BC Ltd. dba Van Pro Disposal (Van Pro), provided waste disposal services to the respondent (and applicant by counterclaim), Axon Cabinets Ltd. (Axon) through a contract. Van Pro says Axon breached the contract by failing to make payments on time and by cancelling the contract before the term's end. Van Pro claims \$20.71 for a garbage disposal fee, \$175 for a bin removal fee, and \$2,804.29 in liquidated damages for a total of \$3,000.
2. Axon says Van Pro breached the contract by failing to provide adequate waste disposal services, so Axon should not be penalized for cancelling the contract. It also says it paid its bills on time. Axon agrees to pay Van Pro the \$20.71 garbage disposal fee but says it should not be required to pay a bin removal fee or liquidated damages.
3. Axon counterclaims and says Van Pro's 4-day delay in picking up its waste in August 2020 required it to reduce its daily production by 25 percent for 4 days. It claims \$5,000 in lost revenue. Van Pro says Axon has failed to prove its counterclaim and it should be dismissed.
4. Each party is represented by an employee or principal.

JURISDICTION AND PROCEDURE

5. 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.

6. 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. 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.
7. 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.
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.

ISSUES

9. The issues in this dispute are:
 - a. Is Van Pro entitled to \$195.71 in service fees?
 - b. Is Van Pro entitled to liquidated damages, and if so, how much?
 - c. Must Van Pro reimburse Axon \$5,000 for lost revenue for delayed waste disposal services?

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, the applicant Van Pro must prove its claims on a balance of probabilities. Likewise, Axon must prove its counterclaim to the same standard. I have read all of the parties' evidence and submissions but only address them to the extent necessary to explain and give context to my decision.

11. On March 19, 2019, the parties signed a waste disposal services contract for a 5-year term starting June 26, 2019. The contract states that Van Pro would pick up Axon's waste on an on-call basis. It is undisputed that on August 13, 2020, Axon notified Van Pro by letter that it wished to cancel the contract as of August 30, 2020 (cancellation letter).

Is Van Pro entitled to \$195.71 or some other amount in service fees?

12. Van Pro claims \$20.71 for an unpaid garbage disposal fee. Although the details are unclear, in its Dispute Response Axon says it agrees with this charge. So, I find Axon must pay Van Pro \$20.71 for the garbage disposal fee.

13. Van Pro also claims \$175 for a bin removal fee. Axon's cancellation letter demanded that Van Pro remove its bin on August 30, 2020, and it is undisputed that Van Pro did so. Van Pro's September 1, 2020 invoice charged Axon \$150 for the bin removal, plus 5% GST, for a total of \$157.50. This is consistent with the contract. Van Pro does not explain the discrepancy between the \$175 claimed and the \$157.50 charged. So, I find Van Pro is entitled to \$157.50 for bin removal. Contrary to Axon's assertion, given the contract, nothing turns on whether Van Pro failed to mention a bin removal fee before Axon provided its final payment.

14. In total, I find Axon must pay Van Pro \$178.21 for unpaid service fees under the contract.

Is Van Pro entitled to liquidated damages, and if so, in what amount?

15. Van Pro claims \$2,804.29 in liquidated damages for Axon's failure to pay invoices on time, and for Axon's cancellation of the contract.

16. It is undisputed that by sending Van Pro the cancellation letter on August 13, 2020 Axon cancelled the contract as of August 30, 2020, which was before the end of the contract's 5-year term. The contract states that if Axon cancels before the term's expiry, Van Pro may accept the cancellation and end the contract. In that case, the contract states that says Axon owes Van Pro liquidated damages in the amount of

its total monthly billings for the most recent 12 months, or the sum of the balance of the contract's remaining term, whichever is greater. It is undisputed that Van Pro accepted Axon's cancellation by sending it a September 1, 2020 invoice for liquidated damages.

17. Axon says a long-term signed contract is not an excuse for Van Pro continuously providing poor service, and so it should not be required to pay liquidated damages. Its August 13, 2020 cancellation letter does not state the reason for cancelling the contract. However, in its submissions Axon says it did so because Van Pro frequently breached the contract by failing to collect Axon's waste within 24 hours of Axon's request and by failing to return the bin within a reasonable time. Axon submitted various emails documenting its complaints about Van Pro's service.
18. In the circumstances, I find Axon is only relieved of its obligation to pay liquidated damages under the contract if it can establish that before it cancelled the contract Van Pro fundamentally breached it. A party fundamentally breaches a contract if their failure to fulfil an obligation under it deprives the other party of substantially the whole benefit of the contract (see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC)). If Van Pro fundamentally breached the contract, Axon was entitled to terminate it and be released from future obligations under it, including its obligation to pay liquidated damages (see *Mantar Holdings Ltd. v. 0858370 B.C. Ltd.*, 2014 BCCA 361). For the following reasons, I find Axon has not established that Van Pro fundamentally breached the contract.
19. Axon claims that Van Pro was required to pick up its waste within 24 hours of Axon's request, but I find this is a misinterpretation of the contract. The contract states that for "Hooklift" accounts, Van Pro required a minimum of 24 hours' notice on weekdays for unscheduled services. It is undisputed that Axon's was a "Hooklift" account. I find this means Van Pro would provide service on weekdays at least 24 hours after a request.
20. Axon says that on Friday, June 7, 2019 it requested service from Van Pro, but Van Pro did not come until Monday, June 10, 2019, in breach of the contract. However, I

find the contract did not require Van Pro to provide the requested service until June 10, 2019. It is undisputed that Van Pro attempted to pick up Axon's bin that day, but it contained banned materials in breach of the contract. So, I find Axon has not established Van Pro breached the contract in June 2019.

21. Axon says that in October 2019 Van Pro failed to provide service within 24 hours and it submitted an October 2, 2019 email to support its allegation. However, Van Pro says, and I agree, that Axon was required to provide 24 hours' notice for a service request, and I find there is no evidence it did so. I find Axon has not established that Van Pro breached the contract in October 2019.
22. Axon also says Van Pro picked up its bin on May 23, 2019 and did not return it until May 27, 2019, despite promising to return it by May 25, 2019. However, the evidence shows Van Pro explained that it was delayed in returning the bin because its locking bar was broken and that such a delay would not happen again. Axon does not dispute this, but it says there were other instances when Van Pro delayed returning its bin. However, Axon did not provide details about these alleged delays. The contract does not specify the time period in which Van Pro is required to return Axon's bin, and on the evidence before me I find Axon has not established that Van Pro breached the contract in May 2019.
23. Axon also claims that on March 10, 2020 Van Pro left it with a 10 cubic yard bin instead of its regular 40 cubic yard bin. However, Van Pro says, and Axon does not dispute, that while Van Pro took Axon's regular bin to the dumpsite that day, Van Pro left a smaller bin with Axon at its request in order for Axon to consider it as an option for wood waste. So, I find Axon has not established that Van Pro breached the contract on March 10, 2020.
24. Finally, Axon says Van Pro delayed its service in early August 2020 by several days which caused it lost revenue. This is the basis of Axon's counterclaim, which I address below. While I find that Axon has established that Van Pro's service was delayed by several days in August 2020, on the evidence before me I find that alone

was not a fundamental breach of the contract which would relieve Axon of its responsibility to pay Van Pro liquidated damages for cancelling the contract.

25. I acknowledge that the liquidated damages clause in the contract is onerous on Axon. However, in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690, the BC Supreme Court found a similar contract to be enforceable, and that decision is binding on me. So, I find Van Pro is entitled to liquidated damages.
26. Van Pro's September 1, 2020 invoice shows it calculated liquidated damages by multiplying the \$150 hauling fee by 12 months, and by multiplying the \$75 monthly rental fee by 12 months, plus 5% GST, for a total of \$2,835. This amount is undisputed, and I find it is consistent with the contract. However, in this dispute Van Pro only claims \$2,804.29 in liquidated damages, so I find it is entitled to that amount. I find Axon must pay Van Pro \$2,804.29 in liquidated damages.
27. Having found that Van Pro is entitled to liquidated damages based on Axon's cancellation of the contract, I find it is unnecessary to address Van Pro's alternate claim that it is entitled to liquidated damages based on Axon's late payment of invoices. For the same reason, I find it is unnecessary for me to address Van Pro's allegation that Axon breached the contract by signing a new contract with another waste hauler without giving it right of first refusal.

Must Van Pro reimburse Axon \$5,000 for lost revenue for delayed waste disposal services?

28. Axon says Van Pro's 4-day delay in picking up Axon's waste in August 2020 was a breach of the contract that caused Axon business interruptions and lost production capacity. Axon claims \$5,000 in lost revenue from Van Pro's alleged breach of the contract. I have already found that Van Pro's 4-day delay in providing service in August 2020 was not a fundamental breach, but Axon can still claim damages for lesser breaches of the contract.
29. Van Pro does not dispute that its service to Axon was delayed in August 2020, but it says it was because Axon had unpaid invoices and Axon put banned materials in its

bin. On the evidence before me, it is unclear exactly what caused Van Pro's delayed service. However, I find it is unnecessary for me to determine whether Van Pro breached the contract as alleged, because I find Axon has not proven its damages. Axon did not submit any financial statements, daily worksheets, or other documents to support its allegations of lost revenue caused by Van Pro's delayed service. Axon is responsible for proving its counterclaim. I find it has not done so, and I dismiss it.

30. The *Court Order Interest Act* (COIA) applies to the CRT. However, under section 2(b) of the COIA, pre-judgment COIA interest must not be awarded if the parties have an agreement about interest. The parties' contract provides for 26.82% annual interest. So, I find there is no interest payable under the COIA. Van Pro did not claim contractual interest in this dispute.

31. 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 it is entitled to reimbursement of \$125 in CRT fees. Since Axon was unsuccessful on its counterclaim, I find it is not entitled to reimbursement of CRT fees. Neither of the parties claimed dispute-related expenses.

ORDERS

32. Within 30 days of the date of this order, I order Axon to pay Van Pro a total of \$3,107.50, broken down as follows:

- a. \$178.21 for unpaid service fees,
- b. \$2,804.29 in liquidated damages, and
- c. \$125 in CRT fees.

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

34. I dismiss Axon's counterclaim.
35. 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.
36. 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.

Sarah Orr, Tribunal Member