



Civil Resolution Tribunal

Date Issued: June 21, 2021

File: SC-2020-008178

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 B.C. Ltd. dba Van Pro Disposal v. H Tech Motor Incorporated*,
2021 BCCRT 680

B E T W E E N :

0955824 B.C. LTD. DBA VANPRO DISPOSAL

APPLICANT

A N D :

H TECH MOTOR INCORPORATED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kristin Gardner

INTRODUCTION

1. This dispute is about a waste disposal contract. The applicant, 0955824 B.C. Ltd. dba VanPro Disposal (Van Pro), provided waste disposal services to the respondent, H Tech Motor Incorporated (HTM). Van Pro says HTM breached their contract by failing to make payments on time and by canceling the contract before the term's end. Van

Pro claims \$1,240.69 in unpaid invoices, \$1,155.80 in liquidated damages, \$173.25 for removing the garbage bin, and 5% contractual interest.

2. HTM says Van Pro breached their contract by failing to provide monthly invoices in an organized or timely way. HTM says it stopped paying Van Pro in April 2020 because Van Pro's account statements were unreliable and incorrect. It says Van Pro failed to provide a proper statement of all invoices and payments, so Van Pro is not entitled to the claimed payment for services and liquidated damages.
3. Van Pro is represented by its owner. HTM is represented by a non-lawyer family member of its owner.

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. 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.
8. HTM submitted evidence after the filing deadline, consisting of emails showing delivery dates of invoices in 2015 and 2017. Van Pro had the opportunity to respond to HTM's late evidence in its reply submissions. Van Pro then filed further evidence in reply to HTM's late evidence, after the submissions process. HTM was provided an opportunity to review and make submissions about Van Pro's late evidence. As discussed further below, issues involving the 2015 and 2017 invoices are of limited relevance in this dispute. Nevertheless, I find neither party is prejudiced by the lateness of the evidence, and I exercise my discretion to accept it, keeping in mind the CRT's mandate that includes flexibility.
9. Van Pro's late evidence also included a balance statement, showing the dates and amounts of each of its invoices and HTM's payments. I find this evidence is highly relevant to this dispute. HTM says it has never seen it before, though does not object to its admission. Given HTM had an opportunity to comment on it, I accept Van Pro's late balance sheet evidence and consider it in my decision below.

ISSUES

10. The issues in this dispute are:
 - a. Is Van Pro entitled to \$1,240.69 for unpaid invoices?
 - b. Is Van Pro entitled to liquidated damages, and if so, how much?
 - c. Is Van Pro entitled to a \$173.25 fee for bin removal?

EVIDENCE AND ANALYSIS

11. In a civil proceeding like this one, the applicant Van Pro must prove its claims on a balance of probabilities. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
12. On February 25, 2015, HTM signed a contract with Housewise Construction Ltd. dba Segal Disposal (Segal) for waste disposal. It is undisputed that the contract's first term was 2 years and expired on March 1, 2017.
13. The other relevant terms of the contract are:
 - a. HTM must pay Segal monthly, within 15 days after being invoiced. Interest is payable at the rate of 2% per month on any amounts outstanding for more than 30 days from the date the amount became due.
 - b. The agreement will renew automatically for a 5-year term, unless HTM provides written notice by registered mail, not more than 120 days and not less than 90 days before any renewal date.
 - c. If HTM tries to terminate the agreement before the terms' expiry, Segal can accept the termination. HTM then agrees to pay liquidated damages according to a specified formula.
 - d. Segal is entitled to assign the contract at any time without HTM's consent.
14. While neither party filed a renewal contract in evidence, I find that according to the stated contractual terms, the contract automatically renewed on March 1, 2017 for a 5-year term.
15. It is undisputed that Segal assigned its contract with HTM to Van Pro in December 2017, which was permitted by the contract, as noted above.
16. Both parties made submissions and provided evidence about invoices and payments made as far back as 2015. I accept that the evidence shows HTM did not pay Segal or Van Pro on a regular monthly basis. HTM argues that this is because both Segal

and Van Pro failed to provide it with regular invoices, so it often paid for several months in one payment after following up on allegedly missing invoices. Van Pro denies sending its invoices irregularly and says HTM paid sporadically due to its own disorganization.

17. I find there is insufficient evidence before me to determine the reason for HTM's sporadic payments over the years. There is some evidence that HTM wrote to Van Pro complaining that it did not receive regular invoices. There is also some evidence that Van Pro contacted HTM about not paying invoices regularly. I find neither party's evidence is more persuasive than the other's. While Van Pro's invoices are each dated on the first of the month, it did not provide any evidence about how or when it delivered each invoice to HTM. As Van Pro bears the burden of proving its claims, I find Van Pro has failed to provide sufficient evidence that HTM breached their contract by failing to pay invoices in a timely manner until 2020, as discussed further below.
18. However, despite the parties' focus on historical payment issues, I find that any invoices dated before October 23, 2018 are not at issue in this dispute. I say this because under section 6 of the *Limitation Act*, a party has 2 years from the time they discover a claim to start a dispute. Van Pro filed its application for dispute resolution on October 23, 2020. So, I find the time to bring a claim for payment of invoices dated before October 23, 2018 has expired.
19. In any event, Van Pro's invoices and balance statement both suggest that the oldest unpaid invoice is Van Pro's June 1, 2019 invoice. Therefore, I find only the invoices and payments dated June 1, 2019 and newer are relevant to this dispute.
20. HTM also argues that Van Pro's invoices were confusing, and it had difficulty determining what amount was owing each month. I find Van Pro's invoices in evidence do not show any of HTM's payments, nor do they show any outstanding balances or itemize unpaid invoices, even when HTM had not made a payment for several months. Each invoice set out only the amount owing for service in the month invoiced. I find this meant that if HTM missed any payments, whether due to its own

delay or Van Pro's failure to send its invoices in a timely manner, HTM would not have an accurate statement of what was owing at any given time. I also find each of Van Pro's invoices showed a \$2,396.49 "customer open balance", and the remittance form requested payment of that amount. Van Pro did not explain where the \$2,396.49 came from or why it was reflected on its invoices. I accept that these factors likely caused HTM some confusion when trying to determine what was owing to Van Pro.

21. HTM says it informed Van Pro in April 2020, that it would not make any further payments until Van Pro provided documentation to confirm the alleged outstanding balance. However, Van Pro continued to provide waste disposal services to HTM. In October 2020, Van Pro invoiced HTM for liquidated damages under the contract, and then removed its bin from HTM's property.

Unpaid invoices

22. Van Pro claims that HTM failed to pay invoices totaling \$1,240.69 for disposal services provided. According to the balance statement in evidence, this amount consists of a partially paid June 1, 2019 invoice (\$24.13 outstanding), 2 months of service at a monthly rate of \$107.70 (November and December 2019), 7 months of service at a monthly rate of \$116.46 (April to October 2020), and 5 finance charges of varying amounts.
23. The June 1, 2019 invoice was for \$107.70. The balance statement shows that HTM made a \$430.80 payment on July 12, 2019. I find that payment was intended to cover the preceding 4 months of service at the monthly \$107.70 rate, including the June 1, 2019 invoice. Van Pro says its computer automatically applied HTM's payments to the oldest unpaid invoice. I infer that this happened with HTM's July 12 payment, which resulted in the June 1, 2019 invoice being only partially paid and leaving a \$24.15 outstanding balance. However, there is no evidence before me about what other invoice the payment was applied to. I find Van Pro has not proven that part of HTM's July 12 payment was properly applied to a valid unpaid invoice. So, I find HTM's July 12 payment fully satisfied the June 1, 2019 invoice, and I do not allow Van Pro's \$24.15 claim for the June 1, 2019 invoice.

24. From my review of the balance statement, I find that HTM's October 4, 2019 \$215.40 payment was intended to pay Van Pro's August and September 2019 invoices, and HTM's December 28, 2019 \$215.40 payment was intended to pay Van Pro's November and December 2019 invoices. I find there is no evidence that HTM paid Van Pro's October 1, 2019 \$107.70 invoice, and I order HTM to pay it.
25. HTM admits that it made no further payments after paying the January to March 2020 invoices. I find HTM has failed to show that Van Pro delivered any of the claimed 2020 invoices late or that the invoices failed to accurately reflect the amount owing for the service Van Pro undisputedly provided, such that Van Pro breached their contract. I find the evidence shows Van Pro continued its waste disposal service for HTM until October 2020. So, I find Van Pro is entitled to payment for its invoices from April to October 2020, totaling \$815.22.
26. As for the 5 finance charges, I find these charges represent calculated contractual interest for allegedly outstanding invoices. Van Pro was entitled to charge 2% interest on unpaid invoices under the contract. The June 30, 2019 invoice #FC 534 for \$65 says it is for overdue balances from invoices dated January 31, 2018 (\$131.83) and April 1, 2019 (\$107.70), May 1, 2019 (\$107.70), and June 1, 2019 (\$107.70). However, the January 31, 2018 invoice was for \$299.32 and says it is a "balance forward from Segal". I find the allowable interest charge for the January 1, 2018 invoice is unproven. Further, given the dispute about whether Van Pro was delivering its invoices late and my finding above that HTM's July 12, 2019 payment was intended to cover the April 1, May 1, and June 1 invoices, I find Van Pro has not proven it was entitled to the claimed finance charge in invoice #FC 534.
27. I find the 4 other claimed finance charges relate to the 2020 outstanding invoices claimed in this dispute. I will calculate the contractual interest for those amounts below, to the date of this decision. To avoid Van Pro being compensated twice for contractual interest, I find it is not entitled to payment of the claimed finance charges.

Liquidated damages and bin removal

28. Van Pro seeks \$1,155.80 in liquidated damages, which Van Pro invoiced HTM for on October 23, 2020. The invoice shows that Van Pro calculated the liquidated damages based on 12 months of its 2020 monthly service rate of \$91.73, plus GST.
29. The parties' contract states that if the customer (HTM) tries to terminate the agreement before the expiration of its term, Segal (now, Van Pro) has the option to either affirm the agreement, or accept the customer's purported termination and terminate the agreement, in which case the customer must pay liquidated damages.
30. The parties did not provide a lot of detailed evidence about the circumstances leading up to the contract's termination. I find the evidence shows HTM sent Van Pro an August 20, 2020 email, in response to phone calls from Van Pro about outstanding invoices. I infer that Van Pro alleged HTM had failed to make any payments in 2020. In the email, HTM provided records showing it had paid the January to March 2020 invoices. HTM also acknowledged it had outstanding unpaid invoices from April to June 2020. HTM requested an updated statement of account based on the information in the email and said it would pay the amount owing.
31. The next correspondence between the parties in evidence is an October 13, 2020 email from Van Pro that stated despite several phone calls to discuss the account with HTM, \$1,226.36 remained outstanding. In a follow up email on October 16, 2020, Van Pro provided a deadline of October 19, 2020 to pay the outstanding balance, or it would take legal action. As noted, Van Pro invoiced HTM for the claimed liquidated damages on October 23, 2020.
32. I find that HTM's failure to pay Van Pro's invoices after March 2020 was a breach of their contract, which provided that HTM must pay Van Pro within 15 days after being invoiced. Further, I find this was a fundamental breach, which is a contractual breach that deprives the other party of substantially the whole benefit of the contract. When a party commits a fundamental breach, the wronged party is entitled to terminate the

contract immediately: see *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BC CA). A fundamental breach is repudiation (termination) of a contract.

33. I find Van Pro is entitled to liquidated damages for HTM's fundamental breach, which is calculated under the contract as the sum of HTM's monthly billing for the most recent 12 months. For the months of January to October 2020, HTM's billing was \$91.73 per month plus GST. For November and December 2019, HTM's billing was \$83.39 per month plus GST. So, I find Van Pro is entitled to liquidated damages of \$1,084.08 plus GST, for a total of \$1,138.28.
34. It is undisputed that Van Pro ultimately removed its bin from HTM's property. I find that Van Pro is entitled to payment of its \$150 bin removal rate plus applicable taxes under the contract's terms. I find HTM must pay Van Pro \$173.25 for the bin removal.

INTEREST AND CRT FEES

35. Van Pro claims 5% contractual interest on its unpaid invoices. As noted, the parties' contract says that HTM must pay 2% monthly interest on amounts that are more than 30 days overdue. The contract does not set out an annual interest rate. Section 4 of the federal *Interest Act* says that when an interest rate is expressed as a rate for a period of less than a year, and the contract does not say what the equivalent annual rate is, the maximum allowable interest is 5%. Therefore, I find that Van Pro is entitled to 5% annual interest, as claimed. Applying this rate to the unpaid invoices, I find Van Pro's entitlement to interest equals \$47.84.
36. 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. I find Van Pro was the successful party, so it is entitled to reimbursement of \$125 in paid CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

37. Within 30 days of the date of this decision, I order HTM to pay Van Pro a total of \$2,407.29, broken down as follows:

- a. \$1,096.17 in debt for unpaid invoices and the bin removal fee,
- b. \$1,138.28 in liquidated damages,
- c. \$47.84 in contractual interest, and
- d. \$125 in CRT fees.

38. Van Pro is also 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.

Kristin Gardner, Tribunal Member