



Civil Resolution Tribunal

Date Issued: February 7, 2022

File: SC-2021-006038

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 B.C. Ltd. dba Van Pro Disposal v. Sunright Multi-Gift Ltd.*,
2022 BCCRT 142

B E T W E E N :

0955824 B.C. LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

SUNRIGHT MULTI-GIFT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Chad McCarthy

INTRODUCTION

1. The applicant, 0955824 B.C. Ltd. dba Van Pro Disposal (Van Pro), provided waste disposal services for the respondent, Sunright Multi-Gift Ltd. (Sunright). Van Pro says Sunright broke the parties' contract by failing to pay for its services and attempting to terminate it early by an invalid method. Van Pro says it accepted the early termination

and claims a total of \$1,278.08: \$461.81 for unpaid service fees, a bin removal fee of \$57.75 (that it later claimed was \$173.25), and \$758.52 in liquidated damages for the early termination.

2. Sunright says Van Pro agreed to make the parties' contract "month to month", that it paid the required service fees and properly terminated the contract, and it owes nothing except \$57.75 for bin removal.
3. Sunright is represented by a director. Van Pro is represented by an employee.

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.

ISSUES

8. The issues in this dispute are as follows:
 - a. Was the parties' contract for a fixed term or month to month?
 - b. Did Sunright break the contract?
 - c. If so, how much does Sunright owe Van Pro, if anything?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Van Pro as the applicant must prove its claims on a balance of probabilities, meaning "more likely than not". I have read all the parties' submissions but refer only to the evidence and arguments that I find relevant to provide context for my decision.
10. Sunright signed a waste disposal contract with Segal Disposal dba Housewise Construction Ltd. (Segal) that was effective September 15, 2015. Sunright undisputedly assigned the contract to Van Pro in 2018.
11. Sunright says it never received notice from Van Pro about the assignment, so it was not valid. I find this does not matter, since the contract allowed Segal to assign the agreement at any time without Sunright's consent. I find the contract was binding on the parties, noting that the contract said it was binding on Segal's and Sunright's "successors and assigns."

12. Sunright says it never received a copy of this “original contract” with Segal, which Van Pro denies. However, Sunright does not deny signing and agreeing to the contract, and there is no evidence that Sunright requested a copy. I find Sunright is bound by the contract even if it did not retain a copy.

Was the parties’ contract for a fixed term or month to month?

13. The written contract was for 5 years of waste disposal services beginning in September 2015. It said that the contract would renew for successive 5 year terms without further action by the parties unless a) Segal terminated it, or b) Sunright provided written termination notice to Segal by registered mail between 90 and 120 days before the “expiry” date. This is known as a cancellation window. I find the expiry date was September 15, 2020, so I find Sunright needed to provide this written termination notice on or between May 18, 2020 and June 17, 2020, or the contract would renew for an additional 5 years.

14. Sunright says it called Van Pro on September 4, 2020, and that a Van Pro representative confirmed that the waste disposal services would be on a month to month basis after the September 15, 2020 contract expiry date. I infer that Sunright means the parties agreed Sunright could terminate the services at any time on 1 month’s notice, without penalty. Van Pro denies agreeing that its services would be month to month. Its representative says she uses the phone number Sunright called every day, but did not recall Sunright requesting a change to month to month service.

15. I find there is no other evidence before me showing that Van Pro agreed to provide its services on a month to month basis after September 15, 2020. On balance, I find it unproven that Van Pro agreed to month to month services. I find the written agreement continued to govern contract termination.

Did Sunright break the contract?

16. According to the contract, if Sunright purported to terminate the agreement before the term’s end, Van Pro could either affirm the agreement and it would continue, or Van Pro could accept Sunright’s repudiation and the agreement would end. If Van Pro

accepted the repudiation, Sunright would owe Van Pro as liquidated damages an amount equal to the sum of Sunright's billing for the most recent 12 months, or "the sum of the balance of the term remaining" on the agreement.

17. Sunright sent written termination notice to Van Pro by registered mail on January 14, 2021. This was outside the both the May 18 to June 17, 2020 cancellation window for the previous term, and the 2025 cancellation window for the renewed term. I find Sunright did not provide any termination notice within a cancellation window. So, I find the contract renewed for an additional 5-year term on September 15, 2020 and was not "month to month".
18. Van Pro sent a January 20, 2021 letter to Sunright that said Van Pro did not accept Sunright's requested contract repudiation "at this moment". The letter said Sunright could terminate the agreement if it agreed to pay Van Pro certain amounts, and otherwise the contract would continue. I find Sunright did not agree to those terms, and the contract continued.
19. It is undisputed that Sunright paid Van Pro for its services up to and including January 2021. Van Pro says it continued to provide the contracted services for another 6 months after that, as shown in a September 8, 2021 account statement, but Sunright did not pay for any of them. I find Van Pro says these non-payments breached the contract and effectively terminated it, so Van Pro then accepted Sunright's repudiation and claimed liquidated damages and unpaid fees under the contract.
20. Sunright agrees that it did not pay for any services after January 2021 and that it considered the contract ended. Sunright does not deny that Van Pro continued to provide the waste disposal services after January 2021, although it says it did not want or need those services. On balance, I find Sunright breached the contract and effectively terminated it, including by not paying for Van Pro's services, and Van Pro accepted this repudiation.

21. Van Pro does not say when it accepted Sunright's repudiation, and referred to its account statement in evidence. I find the statement shows that Van Pro's last monthly fee was issued for July 2021 services, and that Van Pro charged Sunright liquidated damages on August 3, 2021. Sunright confirms that Van Pro did not remove its garbage bin from Sunright's premises until around August 19, 2021 when Sunright submitted its Dispute Response. On balance, I find that Van Pro continued to provide the contracted services until July 31, 2021, the end of the last month Van Pro charged Sunright for its services, and that Van Pro accepted Sunright's repudiation on that date.
22. So, I find Sunright breached the contract by not paying for the contracted services after January 2021, and effectively terminated the contract before the end of its renewal term on September 15, 2025. I find Van Pro is entitled to damages for those breaches, as follows.

How much does Sunright owe Van Pro?

23. Van Pro claims \$461.81 in unpaid service fees. I find Sunright owes Van Pro for waste disposal services for the months of February 2021 through July 2021, at \$71.05 per month, which equals \$426.30. I find this rate is consistent with the \$67.66 monthly charges Sunright paid before February 2021, plus an additional amount for a January 2021 disposal facility cost increase. Van Pro submitted a regional notice showing a January 2021 disposal facility cost increase, and I find the contract allowed Van Pro to adjust its rates for such a cost increase without notice. I allow Van Pro's claim for unpaid service fees in the amount of \$426.30.
24. Van Pro also claims liquidated damages under the contract, based on the most recent 12 months of billings before termination. I find Sunright's submitted Van Pro payment records show those billings were \$67.66 for August 2020 through January 2021, and \$71.05 for February 2021 through July 2021, which equals \$832.26. However, Van Pro only claims \$758.52 for liquidated damages, so I allow its claim for that amount.

25. In its Dispute Notice, Van Pro claimed \$57.75 for a bin disposal fee. In its submissions, Van Pro says its legal assistant made a mistake and the actual removal fee claim should be \$173.25. Sunright provided submissions saying it was unclear why it should pay more than the \$57.75 claimed in the Dispute Notice. I find it would be procedurally unfair to consider a greater claim amount than that set out in the Dispute Notice, especially given that Van Pro chose not to amend it.
26. Sunright says it can pay \$57.75 for bin removal but owes no more. I find the contract said the bin removal fee was \$150 and that taxes were not included in that price. I find that Van Pro removed the bin, so it was entitled to charge \$150 plus tax. I allow Van Pro's claim for \$57.75, which as noted is the amount it claimed in its Dispute Notice.

CRT FEES, EXPENSES, AND INTEREST

27. Van Pro claims contractual interest but does not identify a specific amount or interest rate. The contract says that Sunright owed interest of 2% per month on outstanding charges beginning 30 days from the payment due date. That interest rate is not expressed as a yearly rate. Under section 4 of the federal *Interest Act*, whenever contractual interest is not expressed as an equivalent yearly rate or percentage, the interest rate is limited to a maximum of 5% per year. So, I find the 5% per year maximum rate applies to the \$57.75 bin removal fee and \$426.30 in service fees owing. I find that contractual interest on that amount is reasonably calculated from August 30, 2021, which is 30 days after Van Pro ceased providing services and accepted Sunright's contract repudiation, until the date of this decision. This equals \$10.74.
28. I find there is no contractual interest on liquidated damages, but the *Court Order Interest Act* applies to the CRT. I find Van Pro is entitled to pre-judgment interest under that *Act* on the \$758.52 liquidated damages amount from August 30, 2021 to the date of this decision. This equals \$1.51.

29. Under section 49 of the CRTA, and the 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. Van Pro was substantially successful in its claims, so I find it is entitled to reimbursement of the \$125 it paid in CRT fees. Neither party claimed CRT dispute-related expenses.

ORDERS

30. Within 30 days of the date of this decision, I order Sunright to pay Van Pro a total of \$1,379.82, broken down as follows:

- a. \$484.05 in debt for service fees and bin disposal fees,
- b. \$758.52 in liquidated damages,
- c. \$10.74 in contractual interest on the debt,
- d. \$1.51 in pre-judgment interest on the liquidated damages under the *Court Order Interest Act*, and
- e. \$125 in CRT fees.

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

32. 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.

33. 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.

Chad McCarthy, Tribunal Member