Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Waste Connections of Canada Inc. v. Big Twin Enterprises Ltd.*, 2022 BCCRT 314

B E T W E E N :

WASTE CONNECTIONS OF CANADA INC.

APPLICANT

A N D :

BIG TWIN ENTERPRISES LTD.

RESPONDENT

A N D :

WASTE CONNECTIONS OF CANADA INC.

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member: Eric Regehr

INTRODUCTION

1. Waste Connections of Canada Inc. (Waste Connections) provided waste disposal services to Big Twin Enterprises Ltd. (Big Twin) until 2019. In the main claim in this Civil Resolution Tribunal (CRT) dispute, Waste Connections claims $319.77 for an unpaid July 2019 invoice and $2,517.21 in liquidated damages because it says Big Twin terminated the parties' contract outside of a permitted time window (cancellation window). Big Twin says that the parties' contract expired on April 30, 2019. Big Twin says that it returned Waste Connections' bins on May 30, 2019. Big Twin also says that Waste Connections' claims are out of time under the *Limitation Act*. Big Twin asks that I dismiss Waste Connections' claims.

2. Big Twin counterclaims against Waste Connections. Big Twin says that Waste Connections wrongly charged Big Twin a $381.01 "unsafe site" charge after the municipality put up a concrete barrier in the alley behind Big Twin, which apparently made it harder to access the bins. Big Twin says the barrier was not its responsibility. Big Twin also claims reimbursement of the $217.44 it paid a contractor to remove Waste Connections' bins. Finally, Big Twin claims $3.068.48 for "disruption of business/time spent arranging access for drivers". Waste Connections denies Big Twin's allegations and asks that I dismiss Big Twin's counterclaims.

3. The parties are each represented by an employee.

JURISDICTION AND PROCEDURE

4. These are the CRT's formal written reasons. 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. In some respects, both sides to this dispute call into question the credibility, or truthfulness, of the other. However, in the circumstances of this dispute, I find that it is not necessary for me to resolve the credibility issues that the parties raised. I therefore decided to 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 pay money or to do or stop doing something. The CRT's order may include any terms or conditions the CRT considers appropriate.

8. CRT rule 1.11 says that communications between parties made during facilitation in an attempt to settle a claim must not be disclosed, subject to certain exceptions. One exception is that the CRT may require the parties to disclose them, but section 89 of the CRTA limits the circumstances where the CRT may do so. Big Twin asks for an order that information disclosed in settlement discussions be included as evidence. Big Twin says that these communications will provide "clarity". I decline to make this order. The reason that settlement discussions generally must be kept confidential is that it encourages parties to make admissions. If parties knew that their admissions could be used against them in later proceedings, they would be less likely to be frank and open, and there would be fewer settlements. With that purpose in mind, I see no reason here for any settlement discussions to be included as evidence, and I deny Big Twin's request.

ISSUES

9. The issues in this dispute are:

a. Did Waste Connections and Big Twin have a written agreement, and if so, what were its terms?

b. Are Waste Connections' claims out of time?

c. Does Big Twin have to pay the July 2019 invoice and liquidated damages?

d. Was Waste Connections entitled to charge an unsafe site fee?

e. Is Big Twin entitled to be reimbursed for returning the bins to Waste Connections?

f. Is Big Twin entitled to compensation for disruption to its business and time spent dealing with Waste Connections?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Waste Connections as the applicant must prove its claims on a balance of probabilities, which means "more likely than not". Big Twin must prove its counterclaims to the same standard. While I have read all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.

Waste Connections' Claims

11. The only written contract in evidence is between Big Twin and BFI Canada Inc. (BFI), which apparently did business as Progressive Waste Solutions. The contract is dated April 22, 2014, and it had a 5-year term. As Big Twin points out, there is no written contract between Big Twin and Waste Connections.

12. The only evidence about the relationship between Waste Connections and BFI is a statement from Big Twin that Waste Connections "bought" BFI in 2016. Waste Connections does not explain the relationship at all. Accepting at face value that Waste Connections bought BFI, the 2 corporations would still be separate legal entities. The contract between Big Twin and BFI did not include a term that allowed BFI to assign the contract without Big Twin's consent, and there is no evidence in

any event that BFI did so. I therefore find that there is no legal basis for Waste Connections to rely on the written contract between BFI and Big Twin.

13. There are invoices in evidence dating back to November 2018 from Waste Connections to Big Twin, which Big Twin undisputedly paid. I find that this demonstrates that the parties had an agreement, but there is no evidence of its terms other than what can be inferred from the parties' behaviour.

14. With that background in mind, I will briefly address Waste Connections' liquidated damages claim. Waste Connections relies solely on the terms of the written contract Big Twin had with BFI, which allowed Big Twin to terminate the contract within the cancellation window and required Big Twin to pay liquidated damages if it terminated the agreement outside that window. I find nothing in the parties' interactions with each other to suggest that Big Twin agreed to pay liquidated damages if it terminated its agreement with Waste Connections. On this basis alone, I dismiss Waste Connections' $2,517.21 claim for liquidated damages.

15. While other CRT decisions are not binding on me, I note that a CRT vice chair reached the same conclusion in the recent decision *Waste Connections of Canada Inc. v. Western Pacific Glass Inc.*, 2022 BCCRT 263.

16. I turn next to Waste Connections' debt claim for payment of its $319.77 invoice, dated July 31, 2019. Big Twin says that this claim is out of time under the *Limitation Act*, which sets a 2-year limitation period for most claims. A limitation period is a specific period of time within which a person must pursue a legal claim, such as a CRT claim. If the limitation period expires, the right to bring the claim disappears, so the claim is dismissed even if it would have otherwise been successful. Under section 8 of the *Limitation Act*, the 2-year limitation period starts running when the party "discovers" their claim. A party discovers a claim when they know or reasonably should know that another person has caused them a loss and that a legal proceeding would be an appropriate way to remedy the loss.

17. Waste Connections applied to the CRT for dispute resolution on July 22, 2021. On its face, this is less than 2 years after its July 31, 2019 invoice. However, Big Twin says that Waste Connections discovered its claim sooner. Big Twin's argument is based on the timeline of the breakdown of the parties' business relationship. In early 2019, the parties attempted to negotiate a contract. I find it unnecessary to address the details, but what matters for the limitation period issue is that by sometime in April 2019, it was clear these negotiations would be unsuccessful. It is undisputed that on May 30, 2019, Big Twin hired a contractor to take the bins back to Waste Connections. However, Waste Connections sent 3 further invoices on the last days of May, June and July 2019. Big Twin paid the first 2.

18. Big Twin says that there were several points before July 22, 2019, where Waste Connections should have known that it had a legal claim against Waste Connections. I find that Big Twin's arguments all relate to when Waste Connections knew, or reasonably should have known, that the parties' agreement had been terminated. However, I find that these arguments do not address the fact that the July 31, 2019 invoice at issue was for a pre-payment of waste disposal services for August 2019. The previous invoices in evidence show that Waste Connections' practice was to invoice Big Twin on the last day of each month for the next month's service. Leaving aside for the moment whether Waste Connections had any basis to charge Big Twin for services after Big Twin had already returned Waste Connections' bins, I find that Waste Connections could not have charged Big Twin for August 2019 before July 31, 2019. I therefore find that Waste Connections brought this claim in time.

19. Turning to the merits of that claim, I agree with Big Twin that Waste Connections had no basis to charge for August 2019 waste disposal services. It is undisputed that a Waste Connections driver attempted to pick up Big Twin's waste in early June 2019 only to find that Waste Connections' bins were gone. By this time, Waste Connections had undisputedly already accepted the bins back in its yard. Waste Connections had also cashed a cheque from Big Twins on July 10, 2019, that had a memo line "Final acc closed". Waste Connections does not explain why, in this

context, it was entitled to continue to charge for services it knew it could not perform. I find that Waste Connections has failed to prove that it is entitled to be paid for its July 31, 2019 invoice, so I dismiss its $319.77 claim.

Big Twin's Counterclaims

20. I note at the outset that Big Twin's claims relate to events from the winter and spring of 2019. Waste Connections did not argue that they are out of time under the *Limitation Act*. In any event, section 22 of the *Limitation Act* says that if a party starts a claim within the applicable limitation period (here, Waste Connections), the other party (here, Big Twin) may file a related counterclaim even if the limitation period for the counterclaim has expired. I find that Big Twin's counterclaims are related to Waste Connections because they relate to the same events. Because I have found that Waste Connections filed its claim in time, I find that Big Twin's counterclaim is also in time.

21. Big Twin's first counterclaim relates to an alleged $381.01 charge for an "unsafe site". Big Twin does not explain how it calculated at the claimed amount. According to the invoices in evidence, Waste Connections charged a $25 unsafe site charge on its April 30, 2019 invoice, plus various taxes and fees.

22. The background events that led to Waste Connections charging an unsafe bin fee are disputed. The municipality where Big Twin operates installed a concrete barrier in the alley that Waste Connections used to access Big Twin's bins. This made it more difficult for Waste Connections' driver to empty the bins.

23. I find it unnecessary to consider the merits of the charge in any detail. For reasons that are not explained, Waste Connections issued an invoice on May 21, 2019, that reversed the unsafe site charge as a "billing error". The total credit on that invoice was $31.48, which was the $25 unsafe site charge plus the applicable fees and taxes. However, as Big Twin points out, Waste Connections did not apply this credit to Big Twin's next invoice, dated May 31, 2019. In the absence of an explanation, I find that the May 21, 2019 invoice reversing the charge is a clear admission that

Waste Connections had no right to charge it in the first place. I order Waste Connections to reimburse Big Twin $31.48 for the unsafe bin charge. I dismiss the balance of Big Twin's $381.01 claim.

24. I turn next to Big Twin's $217.44 claim for removing the bins. As mentioned above, there is no evidence of the parties' contract's terms other than their conduct. Because someone had to arrange and bear the cost to remove the bins when the parties' contract ended, I find that it is necessary to imply terms about the bins' removal. A contractual term may be implied (1) based on custom or usage, (2) based on a particular class or kind of contract, or (3) as necessary for business efficacy or those that the parties would have considered obvious. See *Moulton Contracting Ltd. v. British Columbia*, 2015 BCCA 89, at paragraphs 53 to 58.

25. I find it appropriate to imply 2 terms in the parties' contract about bin removal. First, I find that it was an implied term that Waste Connections would pick up the bins on request. I find that this would have been obvious to the parties since Waste Connections has the equipment and expertise to do so. Second, I find that it was an implied term that Big Twin would pay Waste Connections a fee for picking up the bins. I say this because it is customary in the waste disposal industry for waste disposal companies to charge a fee to pick up bins. Big Twin's contract with BFI included a $100 bin removal fee. Other CRT decisions have referred to other waste disposal companies charging between $125 and $150 for bin removal (see *Recovery Enforcement Inc. v. York Aluminum Corp.*, 2019 BCCRT 898, *Super Save Disposal Inc. v. Cambie Star Commercial Ltd.*, *0955824 B.C. Ltd. dba Van Pro Disposal v. Sunright Multi-Gift Ltd.*, 2022 BCCRT 142, and *Canada Minibins.com Ltd v. Interwest Restaurants Inc*, 2020 BCCRT 235). On a judgment basis, I find that if Waste Connections had picked up the bins, Big Twin would have had to pay $125 plus GST ($131.25).

26. With that, I find that Waste Connections breached the parties' contract by refusing to pick up the bins. When a party breaches a contract, the other party is entitled to the amount of money it would take to put them in the position they would have been

in if the contract had been performed. I find that if Waste Connections had picked up the bins as the contract required, Big Twin would have paid it $131.25 for the service. I therefore find that Big Twin's damages are the difference between the $217.44 it paid and the $131.25 it would have had to pay. This equals $86.19.

27. This leaves Big Twin's claim for $3.068.48 for the "disruption of business/time spent arranging access for drivers". Despite the very specific value, Big Twin did not explain how it arrived at this claimed amount. Big Twin's submissions focus on 2 allegations: first, that Waste Connections overcharged Big Twin starting in 2018, and second, that Waste Connections breached its duty to negotiate in good faith.

28. With respect to overcharging, Big Twin relies on a term of its contract with BFI that governed rate increases. I have found above that this contract's terms do not apply to Big Twin's contract with Waste Connections. So, there is no evidence that the parties agreed to anything specific about rate increases. I find that there is no basis to imply a term that Waste Connections' rates would not increase, or would only increase in certain circumstances or by a certain percentage, since Big Twin paid its invoices up until July 31, 2019. I therefore find that Big Twin has not proven that Waste Connections breached the parties' contract by increasing its rates.

29. As for the duty to negotiate in good faith, Big Twin relies on *Wastech Services v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, which reaffirmed the legal doctrine that all contracts include a duty to exercise discretion in good faith and a duty to perform obligations honestly. When a party breaches one of these duties, they breach the contract. The difficulty with Big Twin's claim is that the remedy for a contract breach is damages, and Big Twin has provided no evidence or explanation of what damages or losses it suffered because of Waste Connections' alleged bad faith behaviour. I therefore find it unnecessary to address the merits of Big Twin's allegations, because even if Waste Connections had breached the duty of good faith, Big Twin failed to prove any damages. I dismiss this claim.

30. In summary, I find that Big Twin is entitled to $117.67 in damages.

31. The *Court Order Interest Act* (COIA) applies to the CRT. Big Twin is entitled to pre-judgment interest on the $31.48 unsafe bin charge from July 10, 2019, the day Big Twin says it paid the April 30, 2019 invoice, to the date of this decision. Big Twin is also entitled to pre-judgment interest on the $86.19 bin removal charge from May 30, 2019, the day it had the bins removed, to the date of this decision. Together, this equals $3.34.

32. 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. Waste Connections was unsuccessful, so I dismiss its claim for CRT fees and dispute-related expenses. Big Twin was partially successful, so I find it is entitled to reimbursement of half of its $125 in CRT fees, which is $62.50. Big Twin did not claim any dispute-related expenses.

ORDERS

33. Within 30 days of the date of this order, I order Waste Connections to pay Big Twin a total of $183.51, broken down as follows:

    a. $117.67 in damages,

    b. $3.34 in pre-judgment interest under the COIA, and

    c. $62.50 for CRT fees.

34. Big Twin is entitled to post-judgment interest, as applicable.

35. I dismiss Big Twin's remaining claims.

36. I dismiss Waste Connections' claims.

37. 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.

38. 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.

Eric Regehr, Tribunal Member