



Civil Resolution Tribunal

Date Issued: July 29, 2022

File: SC-2020-008179
SC-2021-002785

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 B.C. Ltd. dba Van Pro Disposal v. BC Restaurant Builders Inc.*,
2022 BCCRT 865

B E T W E E N :

0955824 B.C. LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

BC RESTAURANT BUILDERS INC.

RESPONDENT

A N D :

0955824 B.C. LTD. DBA VAN PRO DISPOSAL

RESPONDENT BY COUNTERCLAIM

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. 0955824 B.C. Ltd., which does business as Van Pro Disposal (Van Pro), provided waste disposal services to BC Restaurant Builders Inc. (BCRB). The parties had 2 separate contracts, one for garbage and recycling removal (waste contract) and another for drywall removal (drywall contract).
2. Dispute SC-2020-008179 is about the drywall contract. In that dispute, Van Pro claims \$684.75 in service and rental fees, a \$173.25 bin removal fee, and \$2,142 in liquidated damages. Dispute SC-2021-002785 is about the waste contract. There, Van Pro claims \$401 in service fees, a \$346.50 bin removal fee, and \$4,252.50 in liquidated damages. Van Pro is represented by an employee.
3. BCRB says that Van Pro suspended its service contrary to the contracts. BCRB says that it was therefore entitled to terminate the contracts. BCRB asks me to dismiss Van Pro's claims. Between the 2 disputes, BCRB counterclaims for a total of \$5,000 because it says it had to do its own waste disposal for several months while it waited for Van Pro to remove its bins. Van Pro says the suspension was justified and asks me to dismiss BCRB's counterclaims. BCRB 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. In some respects, both parties of this dispute call into question the credibility, or truthfulness, of the other. In the circumstances of this dispute, I find that I am properly able to assess and weigh the evidence and submissions before me. I note the decision *Yas v. Pope*, 2018 BCSC 282, in which the court recognized that oral hearings are not necessarily required where credibility is in issue. Bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I 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. The CRT's monetary jurisdiction in small claims disputes is \$5,000. Van Pro's claims in these 2 disputes total more than \$5,000. In *De Bayer v. Yang*, 2019 BCCRT 298, I reviewed cases from the BC Provincial Court that outline when claims are distinct enough that they can be brought as separate claims. In breach of contract cases, the question is whether the claims arise from the same breach of contract. It is undisputed that Van Pro's damages claims are from 2 separate contracts. I find that Van Pro's claims may be brought as separate disputes even though they add up to more than \$5,000 and are against the same party. BCRB did not argue otherwise.

ISSUES

9. The issues in this dispute are:
 - a. Did Van Pro repudiate the contracts?
 - b. If so, does BCRB owe Van Pro anything for services before repudiation?

- c. If not, did BCRB terminate the contract, and if so, what are Van Pro's damages?
- d. If Van Pro breached the parties' contract, what, if anything, are BCRB's damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, Van Pro as the applicant must prove its claims on a balance of probabilities. BCRB 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.
11. The parties signed the waste contract on December 4, 2020. It provided for Van Pro to pick up garbage twice a month for \$135 and cardboard once a month for \$45, plus a 10% "fuel surcharge" and a 10% "environmental levy".
12. It is undisputed that on May 1, 2021, BCRB increased the frequency of the garbage service to once per week, increasing the monthly cost to \$283.50. The cardboard service remained the same.
13. The parties signed the drywall contract on May 28, 2021, effective May 30, 2021. The contract provided for BCRB to rent a bin for \$45 per month. Each pickup was \$125. There was no pickup schedule, but BCRB agreed to pay for at least 1 pickup per month. As with the waste contract, there was a total of 20% in fuel and environmental levies.
14. The 2 contracts contained the same general terms and conditions. Under the term about payments and fines, the contracts said that "suspension of service due to slow or non-payment will not constitute termination of this Agreement". There are no other terms about suspending the contracts. BCRB agreed to pay additional charges if BCRB put waste in the bins that required "extra handling". The contracts also included a clause that said if BCRB purported to terminate the contracts before

the end of their respective terms, Van Pro could either insist that the contracts continue or accept the termination and claim liquidated damages.

15. According to an affidavit signed by AY, a Van Pro driver, BCRB put drywall in the garbage bin on February 23, May 7, May 28, and July 17, 2021 (I find that this last date was a typo, and was actually July 16, 2021, based on the evidence discussed below). AY said that they had to remove the drywall by hand because it is not allowed in the garbage, which is undisputed. BCRB admits that its employees accidentally put drywall in the garbage bin on occasion, and does not specifically dispute those dates, so I accept AY's evidence is accurate.
16. BCRB alleges that Van Pro failed to pick up any waste between June 14 and July 16, 2021. On July 6, 2021, BCRB emailed Van Pro that it wanted to cancel the contract because of this. There is no evidence that Van Pro responded.
17. Van Pro's evidence about the service it provided between June 14 and July 16, 2021, is vague and somewhat contradictory. Regarding the garbage, AY simply said that Van Pro followed the contract schedule. In another affidavit, another Van Pro driver, BD, said the same thing. Neither says anything about specific dates and there are no service records in evidence.
18. I prefer BCRB's evidence about these service dates, for 2 reasons. First, there is no evidence that Van Pro responded to BCRB's July 6, 2021 email. If Van Pro had been providing services as scheduled, I find they would have likely said so at the time. Second, BCRB provided photos of their garbage bins on June 29 and July 14, 2021, which show the garbage bin overflowing and garbage bags and loose garbage surrounding the bin. This suggests that Van Pro had not emptied the bin recently.
19. Regarding the cardboard, AY said that they picked it up on June 8, July 6, August 10, and September 14, 2021. I find this statement inconsistent with Van Pro's evidence that it suspended service after July 16, 2021. I find that AY's statement is

therefore unreliable and prefer BCRB's evidence on this point. I find that Van Pro picked up BCRB's cardboard on June 8, 2021, but not after.

20. Van Pro undisputedly attended on July 16, 2021, to remove garbage. BCRB accepted the service. I find that Van Pro did not accept BCRB's purported termination, so the contract remained in force.
21. On July 16, 2021, Van Pro emailed BCRB stating that there was drywall in the garbage again. BCRB admits to this. Van Pro said that it had "no choice but to suspend" BCRB's services. BCRB responded the same day, asking that Van Pro remove all the bins from BCRB's premises. Van Pro picked up the drywall bin on September 24, 2021, and the garbage and cardboard bins on October 6, 2021.

Did Van Pro repudiate the contracts?

22. BCRB argues that the contracts did not allow Van Pro to suspend service because BCRB accidentally put drywall in the garbage bin. I agree. For contaminated garbage, the contract allowed Van Pro to charge extra which, as discussed below, it did. The only contractual term about suspension is about late or slow payment. I find that Van Pro was not entitled to suspend service because of the drywall.
23. BCRB argues that by suspending service, Van Pro repudiated the contracts. Repudiation occurs when a party indicates to the other party that they no longer intend to follow a contract. See *Kuo v. Kuo*, 2017 BCCA 245.
24. I agree that Van Pro's decision to unilaterally stop providing services indicated to BCRB that it no longer intended to follow the contract. The whole purpose of the contract was for Van Pro to remove BCRB's waste, which it refused to do. When a party repudiates a contract like this, the other party may accept the repudiation and terminate the contract. I find that this is what BCRB did when it told Van Pro to pick up the bins. The contracts were therefore terminated on July 16, 2021. It follows that Van Pro is not entitled to payment for anything it charged after July 16, 2021, and is not entitled to liquidated damages.

Does BCRB owe Van Pro anything for services before repudiation?

25. I find that BCRB must still pay for the services that Van Pro actually performed while the contract remained in force. BCRB did not pay either the June or July invoice, even though it undisputedly received some services. Above, I concluded that Van Pro did no garbage pickups between June 14 and July 16, 2021. From this, I find that BCRB owes Van Pro for 2 garbage pickups from the first half of June 2021, which is \$141.75. I also find that BCRB owes Van Pro for the July 16, 2021 garbage pickup, which is \$70.88. Finally, I find that BCRB owes Van Pro for the June 8, 2021 cardboard pickup, which is \$45.
26. In the June 2021 invoice, Van Pro also charged BCRB \$100 each for 2 penalties for drywall in the garbage from May. I find that the contract allowed this fee, and that it is reasonable. Van Pro did not charge a fee for the drywall that was admittedly in the July 16, 2021 pickup, so I do not award one. Van Pro's June 2021 invoice also includes a \$12.86 "special discount". Since this is not explained, I find that BCRB is entitled to it.
27. As for the drywall bin, I find that BCRB must pay the \$85 bin delivery charge. I find that the contract entitled Van Pro to a monthly bin rental fee and a minimum of one pickup per month. I award Van Pro the monthly fee for June 2021 (\$45), the pro-rated monthly fee for July 1 to 16, 2021 (\$23.23), and a pickup for June 2021 (\$125). I do not award a pickup for July 2021 because Van Pro repudiated the contract before the end of the month, so BCRB did not have a full opportunity to request the pickup.
28. After applying the 10% fuel surcharge and 10% environmental levy (as applicable), GST, and the special discount, I find that BCRB owes Van Pro a total of \$896.84, subject to my findings on the counterclaim.

What are BCRB's damages?

29. Based on the above, I find that Van Pro breached the parties' contract by failing to provide consistent services before July 16, 2021, and by failing to remove the bins on request until late September 2021.
30. BCRB says that during this time, it had to dispose of its own garbage, cardboard, and drywall. BCRB says that it could not hire another waste disposal contractor until Van Pro took its bins away, which it did not start to do until the end of September. Based on the photos of BCRB's parking lot and alley area, I agree.
31. BCRB says that its employees took 13 trips to dispose of garbage and cardboard between June 25 and September 23, 2021. BCRB attributed \$20 for transportation and \$25 for materials per trip. BCRB also attributed a total labour cost of \$2,200, with the amount of employee time ranging from 1.5 to 4 hours per trip. The dump charges totaled \$1,218.02, for a total claim of just over \$4,000. BCRB claimed exactly \$4,000 in its counterclaim about the waste contract.
32. BCRB says that its employees took 3 trips to dispose of drywall during the same period. For these trips, BCRB attributed \$50 for transportation and \$30 for materials per trip. It attributed a labour cost of \$577.50 for 1.5 hours per trip. The dump charges totaled \$173.36, for a total claim of just under \$1,000. BCRB claimed exactly \$1,000 in its counterclaim about the drywall contract.
33. Based on the usual way to measure damages, I find that BCRB is entitled to the amount of money that would put it in the same position as if Van Pro had performed the contracts. I find that it would overcompensate BCRB to award everything it spent getting rid of waste. This is because if the contracts had been performed according to their terms, BCRB would have paid Van Pro to do this work. In other words, BCRB is not entitled to free waste disposal for 3.5 months.
34. I find that it is impossible to determine with precision how much more it cost BCRB to do its own waste disposal than it would have cost them to pay Van Pro. I say this because, as discussed below, BCRB's claimed costs are mostly estimates. I accept,

as a matter of common sense, that it was likely considerably more expensive for BCRB to dispose of its own waste than to hire a dedicated company.

35. As a starting point, Van Pro charged around \$600 per month for all of its services. So, I find that BCRB would have paid Van Pro roughly \$2,100 for the missed services between mid-June and the end of September if Van Pro had not breached the contract.
36. There is no supporting documentation or explanation about why BCRB charged \$25 or \$30 per trip on materials. It is unclear what this would be for other than perhaps garbage bags. There is also no evidence explaining the transportation costs. Most importantly, BCRB also does not justify charging its employees' time at an average of over \$80 per hour. There is no evidence that the BCRB employees who removed the waste earned this high wage.
37. On a judgment basis, I find that it likely cost around \$3,000 for BCRB to dispose of its waste. After deducting the \$2,100 it would have spent anyway, BCRB is entitled to around \$900 in damages, which roughly offsets the amounts it owes Van Pro. I find that the appropriate result is to award neither party damages.
38. 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. Both parties were successful in some respects and unsuccessful in others. I make no order for CRT fees or dispute-related expenses.

ORDERS

39. I dismiss the parties' claims, and the 2 disputes.

Eric Regehr, Tribunal Member