



# Civil Resolution Tribunal

Date Issued: September 21, 2022

File: SC-2021-008123

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Emme Foods Enterprise Co., Ltd., 2022 BCCRT 1034*

**B E T W E E N :**

0955824 BC LTD. DBA VAN PRO DISPOSAL

**APPLICANT**

**A N D :**

EMME FOODS ENTERPRISE CO., LTD. and  
ALLIED PIONEERS ENTERPRISES CO. LTD.

**RESPONDENTS**

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## **REASONS FOR DECISION**

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Tribunal Member:

Chad McCarthy

## **INTRODUCTION**

1. This dispute is about payment for waste disposal services. The respondent, Emme Foods Enterprise Co., Ltd. (Emme), contracted with the applicant, 0955824 BC Ltd. dba Van Pro Disposal (Van Pro) for waste disposal services. The respondent, Allied

Pioneers Enterprises Co. Ltd. (Allied), is not a party to the contract, but undisputedly shares an address and some employees with Emme.

2. Van Pro says Emme repudiated the waste disposal contract by prematurely attempting to cancel it, and Van Pro accepted the repudiation. Van Pro claims a total of \$5,000 in damages: \$555.98 for unpaid waste disposal service fees, \$334.20 for an unpaid waste bin removal fee, and \$4,109.82 in liquidated damages.
3. Emme says that Van Pro provided poor service, which was a breach of their contract. So, Emme says it was entitled to cancel the contract as it did and owes nothing.
4. In this dispute, Van Pro and Emme are each represented by an authorized employee or principal. Allied did not file a Dispute Response as required and is technically in default, as discussed below.

## **JURISDICTION AND PROCEDURE**

5. These are the formal 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. 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.
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.
9. Van Pro says the respondents owe more than \$5,000, but it reduced its claims to exactly \$5,000. I find Van Pro has abandoned any claim to amounts exceeding \$5,000, which is the maximum CRT small claim amount.
10. Emme provided all of its evidence after the deadline had passed. Van Pro responded to that evidence and provided additional evidence of its own. Emme provided submissions in response to Van Pro's additional evidence. I find all of that late evidence is relevant, the parties commented on it, and they were not prejudiced by the delay. So, I allow that evidence. However, with Emme's submissions on Van Pro's additional evidence, Emme submitted a recent invoice and a recent complaint email as further evidence, with copies to Van Pro. I find those 2 further documents relate to alleged events that occurred long after the parties say the waste disposal agreement ended and Van Pro stopped providing the services at issue in this dispute. I find that further evidence is irrelevant to the issues in this dispute, so I decline to allow it.

## **ISSUES**

11. The issues in this dispute are:
  - a. Is Allied liable for any of Van Pro's claims?
  - b. Did Van Pro breach the parties' contract, and if so, what is the appropriate remedy?
  - c. Did Emme properly terminate the contract, and if not, does Emme owe \$5,000 in damages as claimed?

## **EVIDENCE AND ANALYSIS**

12. In a civil proceeding like this one, as the applicant Van Pro must prove its claims on a balance of probabilities, meaning “more likely than not.” I have read the parties’ submissions and evidence, but refer only to the evidence and arguments I find relevant to provide context for my decision.

### ***Is Allied Liable for Van Pro’s Claims?***

13. As noted, Allied did not provide a Dispute Response and is in default. Generally, this means that liability is assumed. However, I find that is not the case here, as follows.

14. Van Pro’s claim is based on breach of contract. The written waste disposal contract at the heart of this dispute was between Van Pro and Emme, and not Allied. It is undisputed that Allied shares an address with Emme, shares some employees with Emme, and may even make payments on Emme’s behalf. However, BC Company Summary documents in evidence show that Emme and Allied are different companies, although they share a president, who is also a director of each company.

15. Van Pro appears to suggest that Allied took on obligations under the contract because of its close relationship with Emme. I find that is not the case, as there is no evidence showing that Allied was a party to the contract, or that the parties agreed that Allied was responsible for any contractual obligations. The common law principle of privity of contract says that as a general rule, a contract cannot give rights or impose obligations on those who are not parties to the contract. So, I find the presumption of liability for Allied’s default is rebutted, and I dismiss the claims against Allied. Below, when referring to the “parties,” I mean the contracting parties, Van Pro and Emme.

### ***Did Van Pro Breach the Parties’ Contract?***

16. Emme undisputedly signed a contract with Van Pro on January 14, 2019 for waste disposal pickup at a “Bathgate” location. Emme later signed a similar contract with Van Pro on December 27, 2019 that I find replaced the earlier contract, and was for

waste and cardboard pickup at both the Bathgate location and a “Burrows” location (contract). I find the contract contained the following relevant terms:

- a. The services began on January 1, 2020 for a 5-year term. The contract would automatically renew every 5 years, unless Emme terminated it by written notice to Van Pro via registered mail between 90 and 120 days before the present term’s expiry date (known as a cancellation window). I find the cancellation window was from September 3, 2024 to October 3, 2024.
  - b. If Emme tried to terminate the agreement outside the cancellation window, Van Pro could affirm and continue the agreement, or accept the repudiation and Emme would owe liquidated damages. The liquidated damages were the greater of the sum of Emme’s monthly billing for the most recent 12 months, or the anticipated charges for the remainder of the term.
  - c. Van Pro agreed to pick up waste and cardboard at the 2 locations either once or twice per month as shown in the contract. There were no specific pickup dates or times. Emme agreed to pay \$150 for Van Pro to remove each bin.
17. Emme says it cancelled the contract, at least in respect of one of the pickup locations, because Van Pro provided poor service. I find the contract’s terms did not allow Emme to cancel it for substandard service. However, I find Emme alleges, essentially, that Van Pro fundamentally breached the parties’ contract. As the party alleging a fundamental breach, I find Emme bears the burden of proving it.
18. A fundamental breach is where a party fails to fulfill a primary obligation in a contract, in a way that deprives the other party of substantially the whole benefit of the contract (see *Hunter Engineering Co. v. Syncrude Canada Ltd.*, 1989 CanLII 129 (SCC) and *Bhullar v. Dhanani*, 2008 BCSC 1202). If there is a fundamental breach, the wronged party may terminate the contract immediately, and does not have to perform any more terms of the contract (see *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BCCA) at paragraph 23).

19. So, I find this issue turns on whether Van Pro's waste disposal services were so poor that they destroyed the contract's commercial purpose, causing a fundamental breach. Other CRT decisions have found that Van Pro fundamentally breached similar waste collection contracts by missing pickups or collecting garbage irregularly and late. For example, see *0955824 BC Ltd. dba Van Pro Disposal v. Walltek Storage Ltd.*, 2020 BCCRT 433, among others.
20. However, here I find the evidence does not show that Van Pro's services were so deficient that they caused a fundamental breach. Specifically, having considered the submitted witness statements and other evidence, I find that although Van Pro may have picked up Emme's waste at irregular intervals, it did not fail to make pickups at the frequencies set out in the contract. I find the evidence does not show that Van Pro provided unreasonably poor service as Emme alleges, or that it breached the contract.
21. Further, in a July 3, 2022 statement, an Emme employee, IY, said that Van Pro verbally agreed to cancel its services at the Bathgate location if Emme paid the amount owing on its account, which Emme did. Van Pro denies this, as did its employee, XF, in a July 8, 2022 statement. I find the submitted evidence does not show that Van Pro agreed to cancel the Bathgate services in exchange for a payment.

***Did Emme Properly Terminate the Contract, and Does it Owe \$5,000?***

22. Emme emailed Van Pro on July 30, 2021 saying that it cancelled the contract at the end of that month, it would not continue using Van Pro's services, and that Van Pro should pick up "all" of its bins. I find this cancellation was outside of the cancellation window, so Emme did not follow the contract's required termination process.
23. Van Pro says it stopped providing waste disposal services at the Bathgate location sometime around October 2021, although it does not say exactly when, and it continued servicing the Burrows location. Emme says it only cancelled services to the Burrows location, but I find that Emme likely meant the Bathgate location, given that the statement of Emme's employee IY confirmed that Emme cancelled the

Bathgate services. Regardless of whether Van Pro continued to provide services at the Burrows location, I find the submitted correspondence shows that Emme attempted to cancel the entire contract on July 30, 2021.

24. Van Pro responded that the contract was valid, and to cancel its services Emme would have to pay liquidated damages under the contract. On August 10, 2021, Van Pro emailed that if Emme did not reply by August 14, 2021, Van Pro would suspend Emme's services for non-payment. Emme did not reply by that date. However, I find none of the evidence shows that prior to filing this CRT dispute, Van Pro informed Emme that it accepted the repudiation and requested specific liquidated damages. I find the evidence before me only shows that Van Pro stopped providing services to the Bathgate location around October 2021.
25. Regardless of Van Pro's repudiation acceptance timing, I dismiss Van Pro's claims because it has not adequately proven its damages or explained how it calculated them, for the following reasons. Van Pro makes separate claims for specific dollar amounts, but the only supporting evidence provided is 2 different versions of a September 1, 2021 invoice for monthly fees, and an October 22, 2021 statement of account. Van Pro says Emme owes \$6,671.70 after tax for liquidated damages, which it reduced to \$4109.82, plus a "reduced" bin removal fee of \$334.20, and \$840 in unpaid waste service fees that it reduced to \$555.98, as allegedly charged in 2 other invoices. I infer Van Pro made these alleged reductions so that its CRT claims did not total more than the \$5,000 maximum CRT small claim amount.
26. However, those 2 other alleged invoices are not in evidence, and neither are the numerous additional invoices the statement of account referred to. There are no invoices in evidence except the 2 different ones dated September 1, 2021, and I find it is unclear which, if either, is correct, or whether Emme paid for either version. From Van Pro's submissions and evidence, I cannot determine exactly what the alleged outstanding balances were for or the basis for their calculation. In the statement of account, Van Pro indicates that Emme owed different monthly fees and bin removal fees than those specified in the contract, and Van Pro used those different fees to

calculate its liquidated damages. However, none of the submitted evidence shows that Van Pro had a valid basis under the contract for charging those fees, or that it informed Emme about those apparent fee increases beforehand or at all.

27. Further, Van Pro does not adequately explain the dates on which it provided services and for which Emme allegedly did not pay. Van Pro also does not adequately explain its liquidated damages calculations in the statement of account. Specifically, Van Pro did not provide evidence of the previous 12 months of Emme billings, or explain the amounts it used to calculate the anticipated charges for the remaining contract term, as required under the contract. Van Pro also does not explain the different alleged bin removal fees, or whether or how it charged those fees to Emme. Overall, on a balance of probabilities, I find Van Pro's claimed damages are unproven.

28. Given my above conclusions, I dismiss Van Pro's claims.

### ***CRT Fees and Expenses***

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. Van Pro was unsuccessful, but the respondents paid no CRT fees and claimed no dispute-related expenses. So, I order no reimbursements.

### **ORDER**

30. I dismiss Van Pro's claims, and this dispute.

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Chad McCarthy, Tribunal Member