



Civil Resolution Tribunal

Date Issued: November 10, 2022

File: SC-2022-002446

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Waste Connections of Canada Inc. v. 492354 B.C. Ltd.*, 2022 BCCRT 1234

BETWEEN:

WASTE CONNECTIONS OF CANADA INC.

APPLICANT

AND:

492354 B.C. LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Micah Carmody

INTRODUCTION

1. The applicant, Waste Connections of Canada Inc. (WCC), provided waste removal services under contract with the respondent, 492354 B.C. Ltd. (492).

2. WCC says 492 failed to pay its final 3 invoices, for which WCC claims \$744.75, plus a \$150 bin removal fee. WCC also says 492 improperly terminated the contract, for which it claims \$2,584.80 in liquidated damages. In total, WCC claims \$3,509.55. WCC is represented by an employee or principal.
3. 492 acknowledges it did not properly terminate the contract but says it paid in full for all the services WCC provided. 492 says WCC continued to invoice for services it did not provide. 492 is represented by its owner, Puran Hansra.

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.
8. 492 provided submissions about statements WCC's representative allegedly made during the CRT's facilitation stage. 492 also provided a copy of a new contract WCC apparently provided as part of a settlement offer. WCC did not object to the evidence or submissions when given the opportunity. However, under section 89 of the CRTA, information provided during the dispute's facilitation stage is confidential and not admissible as evidence unless all parties consent, which I find is not the case here. As a result, I have not considered 492's submissions about statements made during the facilitation phase, and I decline to admit the new contract as evidence. In any event, the information is not relevant to the issues in this dispute.

ISSUES

9. The issues in this dispute are:
 - a. Does 492 owe \$744.75, or some other amount, for unpaid service invoices?
 - b. Does 492 owe the \$150 bin removal fee?
 - c. Is WCC entitled to liquidated damages under the parties' agreement, and if so, what amount?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, WCC must prove its claims on a balance of probabilities, meaning more likely than not. I have considered all the parties' evidence and submissions, but only refer to what is necessary to explain my decision.
11. The "Customer Service Agreement" was signed by 492's owner on December 6, 2019 and by a WCC representative on January 6, 2020.

12. The agreement contained the following relevant terms:
 - a. WCC had the exclusive right to provide waste collection services for the agreement's 4-year term starting on January 1, 2020.
 - b. The monthly service charges were \$48.41 for waste, \$55.29 for recycling, and \$142.70 for organics.
 - c. Bin delivery, removal, relocation, and exchange were \$150 each.
 - d. There were to be "no environmental or fuel surcharges."
 - e. WCC had the right to adjust rates and add surcharges without notice in certain circumstances, and with notice in any other circumstances.
 - f. 492 could terminate the agreement by providing written notice by certified mail between 90 and 180 days before the end of the 4-year term (cancellation window).
 - g. If 492 attempted to terminate the agreement other than as provided by the agreement, it was required to pay WCC liquidated damages in an amount equal to the sum of the monthly billings for the most recent 9 months.

13. I will consider the disputed invoices first. WCC says 492 failed to pay the following 3 invoices:
 - a. March 31, 2021 (for April service): \$256.38
 - b. April 30, 2021 (for May service): \$257.26
 - c. May 31, 2021 (for June service): \$262.11

14. Consistent with 492's submissions that the parties agreed in October 2020 to cancel the recycling collection, these invoices only imposed charges for waste and organics, plus a "BC Carbon Fee", which 492 does not dispute, and GST. Neither party says when the waste and organics bins were removed from 492's location.

15. 492 says it was dissatisfied with WCC's increasing rates and found another company to handle its waste effective April 2021. This is consistent with a March 9, 2021 email, in which Ms. Hansra told a WCC representative that 492 wanted to cancel the agreement. Although WCC continued to invoice 492, I find this email is the best evidence of the termination date. I find 492 terminated the agreement on March 9, 2021.
16. 492 says WCC only provided 1 removal of organic waste in April, and no service after that. 492 therefore says the "April bill" (or March 31 invoice) should have been \$45.31, and WCC should not have invoiced at all on April 30 or May 31, 2021.
17. On June 9, 2021, 492 wrote to WCC and enclosed a cheque for \$251.98. Ms. Hansra said this was, according to her calculations, what 492 owed WCC. I am unable to verify Ms. Hansra's calculations with the limited evidence before me. That said, I find WCC has not established that 492 owes anything more.
18. I say this because I find WCC has not proved that it provided the services identified in the disputed invoices. WCC could have, for example, provided a statement from a driver, or driver logs, or other records, confirming that it collected waste from 492 in May and June, 2021. I also note that when WCC invoiced 492 on June 30 for liquidated damages, it also included service charges for waste removal for July 2021, when it is undisputed that no waste was removed in that month. I find this error in the invoice suggests WCC's invoices are not reliable records of services provided. I dismiss WCC's \$744.75 debt claim.
19. I allow WCC's claim for the bin removal fee of \$150, which 492 expressly agreed to.
20. I turn to the liquidated damages claim. 492 does not dispute that it breached the contract when it attempted to terminate the contract outside of the cancellation window. It does not dispute that the liquidated damages clause was triggered. I acknowledge 492's submission that it cannot afford to pay for 9 months of services it did not receive. However, a respondent's inability to pay is not a defence to a claim. To the extent that 492 argues that the liquidated damages clause is unconscionable,

I note that similar clauses have been enforced by the courts. For example, in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690, the British Columbia Supreme Court held that a liquidated damages clause providing for 24 months of payment, equivalent to the agreement's full term, was enforceable. That decision is binding on me. So, I find 492 is required to pay WCC the sum of its monthly billings for the most recent 9 months before termination as a genuine pre-estimate of damages.

21. WCC did not provide its calculation of liquidated damages or explain how it arrived at a figure of \$2,584.80. I find the most recent 9 invoices before termination are the invoices dated June 30, 2020 to February 28, 2021. Only 7 of those 9 invoices are before me, including the June 30, 2020 invoice. The rates increased over that time. However, even applying the lower June 30, 2020 rate to the missing invoices, I arrive at a figure higher than what WCC claims for liquidated damages. So, I allow the claimed \$2,584.80.
22. I order 492 to pay WCC \$2,584.80 as liquidated damages. In total, I find 492 must pay WCC \$2,734.80 in debt.
23. WCC waived its claim for interest, so I do not award any.
24. 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. WCC was partially successful, so I find it is entitled to reimbursement of \$87.50 for half its \$175 in CRT fees. Neither party claimed any dispute-related expenses.

ORDERS

25. Within 30 days of the date of this order, I order 492 to pay WCC a total of \$2,822.30, broken down as \$2,734.80 in debt and \$87.50 in CRT fees.
26. WCC is entitled to post-judgment interest, as applicable.

27. 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. Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Micah Carmody, Tribunal Member