



Civil Resolution Tribunal

Date Issued: February 28, 2024

File: SC-2023-003668

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 B.C. Ltd. dba Van Pro Disposal v. Vibrant Glass Ltd.*,
2024 BCCRT 193

B E T W E E N :

0955824 B.C. LTD DBA VAN PRO DISPOSAL

APPLICANT

A N D :

VIBRANT GLASS LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Nav Shukla

INTRODUCTION

1. This dispute is about a waste disposal contract. 0955824 B.C. Ltd. dba Van Pro Disposal (Van Pro) provided waste disposal services to Vibrant Glass Ltd. (Vibrant). Van Pro says Vibrant breached the parties' contract by cancelling it before the term's

end. Van Pro claims \$2,805.26 in liquidated damages and a \$194.71 service fee, plus contractual interest. Van Pro is represented by an employee.

2. Vibrant says that the parties had an 18-month contract, and it has paid Van Pro for all services it received. It says it owes Van Pro nothing further. Vibrant is represented by its current owner, JB.

JURISDICTION AND PROCEDURE

3. 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). CRTA section 2 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.
4. CRTA section 39 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 and that an oral hearing is not necessary.
5. CRTA section 42 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.
6. Where permitted by CRTA section 118, 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

7. The issues in this dispute are:
 - a. Did Vibrant breach the parties' contract?

b. If so, what remedies is Van Pro entitled to?

EVIDENCE AND ANALYSIS

8. As the applicant in this civil proceeding, Van Pro must prove its claims on a balance of probabilities (meaning more likely than not). I have considered all the parties' submitted evidence and argument but refer only to what I find relevant to provide context for my decision.
9. On June 27, 2020, Vibrant signed a contract with Van Pro for waste disposal services. At the time, Vibrant was owned by NS, who signed the contract on Vibrant's behalf. The contract had an initial 18-month term which automatically renewed for a subsequent 5-year term if Vibrant did not provide written notice to cancel the agreement not more than 120 days and not less than 90 days before the renewal date (known as the cancellation window). I find the renewal date under the original term was December 26, 2021.
10. Vibrant says that NS attempted to contact Van Pro in December 2021 and January 2022. Notably, however, Vibrant does not say that NS or anyone else at Vibrant gave Van Pro written notice within the cancellation window that Vibrant intended to cancel the contract, as required by the terms of the parties' contract. So, I find the contract automatically renewed on December 26, 2021 for a further 5-year term.
11. Van Pro undisputedly provided waste disposal services to Vibrant until at least January 31, 2022. The parties agree that in either January or February 2022, NS asked Van Pro to remove its bin. Van Pro removed its bin in either February or March 2022. It is undisputed that Vibrant paid for all waste disposal services Van Pro provided. However, Van Pro claims for liquidated damages for Vibrant's early contract termination.
12. The parties' contract states that if Vibrant tries to terminate the agreement before the end of its term, Van Pro has the option to either affirm the agreement, or accept the

termination and end the agreement, in which case Vibrant must pay liquidated damages.

13. In its reply argument, Van Pro says that when NS asked it to remove the bin in February 2022, NS asked Van Pro to temporarily freeze Vibrant's account until Vibrant found a new location to run its business from. However, Van Pro says that it later learned that Vibrant was operating from a new location but had not resumed service with Van Pro. Van Pro says this is when it sent Vibrant an invoice to pay liquidated damages. I find by asking Van Pro to remove its bin and failing to resume service once Vibrant started operations from a new location, Vibrant effectively terminated the agreement before the end of its term, and Van Pro accepted this termination.
14. I acknowledge that the liquidated damages clause in the contract is onerous for Vibrant. However, in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690, the BC Supreme Court found a similar contract to be enforceable, and that decision is binding on me. So, I find Van Pro is entitled to liquidated damages for Vibrant's early termination.
15. The parties' contract says that Vibrant will pay liquidated damages that equal (a) the sum of Vibrant's monthly billing for the most recent 12 months, or (b) the sum of the remaining term's balance, whichever is greater.
16. Van Pro says it is entitled to \$2,805.26, which equals 12 months of the monthly fees it was charging Vibrant at the time Vibrant asked it to remove its bin. Based on the above contractual terms, I find Van Pro was entitled to more than this in liquidated damages because there were over 4 years remaining in its 5-year term. However, given Van Pro claims the lower amount, I award that. So, I find Van Pro is entitled to \$2,805.26 in liquidated damages.
17. As noted above, in the Dispute Notice, Van Pro also claims a \$194.71 "garbage service fee". Based on the evidence before me, I find this is not a fee for providing waste disposal services but rather a "finance charge", presumably for contractual

interest that Van Pro has calculated on the liquidated damages. So, to the extent Van Pro claims \$194.71 as a service fee, I find it is not entitled to this amount.

18. The parties' contract says that Vibrant will pay interest to Van Pro at the rate of 2% per month (26.82% annually) on any amounts that remain outstanding for more than 30 days. I find this agreement about interest applies to the monthly charges Van Pro was entitled to charge under the contract, not to liquidated damages awarded for Vibrant's early termination.
19. So, I find Van Pro is not entitled to contractual interest on the \$2,805.26 award for liquidated damages. Instead, I find Van Pro is entitled to pre-judgment interest on the \$2,805.26 under the *Court Order Interest Act* (COIA) from March 1, 2022, the date of its liquidated damages invoice, to the date of this decision. This equals \$183.74.
20. 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. As the successful party, I find Van Pro is entitled to \$125 for its paid CRT fees. Neither party claims any dispute-related expenses, so I award none.

ORDERS

21. Within 30 days of the date of this decision, I order Vibrant to pay Van Pro a total of \$3,114, broken down as follows:
 - a. \$2,805.26 in liquidated damages,
 - b. \$183.74 in pre-judgment interest under the COIA, and
 - c. \$125 in CRT fees.
22. Van Pro is entitled to post-judgment interest, as applicable.

23. 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.

Nav Shukla, Tribunal Member