Civil Resolution Tribunal

Date Issued: April 16, 2024

File: SC-2023-004555

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Portland Craft Ltd.*, 2024 BCCRT 357

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

PORTLAND CRAFT LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Megan Stewart

INTRODUCTION

1. This dispute is about a waste disposal contract.

2. 0955824 BC Ltd. doing business as Van Pro Disposal, (Van Pro), says it had a written waste disposal service agreement with Portland Craft Ltd. (Portland). Van Pro says

Portland terminated the agreement early and failed to pay for services. Van Pro claims $4,233.60 in liquidated damages, $52.35 for unpaid services ($45.86 + a $6.49 finance charge), and $189 for bin removal charges. An employee represents Van Pro.

3. Portland denies Van Pro's claims, and asks me to dismiss this dispute. It says its employee, DB, did not have authority to sign the agreement with Van Pro. So, Portland says the agreement is not binding. In any case, Portland says Van Pro provided substandard bins and service, so it is not obliged to pay Van Pro for any unpaid services. Portland's owner represents it.

JURISDICTION AND PROCEDURE

4. These are the Civil Resolution Tribunal's (CRT) formal written reasons. 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.

5. 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, without an oral hearing.

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 court.

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.

ISSUES

8. The issues in this dispute are:

a. Is the written waste service disposal agreement binding?

b. Is Van Pro entitled to its claimed amounts for liquidated damages, unpaid invoices, and bin removal charges?

EVIDENCE AND ANALYSIS

9. 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 read all the parties' submissions and evidence, but I only refer to what I find is necessary to explain my decision.

10. On March 29, 2023, Portland's employee, DB signed a 5-year waste disposal service agreement with Van Pro, starting immediately. The agreement says Portland could only terminate it by written notice between 90 and 120 days before its expiry date. The agreement also says if Portland ended the agreement before its term expired, Van Pro could accept the termination, in which case Portland would owe it liquidated damages.

11. On May 1, 2023, Portland advised Van Pro it was ending the agreement, and asked Van Pro to collect its bin. Van Pro removed its bin around May 4, 2023 and sent Portland two invoices: one for waste disposal services from May 1-4, 2023 for $45.86, and one for liquidated damages and bin removal charges for $4,422.60 ($4,233.60 + $189). These undisputedly remain unpaid.

Is the parties' agreement binding?

12. Portland says DB was not authorized to enter into the written waste disposal service agreement, because its owner was its sole signing officer. So, it says the agreement is not binding. Van Pro disagrees.

13. There are two ways an employee can enter into a valid agreement on behalf of their employer. First, the employer can give the employee actual authority. Second, an employee can have apparent authority (see *Kassam v. Dream Wines Corporation*, 2022 BCSC 1069, at paragraph 24).

14. Since Portland says DB did not have actual authority, Van Pro bears the burden of proving DB had apparent authority to enter into the agreement. Van Pro must show Portland represented through words or actions that DB had that authority (see *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295, at paragraphs 84 to 86).

15. Despite Portland's position, I note it accepted Van Pro's services from March 29, 2023, and there is no evidence it tried to cancel the agreement at that time. Further, text messages between Portland's owner and Van Pro's employee show they agreed to meet at Portland's place of business on March 29, 2023 to discuss service provision. Van Pro's employee indicated they would bring a bin, and Portland's owner did not object. Around 12:30pm on March 29, Portland's owner sent Van Pro's employee a text saying "talk to (DB and A) unfortunately I had a bit of emergency and had to deal with – (A and DB) are the best to deal with" (reproduced as written, except as anonymized). From context, I infer A is an acquaintance of Portland's owner, who facilitated an introduction with Van Pro.

16. Portland also says DB told the owner they were led to believe they were signing a delivery receipt, and not a service agreement. However, Portland did not submit a statement from DB, and did not provide any explanation for why it could not do so in place of this hearsay evidence. Also, DB signed the agreement just below text indicating it was a "legal binding agreement", and that by signing it "Customer acknowledges that he or she or its authorized signatory has read, understood and agreed to this Agreement" and the terms and conditions on the reverse.

17. Based on the above, I find DB had apparent authority to enter into the written waste disposal service agreement, and that it was a binding agreement. I further find Portland ended the agreement before its term expired.

Liquidated damages, unpaid invoices, and bin removal charges

18. I find Van Pro accepted Portland's early termination, as shown in Van Pro's May 4, 2023 invoice for liquidated damages and bin removal charges. As noted above, the agreement requires Portland to pay Van Pro liquidated damages for such termination.

19. However, that does not end the matter. Portland says Van Pro provided substandard service and equipment. I find Portland essentially argues Van Pro fundamentally breached the agreement, so it owes nothing. A fundamental breach is where a party fails to fulfill a primary obligation of 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] 1 SCR 426). If there is a fundamental breach, the wronged party may terminate the contract immediately, and does not have to perform the contract further (see *Poole v. Tomenson Saunders Whitehead Ltd.*, 1987 CanLII 2647 (BC CA), at paragraph 23).

20. Portland says the bin Van Pro delivered was in poor condition. Portland says it leaked, had seized caster wheels, included a non-functional lock for which no keys were provided, and "appeared to be a repurposed unit from a competitor." It says the leakage posed a health and safety risk and disrupted its business operations, though it does not elaborate on this, or provide supporting evidence.

21. I find none of these equipment concerns amounts to a fundamental contract breach that destroyed the agreement's purpose and made further performance impossible. From photos in evidence, it is clear Portland was able to put garbage into the bin, as was intended.

22. I turn to Portland's allegation of substandard service. Portland says from the time Van Pro delivered the bin to the time it removed it, Van Pro only collected garbage once, on May 1, 2023. Portland also says Van Pro overcharged it.

23. First, the alleged overcharging. The parties agree Van Pro initially charged Portland for a full month's service for March 2023. The March 2023 invoice shows Van Pro ultimately only charged Portland for 3 days' service in March, along with a fuel surcharge and an environmental levy, a bin delivery charge, and a lock. I find the service charge, bin delivery charge, and lock were all contemplated in the agreement.

24. Regarding the fuel surcharge and environmental levy, the agreement contains the following special instructions: "All price quoted base on 2023yr rate Customer had

rea (…) accepted all terms at back Current fuel surcharge & environmental levy ar (…) respectively" (reproduced as written). Some words appear to have been cut off, so I find it is unclear whether Portland agreed to pay extra for a fuel surcharge and an environmental levy, and if so, how much it agreed to pay. I note the agreement's pre-printed terms also indicates "Customer agrees to pay any other charges and fines, surcharges or levies incurred by VAN PRO providing the Services to the Customer". But, Van Pro provided no evidence it incurred fuel surcharges or environment levies. In the absence of such evidence, and since the copy of the agreement submitted is unclear, I find Van Pro has not proven it was entitled to charge Portland for fuel surcharges and environmental levies. Based on the invoices in evidence, I find Van Pro overcharged Portland $84.53 including tax for these things. However, I do not find Van Pro's overcharging, particularly for this relatively small amount, deprived Portland of the contract's whole benefit.

25. Next, the bin collection. The agreement provides for bin collection "EOW", which I infer means "every other week". In submissions, Van Pro questions why Portland paid its March and April invoices in full if Van Pro only collected the bin once during those months. However, Van Pro does not explicitly deny Portland's allegation.

26. Other CRT decisions have found that waste disposal companies that repeatedly missed or irregularly collected garbage fundamentally breached their contracts because the heart of the contract is regular garbage pickup (see, for example, *Super Save Disposal Inc. v. SKR Ventures Ltd.,* 2022 BCCRT 1242, *0955824 BC Ltd. dba Van Pro Disposal v. Walltek Storage Ltd*., 2020 BCCRT 433, and *0955824 BC LTD. dba Van Pro Disposal v. Metrogain Enterprises Ltd.,* 2020 BCCRT 1029). I agree.

27. Here however, Portland ended the agreement after about 4 ½ weeks. I find this is an insufficient period to establish Van Pro repeatedly missed bin collection, or collected the bin irregularly. In addition, though Portland says its owner sent numerous texts and made calls to Van Pro about collecting the bin on time, there is no evidence of this. The only evidence of Portland's dissatisfaction with bin collection were texts addressed to A on May 1, 2023, the day Portland terminated the agreement. While

Van Pro's employee was copied on one of these texts, the reason Portland gave Van Pro for ending the agreement was that it needed the bin emptied more than twice a month. In these circumstances, I do not find the evidence supports a conclusion Van Pro's services were so deficient they were a fundamental breach.

28. So, I find Van Pro is entitled to liquidated damages for Portland's termination of the agreement. The agreement says Portland will pay the greater of a) the sum of its monthly billing for the most recent 12 months or, if that is not applicable, the billing projected for the first month multiplied by 12, and b) the sum of the balance of the term remaining on the agreement. Van Pro claims $4,233.60, which is 12 times the monthly billing it was charging Portland at the time Portland ended the agreement. Based on the terms above, I find Van Pro was entitled to more than this in liquidated damages because there were more than 4 ½ years left in the agreement's 5-year term. But, since Van Pro did not claim the greater amount for the balance of the term, I have only calculated liquidated damages on the basis of the first month's projected billing times 12.

29. The monthly service rate under the agreement was $280. In calculating liquidated damages, Van Pro added a $28 monthly fuel surcharge and a $28 monthly environmentally levy, for a monthly bill of $336, before tax. For the reasons above, I find it was not entitled to add these extra charges. So, I find the billing projected for the first month was $280, and the total amount for liquidated damages is $3,360. I do not find Van Pro is entitled to GST on the liquidated damages, as no goods or services were provided to attract GST. I order Portland to pay $3,360 in liquidated damages.

30. Next, Van Pro claims $52.35 for unpaid services. As noted above, this consists of $45.86 for a pro-rated monthly service rate for May 1-4, 2023, and a $6.49 finance charge for Van Pro's claimed liquidated damages and bin removal charges. I address interest below, so I dismiss the $6.49 finance charge. As the $45.86 was for a period after Portland ended the agreement on May 1, 2023, I find by accepting Portland's termination and claiming for liquidated damages, Van Pro was not entitled to charge Portland its monthly service rate after that date. So, I dismiss the $45.86 as well.

31. Finally, the $189 for the bin removal charges. The agreement specifies $150 for each bin removal, and Van Pro invoiced Portland for 1 bin removal plus a fuel surcharge and an environmental levy at $15 each. For the reasons as above, I find Van Pro is not entitled to the fuel surcharge or environmental levy. I order Portland to pay $157.50 for the bin removal ($150 +5% tax).

32. Portland did not file a counterclaim. So, I infer it requests a set-off of the $84.53 I found Van Pro overcharged it for fuel surcharges and environmental levies, against anything Portland owes Van Pro. I find a set-off for the $84.53 proven overcharge is appropriate. I deduct this amount from the bin removal charge.

CRT FEES, EXPENSES, AND INTERST

33. Van Pro claims 26.82% annual contractual interest. I find the parties' agreement on interest only applied to monthly and one-time charges (such as the bin removal charge), and not to liquidated damages. So, I find Van Pro is entitled to contractual interest on $72.97, which is the amount left after deducting the $84.53 set-off from the $157.50 bin removal charge. I find contractual interest applies from May 4, 2023, the date of Van Pro's last invoice, to the date of this decision. This equals $18.66.

34. While Van Pro is not entitled to contractual interest on the $3,360 liquidated damages, I find it is entitled to pre-judgment interest on that amount under the *Court Order Interest Act*, from May 1, 2023, the date Portland ended the agreement, to the date of this decision. This equals $160.05.

35. 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 reimbursement of $175 in CRT fees. Van Pro did not claim dispute-related expenses. In submissions, Portland requests $1,000 for its owner's time spent dealing with this dispute. As Portland was not successful, and because the CRT does not typically award compensation for time spent on a dispute, I dismiss this claim.

ORDERS

36. Within 30 days of the date of this order, I order Portland to pay Van Pro a total of $3,786.68, broken down as follows:

    a. $72.97 in debt,

    b. $18.66 in contractual interest,

    c. $3,360 in liquidated damages,

    d. $160.05 in pre-judgment interest under the *Court Order Interest Act,* and

    e. $175 in CRT fees.

37. Van Pro is entitled to post-judgment interest, as applicable.

38. I dismiss Van Pro's remaining claims.

39. This is a validated decision and order. 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.

Megan Stewart, Tribunal Member