



Civil Resolution Tribunal

Date Issued: May 21, 2024

File: SC-2023-003053

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *0955824 BC Ltd. dba Van Pro Disposal v. Novalink Logistics Inc.*,

2024 BCCRT 464

B E T W E E N :

0955824 BC LTD. DBA VAN PRO DISPOSAL

APPLICANT

A N D :

NOVALINK LOGISTICS INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This dispute is about a waste disposal contract.

2. 0955824 BC Ltd. doing business as Van Pro Disposal had a written waste disposal contract with Novalink Logistics Inc. Novalink terminated the contract in August 2022. Van Pro claims \$413.50 for unpaid monthly service fees and \$1,025.93 in liquidated damages.
3. Novalink says the contract is not binding because its employee, LL, did not have authority to sign it on behalf of Novalink. Novalink also says Van Pro breached the contract in various ways, so it does not owe Van Pro anything.
4. Both parties are represented by an authorized employee or principal.

JURISDICTION AND PROCEDURE

5. 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.
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 court.
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.

ISSUES

9. The issues in this dispute are:
 - a. Is the waste disposal contract binding?
 - b. Did Van Pro breach the contract?
 - c. Is Van Pro entitled to its claimed amounts for unpaid monthly services and liquidated damages?

EVIDENCE AND ANALYSIS

10. As the applicant in this civil proceeding, Van Pro must prove its claims on a balance of probabilities, which means more likely than not. I have read all the parties' evidence and submissions but refer only to what I find relevant to explain my decision.
11. On August 23, 2012, Novalink signed a waste disposal contract with Housewise Construction Ltd. doing business as Segal Disposal (Segal) for a 5-year term starting August 24, 2012. At the end of the first 5-year term the contract was automatically renewed for another 5-year term ending August 23, 2022.
12. On November 1, 2017, Van Pro notified Novalink by letter that Segal had assigned its responsibilities under the contract to Van Pro, as permitted by the contract's terms.
13. In June 2022, Novalink notified Van Pro that it was moving at the end of that month, and that it wished to terminate the contract as of July 1, 2022. Several days later it notified Van Pro that it wished to terminate the contract as of August 23, 2022, which was the end of the contract's second 5-year term.

Is the waste disposal contract binding?

14. Novalink's employee, LL, signed the contract for Novalink. Novalink says LL was not authorized to sign the contract on its behalf, so the contract is not binding. Van Pro disagrees. Given Novalink's position, Van Pro must prove that LL had apparent authority to sign the contract (see *Kassam v. Dream Wines Corporation*, 2022 BCSC

1069, at paragraph 24). This means Van Pro must show that Novalink represented through its words or actions that LL had signing authority (see *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295, at paragraphs 84 to 86).

15. LL signed the contract directly below a statement that the contract is “legally binding”, and that by signing it, the “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 side. One of those terms states that “The person who signed the Agreement on behalf of the Customer acknowledges that he or she has read and understood all of the terms and conditions” and confirms that “he or she is duly authorized to enter into this Agreement for and on behalf of Customer to bind Customer hereto.”
16. The evidence shows that Novalink paid Van Pro for its monthly waste disposal services for 10 years from 2012 to 2022, and generally abided by the contract’s terms during that time. Novalink does not elaborate on its allegation that LL was not authorized to sign the contract, nor does it explain why it paid Van Pro for its services for almost a decade if there was no binding contract between the parties. It provided no statement from LL or any other Novalink representative to support its allegation. Based on Novalink’s conduct over the 10-year duration of the contract, I am satisfied that LL had apparent authority to sign the contract on behalf of Novalink, and that the contract was binding on the parties.

Did Van Pro breach the contract?

17. Novalink says Van Pro breached the contract by failing to provide Novalink its new contact information, failing to provide some of its monthly services, increasing prices without notice, failing to negotiate a new contract at Novalink’s new location, and failing to provide its business license and incorporation certificate upon request. Novalink says that because of Van Pro’s breaches of the contract, it does not owe it anything. I address each allegation in turn.

Van Pro's Contact Information

18. According to the contract's terms, the contract automatically renewed for successive 5-year terms unless the parties took specific actions. If Novalink wished to terminate the contract at the end of a term, it was required to give Van Pro notice by registered mail between 90 and 120 days before the annual renewal date, which was August 24. This means that for Novalink to have terminated the contract as of August 23, 2022 without incurring additional charges, it was required to give Van Pro notice by registered mail between April 25 and May 25, 2022, which it undisputedly did not do.
19. Novalink says Van Pro breached the contract by changing its contact information without providing sufficient notice. Novalink says this prevented it from terminating the contract within the required time frame.
20. Van Pro disagrees and says it sent Novalink its new contact information in October 2018. The evidence shows that in October 2018 Van Pro sent Novalink its updated contact information. As Van Pro notes, in February 2019, Novalink emailed Van Pro at its new email address. Van Pro says this shows Novalink had its new contact information. I agree. Novalink does not address this February 2019 email at all in its submissions.
21. Even if Novalink did have the incorrect contact information for Van Pro, there is no evidence it attempted to send Van Pro notice of termination by registered mail between April 25 and May 25, 2022 as the contract required. I find Novalink has failed to prove that Van Pro breached the contract by failing to notify Novalink of its new contact information or by otherwise preventing Novalink from complying with the contract's termination provisions.

Missed Monthly Services

22. Novalink says Van Pro failed to provide its monthly services several times over the 10-year duration of their contract. However, Novalink provided only two emails to support this allegation. The first is an email it sent Van Pro on June 24, 2022 stating "I think your side missed waste service in Jun...Could you please double-check and

arrange a service to remove all the waste asap?”. The email also said this was not the first time Van Pro had missed a monthly service. While there is no email response in evidence, Van Pro denies this allegation and says it provided Novalink its service on June 2, 2022. Novalink also submitted a July 21, 2022 email it sent Van Pro asking it to provide its August service schedule. Novalink says Van Pro never responded to this email. However, I find that does not prove that Van Pro failed to provide services in August 2022. Van Pro says it provided its services to Novalink on July 4 and August 4, 2022, and I find this is reflected in the invoices in evidence. Without more, I find Novalink has failed to prove that Van Pro breached the contract by failing to provide monthly waste disposal services.

Increased Prices

23. Novalink says Van Pro consistently increased its prices without Novalink’s consent. However, the contract allows Van Pro to adjust its rates, and Novalink provided no evidence that Van Pro increased its rates beyond what was permitted in the contract.

Failure to Negotiate a New Contract

24. Novalink says Van Pro failed to acknowledge that it was moving and failed to negotiate a new service agreement at its new location. However, I find Van Pro had no obligation to do so under the contract’s terms. The evidence also shows that on June 6, 2022, Novalink notified Van Pro that it would be moving at the end of that month, and that it wished to terminate the contract at that time. On June 7, 2022, Van Pro responded that Novalink’s move did not invalidate the contract. Van Pro offered to move its bin to Novalink’s new location and provide services there. So, I find the evidence shows that despite this offer, Novalink chose to terminate the contract.

Business License and Incorporation Certificate

25. Novalink says Van Pro failed to provide its business license or incorporation certificate when requested to do so. Novalink says it refuses to do business with an unlicensed and uninsured business. However, I find Van Pro had no obligation under the contract to provide the requested documents. I also find Novalink has failed to

establish that Van Pro is either unlicensed or uninsured, or that either situation would affect the parties' obligations under the contract.

26. In summary, I find Novalink has failed to establish that Van Pro breached the contract in the ways it alleges.

Is Van Pro entitled to its claimed amounts for unpaid monthly services and liquidated damages?

27. Novalink notified Van Pro in June 2022 of its intention to terminate the contract as of August 23, 2022. While Van Pro did not initially accept this termination, the emails in evidence show that Van Pro later accepted the termination. So, I find the contract terminated on August 23, 2022.

28. First, I address Van Pro's claim for \$413.50 in monthly service fees. Van Pro says Novalink owes monthly fees for June, July, and August 2022, totaling \$247.94, plus interest of \$165.56, which equals \$413.50.

29. As noted above, Novalink says Van Pro failed to provide waste disposal services in June or August 2022. It says it paid the June 2022 invoice towards the July 2022 service. Van Pro says it provided Novalink waste disposal services on June 2, July 4, and August 4, 2022. I find that if Van Pro had failed to provide services in June or August 2022 there likely would have been documentary evidence of it from Novalink. On the evidence before me, I am satisfied that Van Pro provided services on these dates. However, I find there are some problems with Van Pro's calculations.

30. There are two different June 2022 invoices in evidence. Van Pro's version is for \$85.59, and Novalink's version is for \$84.23. Both parties provided evidence showing Novalink paid \$84.23 for this invoice, and Van Pro does not explain why there are two different invoices for the same month. So, I find the June 2022 invoice was for \$84.23, which Novalink paid.

31. Van Pro's invoices for both July and August 2022 were for \$85.59, and there is no evidence Novalink paid these amounts, so I find they are owing. In total, I find Van

Pro has established that it is entitled to \$171.18 in monthly service fees for July and August 2022. I address entitlement to contractual interest below.

32. Next, I address Van Pro's claim for \$1,025.93 in liquidated damages. The contract says that if Novalink terminates the contract before the term expires, and if Van Pro accepts that termination, Novalink agrees to pay as liquidated damages an amount equal or greater to either the total of Novalink's most recent 9 months of billing, or the sum of the balance of the term remaining under the contract. As noted above, Novalink failed to notify Van Pro of its intention to terminate the contract before May 25, 2022, which means the contract automatically renewed for another 5-year term starting August 24, 2022. So, I find Van Pro is entitled to liquidated damages.
33. Van Pro calculated its claimed \$1,025.93 in liquidated damages by totaling Novalink's monthly invoices from December 2021 to August 2022 (\$750.88) and adding contractual interest (\$275.05). However, having found the June 2022 invoice was for \$84.23, not \$85.59, I find Van Pro's liquidated damages claim must be reduced by \$1.36. So, I find Van Pro is entitled to \$749.52 in liquidated damages. I address entitlement to contractual interest below.

CRT FEES, EXPENSES, AND INTEREST

34. Van Pro claims 24% annual contractual interest. I find the contract only permits contractual interest to be applied to the monthly service fees, and not to liquidated damages. So, I find Van Pro is entitled to contractual interest on the \$171.18 owing for monthly service fees, calculated from August 17, 2022 to the date of this decision. This equals \$72.49.
35. Having found Van Pro is not entitled to contractual interest on the \$749.52 owing for liquidated damages, I find it is entitled to pre-judgment interest on that amount under the *Court Order Interest Act* from August 23, 2022, which is the date the contract terminated, to the date of this decision. This equals \$54.98.

36. 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. I see no reason in this case not to follow that general rule. Since Van Pro was generally successful, I find it is entitled to reimbursement of \$125 in CRT fees. Novalink did not pay any CRT fees, and neither party claimed any dispute-related expenses.

ORDER

37. Within 30 days of the date of this order, I order Novalink to pay Van Pro a total of \$1,173.17, broken down as follows:

- a. \$171.18 in debt,
- b. \$72.49 in contractual interest,
- c. \$749.52 in liquidated damages,
- d. \$54.98 in pre-judgment interest under the *Court Order Interest Act*, and
- e. \$125 in CRT fees and dispute-related expenses.

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

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.

Sarah Orr, Tribunal Member