



# Civil Resolution Tribunal

Date Issued: July 3, 2018

File: SC-2017-04779

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Gill's Dream Enterprise Ltd.*, 2018 BCCRT 298

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

Super Save Disposal Inc.

**APPLICANT**

**A N D :**

Gill's Dream Enterprise Ltd.

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Julie K. Gibson

## **INTRODUCTION**

1. The applicant Super Save Disposal Inc. says the respondent Gill's Dream Enterprise Inc. breached the parties' disposal service contract.

2. The applicant claims liquidated damages as set out in the contract. The respondent says the person who signed the contract did not have authority to do so, and that it cancelled the contract. The respondent asks me to dismiss the dispute.
3. The parties are each self-represented through their corporate principals.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal 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 tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Under tribunal rule 126, in resolving this dispute the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Did the parties enter into an enforceable contract?
  - b. Did the respondent repudiate or was it in breach of the contract?
  - c. What damages, if any, should the applicant receive?

## **EVIDENCE AND ANALYSIS**

9. In this civil claim, the burden is on the applicant to prove their claim on a balance of probabilities. I have reviewed all of the evidence and submissions provided by both the applicant and the respondent.
10. I set out the facts:
  - a) On June 20, 2014, Pav Gill on behalf of the respondent signed a Service Agreement (the "Agreement") with the applicant. The Agreement's terms provided:
    - i. The applicant would provide waste collection services to the respondent.
    - ii. The respondent would pay a monthly charge for these services.
    - iii. The term of the Agreement was 5 years.
    - iv. The Effective Date of the Agreement would be delayed to the day after the end of any existing contract for the same services the respondent had with a different disposal service.
    - v. The respondent had the obligation to notify any existing service provider that it would not be renewing its contract with them (clause 3).

- vi. If the respondent terminated the Agreement prior to the end of the term, the applicant could accept the repudiation of the Agreement and terminate the Agreement (clause 11).
  - vii. Upon termination of the contract, the respondent agreed to pay as liquidated damages the amount of the remaining monthly charges plus the sales tax (clause 11).
  - viii. The respondent could not terminate the Agreement except by providing written notice, by registered mail, to the applicant between 120 and 90 days prior to the end of the 5 year term (clauses 2 and 14).
11. At the time the respondent signed the Agreement, it had a service contract with BFI Canada (BFI), another disposal company (the BFI agreement). The BFI agreement was signed by Pav Gill on February 8, 2012. It expired on February 10, 2017 based on written notice given by the respondent dated October 12, 2016.
12. On February 10, 2017, the applicant attempted to deliver 2 three yard bins to the respondent's premises, but because the respondent refused to accept them they had to be returned to the applicant's premises. Since then, the applicant says it has been ready to provide the waste disposal services, but the respondent has prevented it from doing so. A delivery receipt authored by the applicant on February 10, 2017 contains a note "service refund – was to be setup ...bins returned to yard."
13. On February 20, 2017, the applicant wrote to the respondent, to the attention of Pav Gill, noting the bin refusal on February 10, 2017. The applicant indicated this was repudiation of the Agreement giving rise to payment for the balance of all monthly payments that would come under it for the remaining term, totalling \$3,366.26 broken down as: 60 months of term remaining for waste service at \$40.52 each, 60 months of term remaining for cardboard service at \$10.00 each, removal charge for two bins at \$135 each, and GST. (My calculation gives

\$3,466.26, but the applicant is confined to their lower claimed amount of \$3,366.26.)

**Issue One: Did the parties enter into an enforceable contract?**

14. The applicant says the parties had a valid and binding agreement.
15. The respondent suggested that the agreement was not signed by one of its directors and so was not valid. I reject this argument, particularly given that the BFI agreement was also signed by Pav Gill, which I find proves that Pav Gill had the authority to bind the respondent.
16. The respondent says the agreement was not valid and was terminated by a phone call and fax letter by it to one of the applicant's (then) employees named Earl. The respondent says Earl indicated that he would cancel the agreement.
17. I do not accept that the agreement was terminated before February 10, 2017. I say that because no objective evidence of a promise to cancel the agreement was provided. Although the respondent referenced it in their submissions, I was not provided with a fax to the attention of anyone named Earl. Further, on October 25, 2016, the applicant wrote to the respondent saying that, further to the Agreement's terms, waste disposal service would begin on February 10, 2017, according to the termination date of the respondent's previous provider. If the respondent had already cancelled the Agreement with Earl, I would expect the respondent would have responded to the October 25, 2016 letter to remind the applicant of that fact.

**Issue Two: Did the respondent breach the Agreement?**

18. The respondent refused delivery of the bins on February 10, 2017, in breach of the Agreement. I find the refusal constituted a material breach and termination of the Agreement. The respondent was only permitted to terminate the Agreement according to the process set out in Clauses 2 and 14, which did not apply on February 10, 2017.

19. I find the respondent's refusal of delivery of the bins constituted a breach and termination the agreement.

**Issue Three: Is the applicant entitled to liquidated damages?**

20. The Agreement provides where the respondent terminates the Agreement unlawfully, the applicant may elect to accept that termination. I find that the applicant did accept the respondent's termination of the Agreement. I rely on the February 20, 2017 letter in making this finding.
21. Clause 11 states that if the Agreement is improperly terminated by the respondent, the applicant is entitled to liquidated damages. The liquidated damages are the amount of the remaining monthly payments owing under the agreement, plus taxes.
22. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. Liquidated damages must not be a penalty, but rather a genuine pre-estimate of damages incurred. Simply because a contract says damages are liquidated damages and not a penalty does not make them liquidated damages. The damages will be a penalty if the amount is extravagant and unconscionable when compared to the greatest loss that could possibly come from the breach. The courts have said their duty is to assess whether the clause is a genuine pre-estimate of the anticipated losses or a clause intended to compel performance of the contract. This issue was decided in the case of *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.* 2014 BCSC 690 (CanLII). Madam Justice Fenlon (at paragraph 46) found that the income stream loss over the remaining term of the contract amounts to a genuine pre-estimate of damages and is not a penalty.
23. In *Super Save Disposal Inc. v. Paul's Metal Service Inc.*, 2018 BCCRT 191, the tribunal agreed with his Worship B. G. Baynham in *Super Save Disposal Inc. v. Lee* 2015 BCPC 0157, and in particular with the court's comments regarding the onerous nature of the terms of disposal service contracts, and the need for

consumer protection. While I am not bound by the tribunal's decision, I concur with it, and the tribunal's similar decision in *Super Save Disposal Inc. v. K.M.I. Holdings Ltd* 2018 BCCRT 285.

24. However, I find that I am bound by the *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.* The remaining term of the agreement from the date of termination was 60 months. I find that the applicant is entitled to liquidated damages in the amount claimed, being \$3,366.26.
25. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of \$175.00 in tribunal fees.
26. I have not awarded expenses for service fees because no receipt was provided to substantiate that expense.

## **ORDERS**

27. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$3,568.75, broken down as follows:
  - a. \$3,366.26 as damages;
  - b. \$27.49 in pre-judgment interest under the *Court Order Interest Act*; and
  - c. \$175.00 in tribunal fees.
28. The applicant is entitled to post-judgement interest, as applicable.
29. Under section 48 of the Act, the tribunal will not provide the parties with the Order giving final effect to this decision until the time for making a notice of objection under section 56.1(2) has expired and no notice of objection has been made. The

time for filing a notice of objection is 28 days after the party receives notice of the tribunal's final decision.

30. Under section 58.1 of the Act, a validated copy of the tribunal's order can be enforced through the Provincial Court of British Columbia. A tribunal order can only be enforced if it is an approved consent resolution order, or, if no objection has been made and the time for filing a notice of objection has passed. Once filed, a tribunal order has the same force and effect as an order of the Provincial Court of British Columbia.

---

Julie K. Gibson, Tribunal Member