



Civil Resolution Tribunal

Date Issued: August 10, 2018

File: SC-2017-006126

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Wongs' Benevolent Association*,
2018 BCCRT 435

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Wongs' Benevolent Association

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a contract for waste disposal services. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, Wongs' Benevolent Association, breached the contract` between the parties by cancelling the services

before the agreed term ended. The applicant seeks liquidated damages of \$4,236.75. The applicant is represented by an employee, Marli Griesel. The respondent is represented by Jeffrey Wong.

JURISDICTION AND PROCEDURE

2. 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.
3. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.
4. 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.
5. 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.
6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondent breached the contract between the parties, and if so, what remedy is appropriate.

EVIDENCE AND ANALYSIS

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.
9. The parties signed a contract for waste disposal services on July 31, 2013. The parties' contract was effective June 16, 2016, because the respondent was still under contract with another waste disposal hauler, WM. In July 2013, the respondent's contract with WM was effective until June 30, 2016.
10. I turn then to the contract's relevant terms (my bold emphasis added):
 - a. The "monthly charge" is \$65 for a bi-weekly service of a 3-yard bin.
 - b. The applicant has the exclusive right to provide all non-hazardous solid waste disposal services (Clause 1).
 - c. The respondent agrees that it **will not enter into or renew any other service agreement with any third party during the contract's term** (Clause 1).
 - d. The stated effective date of the contract is June 16, 2016, for a 5-year term (Clause 2). Thus, the parties' contract ended on June 16, 2021, and only if the respondent terminated the contract within the cancellation window set out in Clause 2, summarized below.
 - e. The respondent can terminate the contract by providing not more than 120 days and not less than 90 days **written notice, by registered mail, before the end of the term or any renewal term** (Clause 2).

- f. The contract is effective either 1) the first day equipment is delivered, or 2) if the respondent was obligated under a pre-existing service contract with a third party, the first day after the expiration or termination of that pre-existing contract, but the **parties' contract is a legally binding contract from the date of execution until the effective date, and thereafter until the end of its term** (Clause 3).
 - g. **The respondent agrees not to renew any third party service contract,** pending the effective date of the parties' contract (Clause 3).
 - h. If the respondent "unlawfully" terminates the agreement before the term's expiry, The applicant may, at its option, accept the respondent's repudiation, and in that case the respondent agrees to immediately pay liquidated damages consisting of all amounts owing to the end of the term, plus an amount equal to the monthly charges (plus tax) (Clause 11).
11. As per the parties' agreement, on March 14, 2016 the applicant sent a cancellation letter to WM, on the respondent's behalf, which was signed by the respondent's director.
12. On April 19, 2016, the applicant wrote the respondent reminding it of the July 1, 2016 date for placement of its waste bin. I note this letter refers to an agreement signed on March 24, 2011, and yet the parties' contract before me was signed in 2013. Nothing turns on this discrepancy.
13. On May 2, 2016, the respondent's director signed a renewal waste services contract with WM, and advised the applicant that it no longer needed the applicant's services.
14. On July 4, 2016, the applicant proceeded with delivery of the bin as per the parties' agreement. On July 7, 2016, the applicant confirmed it did not wish to proceed with the agreement. That same day, the applicant wrote the respondent and advised that cancellation of the contract was not possible and if the respondent proceeded

to cancel the applicant would make a liquidated damages claim, as provided for in the contract.

15. On July 7, 2016, the applicant sent a “cancellation request” letter setting out the respondent’s breach and the applicant’s liquidated damages claim, if the respondent insisted on cancelling the agreement. In this letter, the applicant stated that delivery of the bin was to start July 1, 2016 and continue for an initial 5-year term. It is unclear why July 1, 2016 was the stated start date, when the contract provided for June 16, 2016. Nothing turns on that discrepancy, as the central point is that the respondent failed to fulfil the contract for the entire 5-year term. In other words, it refused to accept delivery of the bin from the start, and thus the applicant claims the entire 60 months. It also claims a \$135 removal charge, which I infer relates to the bin delivered on July 4, 2016. Together with GST, that brought the applicant’s liquidated damages claim to \$4,236.75, the amount claimed in this dispute. The applicant gave the respondent 10 days to respond, or else the applicant would assume repudiation.
16. The respondent’s defence to the applicant’s claim is two-fold. First, the respondent says it wrote the applicant on May 2, 2016 advising that it did not require the applicant’s services. It appears the applicant received this letter on May 6, 2016, based on the date stamp on the applicant’s copy in evidence. The difficulty for the respondent is that this does not comply with the contract’s requirement that the written notice of termination be provided by registered mail (clause 2). Similarly, the respondent’s stated attempts to telephone the respondent do not comply with the contract’s termination provisions.
17. Second, the respondent says the parties’ contract “shifted forward” to when the respondent’s contract with WM ended. The respondent says it has always been under contract with WM. The difficulty here is that the respondent’s contract with WM ended on June 30, 2016 and the respondent renewed that contract. The parties’ contract expressly provides that the respondent agrees it will not renew a third party hauler’s contract after signing the applicant’s contract. Here, the

respondent signed the applicant's contract on July 31, 2013. Thus, the respondent breached its contract with the applicant when the respondent renewed its contract with WM in May 2016. Under the contract, the respondent agrees to pay liquidated damages for breaching the contract. The liquidated damages are the monthly charges for the balance of the term.

18. The respondent submits it is unreasonable to claim the entire 60 month term when no waste services were provided. I acknowledge prior decisions that have found disposal service contracts are onerous and that there is a need for consumer protection. However, the court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered essentially identical language involving the applicant and found the contract enforceable. While I am not bound by other tribunal decisions, I am bound by the court's decision in *Tristar* (for similar reasoning see also: *Super Save Disposal Inc. v. Paul's Metal Service Inc.*, 2018 BCCRT 191, *Super Save Disposal Inc. v. Gill's Dream Enterprise Ltd.*, 2018 BCCRT 298, and *Super Save Disposal Inc. v. K.M.I. Holdings Ltd.*, 2018 BCCRT 285).
19. In short, while the contract's terms are onerous, they are enforceable. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. The parties' contract states that if the service agreement is improperly terminated by the respondent, the applicant is entitled to liquidated damages, in the amount of the remaining monthly payments owing under the agreement, plus taxes.
20. I turn then the amount of the applicant's damages claim. The applicant's claim for a \$135 removal fee is not allowed. It is not referenced in the contract and the applicant did not provide sufficient evidence to support it. I allow the balance of the applicant's claim, \$3,900 plus \$195 GST, for a total of \$4,095. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$4,095, from July 17, 2016.

21. The applicant claimed \$110.25 in dispute-related expenses, but provided no explanation of what this was for and no supporting evidence. Therefore, I dismiss this claim. In accordance with the Act and the tribunal's rules, as the successful party I find the applicant is entitled to reimbursement of the \$175 it paid in tribunal fees.

ORDERS

22. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$4,342.86, broken down as follows:
 - a. \$4,095 in liquidated damages under the parties' contract,
 - b. \$72.86 in pre-judgment interest under the COIA, and
 - c. \$175 in tribunal fees.
23. The applicant is also entitled to post-judgment interest under the COIA, as applicable. The applicant's claim for dispute-related expenses is dismissed.
24. 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.

25. 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.

Shelley Lopez, Vice Chair