



# Civil Resolution Tribunal

Date Issued: August 23, 2018

File: SC-2017-005354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc v. Integrated Auto System Inc.*, 2018 BCCRT 468

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

Super Save Disposal Inc

**APPLICANT**

**A N D :**

Integrated Auto System Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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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, Integrated Auto

System Inc., breached the contract between the parties by attempting to cancel the services before the agreed term ended.

2. The applicant claims \$592.79 in debt and \$2,940 in liquidated damages, for a total of \$3,532.79. The respondent says the applicant's salesperson told its representative that it could cancel the contract at any time. The applicant is represented by an employee, Marli Griesel. The respondent is represented by its owner, Eduard Kamalov.

## **JURISDICTION AND PROCEDURE**

3. 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.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these.
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: 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**

8. 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**

9. 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.
10. The parties signed a contract for waste disposal services on November 11, 2016. Around November 18, 2016, the applicant delivered waste bins to the respondent, as per their agreement. Around December 29, 2016, the respondent e-mailed the applicant and requested cancellation of the contract, because their warehouse lease had been terminated. The fact that the cancellation request was sent by e-mail, rather than by registered mail, is central to the applicant's claim, as set out below.
11. Around January 9, 2017, the applicant advised the respondent it would not accept the cancellation request, and that the respondent could move the bin to their new location. However, the respondent advised it did not have a new location.
12. Around January 13, 2017, the applicant sent an "early termination" letter to the respondent, advising of its pending claim for damages if the respondent proceeded with the cancellation of the agreement.
13. Around February 3, 2017, the applicant tried to remove its bin from the respondent's premises, but the respondent had the bin locked inside the shop and

so the applicant could not access it. The applicant finally removed the bin on March 22, 2017.

14. The contract's relevant terms are as follows (my bold emphasis added):
  - a. The "monthly charge" is for a monthly service of a 4-yard bin (\$50).
  - b. The stated effective date of the contract is November 11, 2016, the date the contract was signed, for a 5-year term (Clause 2).
  - c. 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**. This is defined as the 'cancellation window'. (Clause 2).
  - d. 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).
  - e. 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).
15. Given the above terms, the respondent breached its contract with the applicant and the applicant was entitled to accept the repudiation and claim liquidated damages. I say this because the respondent's cancellation was not within the cancellation window and because the cancellation request was sent by e-mail, rather than registered mail.

16. The respondent submits that the applicant's salesperson misrepresented the contract and "rushed us through the signing process". I find the respondent has not provided sufficient evidence in support of this allegation. I therefore place no weight on this submission. I acknowledge the respondent's submission that at the time it signed the contract it was unsure if they needed waste disposal services and that they made this clear to the applicant's sales representative. The respondent submits the salesperson was "very assertive" but also was very kind and "consoled" the respondent's representative that it did not need to "pore over the fine print" in the contract and that "during the time of uncertainty" the applicant's salesperson made it clear that the respondent could cancel the agreement at any point in time.
17. Taking all of the evidence before me into account, I find this is not a reasonable explanation of why the respondent nonetheless signed the lengthy and detailed contract that contains the terms summarized above. The respondent is a corporate entity, and there is no evidence before me that it or its principal or employees were particularly vulnerable. The respondent's assertion that the applicant's salesperson was acting with their "interests at heart" does not make sense from a business perspective, something I find the corporate respondent likely would have known. There is no notation in the "special instructions" box on the contract for early cancellation rights. The applicant denies that its salesperson ever told the respondent's representative that the agreement could be cancelled at any time.
18. Further, the applicant's contemporaneous business records documenting its multiple communications with the respondent's employee M, between June 22 and November 28, 2017, do not support the respondent's position. Mr. Kamalov's and the applicant's emails in December 2016 and January 2017 also do not support the respondent's position. In particular, on January 9, 2017, Mr. Kamalov wrote "We would love to move the bin to a new location. However, we do not have a new location. **The contract was terminated unexpectedly.** ... (my bold emphasis added)". While Mr. Kamalov also wrote in that email that the salesperson "told us clearly that we can cancel the service agreement at any time", I find the more likely

scenario is that the respondent accepted the contractual terms at the time it signed the agreement and only later disputed them when it suddenly found it needed to move and did not yet have a new location for the applicant's waste bin.

19. On balance, I do not accept that the corporate respondent reasonably signed a lengthy contract without being aware of its terms, because of the alleged verbal assurances of the applicant's salesperson.
20. I acknowledge prior decisions that found disposal service contracts are onerous and there is a need for consumer protection. However, the court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered virtually 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).
21. 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.
22. I turn then the amount of the applicant's debt and damages claims, which total \$3,532.79. The \$592.79 debt portion reflects the period of time the respondent had possession of the applicant's waste bin, even though the respondent never used it. The \$2,940 liquidated damages claim reflects the monthly charges (\$50 per month) owing for 56 months, to the end of contract's 5-year term, which totals \$2,800, plus \$140 in tax (GST). I allow these amounts, under the parties' contract.

23. The applicant is entitled to pre-judgment interest of 24% per annum, as set out in the parties' contract and as claimed in the applicant's Dispute Notice, from February 3, 2017, the date I find most reasonable as it was the date the applicant accepted the respondent's repudiation and tried to remove its waste bin.
24. The applicant claimed \$78.75 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 substantially successful party I find the applicant is entitled to reimbursement of the \$175 it paid in tribunal fees.

## **ORDERS**

25. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$5,022.57, broken down as follows:
  - a. \$3,532.79 in debt and damages under the parties' contract,
  - b. \$1,314.78 in pre-judgment interest at 24% per annum, and
  - c. \$175 in tribunal fees.
26. The applicant is also entitled to post-judgment interest under the *Court Order Interest Act*, as applicable. The respondent's claim for expenses is dismissed.
27. 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.
28. 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.

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Shelley Lopez, Vice Chair