



# Civil Resolution Tribunal

Date Issued: November 5, 2018

File: SC-2017-006455

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Ryan E Townsend dba Timbre Restaurant*,  
2018 BCCRT 690

B E T W E E N :

Super Save Disposal Inc.

**APPLICANT**

A N D :

Ryan E Townsend dba Timbre Restaurant

**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, Ryan E Townsend dba Timbre

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

2. The applicant claims \$4,354.56 in liquidated damages, under the parties' contract. The respondent says the parties' contract is irrelevant because at the time it was signed he had incorporated his business and "Ryan Townsend DBA Timbre Restaurant" was no longer the legal name of the business. The applicant is represented by an employee, Marli Griesel. The respondent is self-represented.

## **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. 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. It is undisputed that the parties signed a contract for waste disposal services on August 3, 2011, with an effective date of June 1, 2012. Later, the parties agreed that the effective date would be July 4, 2017, because the respondent was still under agreement with a third party waste hauler. The agreement was for a 2 year term. Given the postponement of the effective date, this meant the contract was to run until July 4, 2019.
10. When the applicant attempted to deliver the waste bin on July 4, 2017, Mr. Townsend refused to accept delivery. The applicant returned the bin to its premises.
11. At this point, I will address the respondent's argument that at the time the agreement was signed in 2011 he was in the process of incorporating. The evidence shows Mr. Townsend's business was incorporated on July 13, 2011, under the name "Townsend Entertainment Group Ltd.". The difficulty for Mr. Townsend is that he personally signed the contract with the applicant as a sole proprietor, "doing business as" Timbre Restaurant. That means Mr. Townsend is personally liable for the contract with the applicant. It does not matter that he stopped operating as Timbre Restaurant. The fact that Mr. Townsend later incorporated a business is irrelevant, because Townsend Entertainment Group was not a party to the contract with the applicant. As discussed further below, given the terms of the parties' contract, it is also irrelevant that the respondent never used the services.
12. I next address the respondent's argument that the applicant's claim was filed out of time under the *Limitation Act*. There is a 2-year limitation period. However, because the agreement's effective date was moved to July 4, 2017, that is when the applicant

reasonably first attempted to deliver the bin. The applicant's claim against the respondent was not discoverable until he refused the bin on that date, July 4, 2017. Thus, the applicant's claim was started in time.

13. The applicant claims liquidated damages under clause 11 of the contract, in the amount of \$4,354.56. The contract's relevant terms are as follows (my bold emphasis added):

- a. The "monthly charge" is for a weekly service of i) a 3-yard waste bin (\$137.80), and ii) a 3-year cardboard bin (\$35.00). This totals \$172.80.
- b. The stated effective date of the contract is July 1, 2012, for a 2-year term. It is undisputed that given the respondent's third party hauler agreement in effect at the time, on May 2, 2012 the parties' contract's effective date was postponed to July 4, 2017.
- c. 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** (Clauses 2 and 3).
- d. 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 often referred to as the 'cancellation window'. (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).

14. Given the above terms, I find the respondent breached his contract with the applicant when he refused the bin. Nothing turns on the fact that the bin was not accepted because

the respondent no longer ran a restaurant at the designated location. If the respondent did not want to continue with the contract, under the contract's terms he needed to cancel within the cancellation window.

15. I find the applicant was entitled to accept the repudiation and claim liquidated damages. I say this because the respondent's refusal or cancellation on July 4, 2017 was not within the cancellation window.
16. The respondent submits it is unreasonable to expect him to pay for the whole 2 years, when he never received any services. 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).
17. 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.
18. I turn then the amount of the applicant's liquidated damage claim, which total \$4,356.56. This is based on 24 months of the waste bin (\$137.80 per month) and 24 months of the cardboard bin (\$35 per month), plus GST. I allow the \$4,354.56, under the parties' contract.
19. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$4,354.56, from July 20, 2017, the date the applicant accepted the

respondent's repudiation of the agreement. In accordance with the Act and the tribunal's rules, as the applicant was successful in this dispute it is also entitled to reimbursement of \$175 in tribunal fees.

## **ORDERS**

20. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$4,591.39, broken down as follows:
  - a. \$4,354.56 in liquidated damages under the parties' contract,
  - b. \$61.83 in pre-judgment interest under the COIA, and
  - c. \$175 in tribunal fees.
21. The applicant is also entitled to post-judgment interest under the COIA, as applicable.
22. 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.
23. 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