



# Civil Resolution Tribunal

Date Issued: November 9, 2018

File: SC-2017-005611

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. G&G Golf Company Inc.*, 2018 BCCRT 714

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

Super Save Disposal Inc.

**APPLICANT**

**A N D :**

G&G Golf Company Inc.

**RESPONDENT**

---

## **REASONS FOR DECISION**

---

Tribunal Member:

Julie K. Gibson

### **INTRODUCTION**

1. The applicant Super Save Disposal Inc. says the respondent G&G Golf Company Inc. breached the parties' disposal services contract.
2. The applicant claims liquidated damages as set out in the contract, in the total amount of \$1,634.72.

3. The respondent says it cancelled the requested waste disposal service prior to the written agreement between the parties becoming effective. It asks that the applicant's claim be dismissed.
4. The applicant appears through its corporate representative Marli Griesel. The respondent appears through corporate representative Gordon German.

## **JURISDICTION AND PROCEDURE**

5. 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.
6. 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.
7. 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.
8. 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**

9. The issues in this dispute are:
  - a. Did the parties enter into an enforceable contract?
  - b. If so, did the respondent breach the contract?
  - c. What damages, if any, should the applicant receive?

## **EVIDENCE AND ANALYSIS**

10. In this civil dispute, the burden is on the applicant to prove their claims on a balance of probabilities. I have reviewed all of the evidence and submissions provided by both the applicant and the respondent.
11. On June 30, 2016, the respondent signed a Service Agreement (the “Agreement”) with the applicant for a one year term. The Agreement’s terms provided:
  - a. The applicant would provide waste collection services to the respondent.
  - b. The respondent would pay a monthly charge for these services.
  - c. Clause 2 provides that the Agreement commences on the Effective Date. Once the Effective Date of the Agreement had passed, 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 Term. This is often referred to as the “cancellation window”. This means the contract was to end July 6, 2017 and so the cancellation window was 3 to 4 months before that, that is, around February 28 to March 30, 2017 (clauses 2 and 14).
  - d. Clause 3 provides that the effective date of the Agreement is either the first day equipment is delivered to the premises or, if the respondent had a pre-existing service contract, the first day after the expiration of that pre-existing agreement and in that latter case “the agreement shall constitute a legally binding contract between the contractor and the customer from the date of

execution” up to and including the Effective Date and thereafter shall continue in full force and effect for the length of the term.”

- e. 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).
  - f. 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).
12. On July 6, 2016, the applicant attempted to deliver its waste disposal bin. The respondent refused to accept delivery of the bin.
  13. On July 15, 2016, the applicant wrote to the respondent by registered mail noting the bin refusal on July 5. The applicant incorrectly referenced the delivery attempt as occurring on July 5 rather than the 6th, but I find that nothing turns on this discrepancy.
  14. The applicant indicated the bin refusal was a breach of the Agreement giving rise to payment for the balance of all monthly payments that would come under it for the remaining term, totaling \$1,634.72. However, in the July 15, 2016 letter, the applicant’s description of the calculation to arrive at the \$1,634.72 amount is wrong, listed as 12 months x \$59=680.88, plus 12 months x \$59=516.00, plus 12 months x \$59=360.00 plus tax of 77.84.
  15. The Agreement provides that the balance of all monthly payments if the Agreement was breached on July 6 would be \$56.74 x 12 months, plus \$43.00 x 12 months plus \$30.00 x 12 months, plus tax of \$77.84 which adds up to the total amount \$1,634.72 owing, as accurately referenced in the applicant’s July 15, 2016 letter.
  16. The applicant says the parties had a valid and binding agreement.
  17. The respondent agrees it signed the Agreement but then discovered that strata rules for the building would not permit it to have a large outdoor waste bin. The

respondent then attempted to cancel the Agreement, which it thought it could do because no equipment had yet been provided.

18. The respondent says they cancelled the agreement less than 24 hours after signing it, and well before any waste disposal service started. The respondent also provided evidence that it had just moved to this new building.
19. This dispute turns on the interpretation of the Effective Date for the purposes of the Agreement. The Agreement says that it commences on the Effective Date.
20. On the one hand, the Agreement lists the Effective Date as June 30, 2016, the date it was signed.
21. On the other hand, the Agreement expressly defines the Effective Date, at clause 3 as:

The Effective Date of this Agreement shall be either: (1) the first day that the Equipment is delivered to or Service commences at the Location; or (2) if the Customer is obligated under a pre-existing service contract with a third party for the Location, the first day after the expiration or termination of the pre-existing third party service contract...and, in the latter case, this Agreement shall constitute a legally binding contract between the Contractor and the Customer from the date of execution of this Agreement up to and including the Effective Date...

22. As I interpret clause 3, the Effective Date for a customer with no pre-existing service agreement would be the date the equipment is delivered or the serviced commenced, in this case, July 6, 2016.
23. The respondent says that because it had no pre-existing service agreements at that address, which I accept as this was a new building for the respondent, clause 3 provides that the Effective Date of the Agreement shall be the first day the equipment is delivered or service commences at the location.
24. The Agreement provides for two different dates as the Effective Date, either June 30, 2016 or July 6, 2016. I find that there are two reasonable, explicit and conflicting interpretations of the Effective Date in the Agreement.

25. This is an ambiguity, meaning that it is unclear and there is more than one reasonable way to understand, the Effective Date. This is an essential term of the Agreement that impacts all obligations under the Agreement.
26. When an ambiguity arises about what the parties were agreeing to, there is a legal rule about interpreting contracts called *contra proferentum*, which is a Latin phrase meaning “against a party who proffers or puts forward a thing.” (see *First Class Waste Services Inc. v. Hub Fire Engines and Equipment Ltd.* 2014 BCPC 0038 (*First Class*) at paragraphs 12 and 13). In this instance, the party offering waste disposal service, and who drafted the Agreement, is the applicant. Under this rule of construction of contracts, the ambiguity must be resolved against them.
27. In *First Class*, the court interpreted an ambiguity about how notice of cancellation under a container service agreement against the claimant, because it had proffered the contract. I find the analysis in *First Class* applicable to this dispute.
28. Because the Agreement said it started on the Effective Date, and the Effective Date is unclear, I find that the Agreement was not valid between the parties. This interpretation favours the party who is not part of the waste disposal industry and did not draft the Agreement, which is fair in circumstances where the Effective Date is not discernable to a reasonable person.
29. Given the particular circumstances, I find the Effective Date was July 6, 2016.
30. The Effective Date of July 6, 2016 had not yet occurred when cancellation notice was provided by the respondent. Therefore, there is no issue about whether the respondent gave notice within the cancellation window specified in the Agreement, nor about whether the cancellation was given the form specified in the Agreement.
31. The question then becomes whether the respondent gave reasonable notice of cancellation to the applicant.
32. On July 1, 2016, Cori German for the respondent wrote to Carly Ouderkirk at the applicant and cancelled the delivery and the Agreement, because bins were not

going to be permitted outside the building. She then wrote “I realize we have signed the contract but with not taking delivery yet we would like to cancel.”

33. Ms. Ouderkirk responded on July 4, 2016 saying that she received the email but would need to speak with her office regarding the request to cancel because she had “never had a customer ask me to set them up and then change their mind.”
34. I find that this email constituted reasonable cancellation notice given to the applicant, and received by it, prior to the Effective Date of the Agreement. Therefore, the respondent was not yet bound by the terms of the Agreement.
35. Although the cancellation notice was not provided by registered mail, I find this was not a requirement given that the Agreement was not yet in effect.
36. As well, the cancellation was sent within 24 hours of signing the Agreement, and gave a clear reason for the cancellation.
37. Because I have found that the respondent gave reasonable notice of cancellation of their request for waste disposal service, and that the Agreement was not valid due to uncertainty about the Effective Date, I dismiss the applicant’s claim.
38. 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. The respondent was successful but paid no tribunal fees, so I make no order on this point.

**ORDER**

39. The applicant's claim and this dispute are dismissed.

---

Julie K. Gibson, Tribunal Member