



Civil Resolution Tribunal

Date Issued: November 16, 2018

File: SC-2018-004555

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Motosel Industrial Group Inc.*,

2018 BCCRT 740

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Motosel Industrial Group Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Eric Regehr

INTRODUCTION

1. The applicant, Super Save Disposal Inc., says that the respondent, Motosel Industrial Group Inc., breached their waste disposal service contract. The applicant claims \$2,200.20.

2. The respondent says that the person who signed the contract did not have authority to do so on behalf of the respondent. The respondent therefore says that there is no valid contract. The respondent asks me to dismiss the dispute.
3. The applicant is represented by an employee, Marli Griesel. The respondent is represented by one of its corporate directors, David Mah.

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 respondent's receptionist have the actual or apparent authority to enter into the agreement with the applicant?
 - b. If so, did the respondent properly cancel the parties' agreement?
 - c. If so, how much, if any, is the applicant entitled to for breach of contract?

EVIDENCE AND ANALYSIS

9. In June 2017, the respondent contacted the applicant to enquire about waste disposal services. One of the applicant's salespeople met with Mr. Mah and provided him with quotes.
10. On July 4, 2017, Mr. Mah responded to the salesperson to say that the quote was too expensive. The same day, the salesperson provided Mr. Mah with other options and quotes to try to get the respondent's business.
11. The salesperson and respondent's receptionist both signed the agreement on August 9, 2017, to take effect on August 15, 2017.
12. The receptionist provided a signed, written statement dated August 18, 2017, about the events of August 9, 2017. The applicant did not provide any evidence from the salesperson to dispute the receptionist's evidence. I accept the receptionist's evidence about what happened on August 9, 2017.
13. The receptionist stated that she emailed the salesperson on August 9, 2017 with some follow up questions regarding the quote. The salesperson followed up with a telephone call that she would come into the office to answer the questions. The receptionist stated that the salesperson showed up with the agreement and began filling it out, despite the receptionist saying the managers were not in the office and that they should wait until they return. The receptionist states that she specifically

stated that she did not have authority to agree to terms on behalf of the respondent, but that the salesperson seemed to be in a hurry and that the receptionist felt pressured to sign, which she did.

14. The applicant delivered waste disposal bins on August 15, 2017.
15. On August 16, 2017, Mr. Mah complained to the applicant, telling them that they never ordered the bins and that the receptionist did not have the authority to enter into the agreement. On August 18, 2017, Mr. Mah wrote the applicant a letter demanding that the applicant to remove the bins.
16. In response, the applicant wrote to the respondent that they would claim liquidated damages for 2 years of fees if the respondent cancelled the agreement.
17. The applicant removed the bins on August 30, 2017.

Did the receptionist have the authority to enter into the agreement on behalf of the respondent?

18. There are 2 ways that an employee can enter into a valid agreement on behalf of their employer.
19. First, the employer can give the employee actual authority. The applicant submits that the receptionist had authority to enter into the agreement, but I find the evidence is clear that she did not. Mr. Mah contacted the applicant the day after the applicant delivered the bins to tell the applicant that the receptionist did not have the authority.
20. Second, an employee can have apparent authority to enter into agreements on behalf of their employer. If an employee has apparent authority to enter into an agreement, the agreement is valid and enforceable even if the employer did not actually give the employee the power to do so.

21. The burden is on the applicant to prove that the receptionist had apparent authority to enter into the agreement. The applicant must prove that the respondent, not the receptionist, represented through words or actions that the receptionist had the authority to enter into the agreement. The applicant must also prove that they reasonably believed that the receptionist had the authority to enter into the agreement. See *R & B Plumbing & Heating Ltd. v. Gilmour*, 2018 BCSC 1295, at paragraphs 84 – 86.
22. I find that the applicant has failed to prove that the respondent did or said anything that would reasonably suggest that the receptionist had the authority to enter into the agreement.
23. I rely primarily on the fact that the applicant's arguments focus on what the receptionist said. The applicant does not point to anything that Mr. Mah said or did that would suggest that the receptionist had the authority to enter into the agreement.
24. Mr. Mah initiated the quote and did all of the negotiations on behalf of the respondent prior to August 9, 2017. Mr. Mah's emails identify him as the Financial Manager, whereas the receptionist's email identifies her as an assistant. As for the receptionist's email to the salesperson on August 9, 2017, a reasonable person would not read this email and believe that Mr. Mah had delegated authority over the agreement to the receptionist. The receptionist was not in a management position and there is no evidence that the applicant believed her to be.
25. Furthermore, I find that the salesperson did not reasonably believe that the receptionist had authority to enter into the agreement. The receptionist was clearly uncomfortable with signing the agreement and specifically told the salesperson that they should wait. A reasonable person in the salesperson's position would not have believed that the receptionist had the authority to sign the agreement, but the salesperson went ahead anyway.

26. Therefore, I find that the receptionist did not have actual or apparent authority to sign the agreement.

27. All of the applicant's claims are based on the terms of the agreement. Because there was no agreement between the parties, I do not need to address the other issues raised in this dispute. I dismiss the applicant's claims.

28. 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 has not claimed any dispute-related expenses. I therefore decline to make an order for tribunal fees or dispute-related expenses.

ORDER

29. I order that the applicant's claims and this dispute are dismissed.

Eric Regehr, Tribunal Member