Civil Resolution Tribunal

Date Issued: December 17, 2018

File: SC-2017-006121

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. River's Reach Neighbourhood Pub Inc.*, 2018 BCCRT 862

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

River's Reach Neighbourhood Pub Inc.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. This dispute is about a contract for waste disposal services. The applicant, Super Save Disposal Inc., says the respondent River's Reach Neighbourhood Pub Inc. breached the contract between the parties by attempting to cancel the services before the agreed term ended. The applicant seeks $3,347.19 in liquidated damages.

2. The applicant is represented by an employee, Marli Griesel. The respondent is represented by its sole director, George Petropavlis.

3. Mr. Petropavlis, on behalf of the respondent, denies liability. He says he was unaware of the original contract from 2004, and he never agreed to renew it.

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. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the tribunal's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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.

ISSUES

8. The issue in this dispute is whether the respondent breached a 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 addressed the evidence and arguments to the extent necessary to explain my decision.

10. On April 20, 2004, Max Frohnweiser signed a service agreement (Agreement) for waste disposal services from the applicant. Mr. Frohnweiser is identified on the Agreement as the respondent's general manager.

11. The Agreement had a 3 year term, and included the following terms:

    - The applicant would provide weekly waste collection services to the respondent, including an 8 yard waste container and an 8 yard cardboard container.

    - The respondent would pay $283 per month for these services. The applicant had the right to adjust the rate based on several listed factors.

    - The effective date of the Agreement was April 24, 2004.

- The term of the Agreement was 3 years, starting on the effective date, and the Agreement would be automatically renewed for successive 3 year terms without further action of the parties unless terminated by either party (clause 3).
- The respondent could only terminate the Agreement by providing written notice to the applicant by registered mail no less than 60 days prior to the end of a 3 year period (clause 3).
- If the respondent cancelled the service or terminated the Agreement prior to the end of the term, the respondent agreed to pay as liquidated damages an amount equal to the respondent's most recent monthly charge multiplied by 6 (clause 11).

12. Mr. Petropavis says that he, the sole director of the respondent company, was unaware of the Agreement when it was signed in 2004. He also says the business name on the Agreement is written incorrectly as Rivers Reach Pub Inc., rather than River's Reach Neighbourhood Pub Inc. I find there was a valid and enforceable contract between the parties, despite these objections. There is no evidence before me suggesting that Mr. Frohnweiser was not the respondent's general manager, or that he entered into the Agreement fraudulently or without authority to bind the respondent. Also, any flaw in the respondent's corporate name, and Mr. Petropavis' initial lack of knowledge of the Agreement, were cured by the fact that the respondent accepted and paid for waste disposal services from the applicant under the terms of the Agreement for over 11 years without objection.

13. In November 2015, Mr. Petropavis telephoned the applicant and said he wanted to cancel the applicant's services. The respondent's employee also sent an undated letter to the applicant in November 2015, stating that the respondent would discontinue service and wanted the applicant to remove both waste bins by November 10, 2015.

14. The applicant replied with a November 12, 2015 letter stating that the current term of the Agreement was valid until April 24, 2016, and if the respondent wanted to cancel it would be responsible to pay the remaining 5 months of monthly payments, plus tax, equalling $3,337.19. The applicant removed the bins as requested.

15. The “A/R Customer Inquiry” document provided in evidence shows that the applicant received the respondent’s written notice of termination by registered mail on November 26, 2015.

16. The respondent provided a copy of a new service agreement from the applicant, dated December 1, 2012. This contract is unsigned, and includes substantially different terms that the 2004 Agreement. Mr. Petropavis says he refused to sign this service agreement. He says that after receiving it, he called the applicant and said he did not want a 3 year contract, and instead would only agree to month-to-month service. The evidence shows that the respondent never signed the 2012 service agreement, but the applicant continued to provide waste disposal services.

17. Mr. Petropavis submits that by sending him a new contract in the middle of a 3 year term of the 2004 Agreement, the applicant repudiated the 2004 Agreement. He says that because the applicant continued to provide services, by its conduct it accepted the month-to-month service agreement demanded by the respondent.

18. I do not find the parties entered into a new contract in 2012 or afterward, as alleged by the respondent. The 2004 Agreement had very specific written terms, which said that unless the respondent gave written notice by registered mail, the Agreement would continue to renew for successive 3 year terms. While I accept that the parties discussed the respondent’s request for month-to-month service in 2012, I find the applicant did not agree to monthly terms as there is insufficient evidence to support such a conclusion. The applicant says it did not agree. I do not agree with the respondent’s submission that by continuing to provide service, the applicant effectively agreed to end the 2004 Agreement and instead provide service on a month-to-month basis, based on a new verbal contract. I find that in order to override the specific written provisions of the 2004 Agreement and its automatic

renewal clause, the respondent would have to prove an alternate agreement with the applicant, and I find it has not done so.

19. I also do not agree with the respondent's argument that the applicant repudiated the 2004 Agreement when it sent him a new service agreement in December 2012. Because the 2012 service agreement was never signed, no new contract was formed. Rather, I find the December 2012 service agreement was an offer by the applicant to negotiate a new contract. The respondent rejected that offer, so the 2004 Agreement continued in force.

20. The respondent also submits that the applicant should have accepted Mr. Petropavis' 2012 request for month-to-month service terms as notice to terminate the Agreement at the end of the 3 year term, which was April 24, 2013. Mr. Petropavis says that while he did not provide written notice as required under the Agreement, it was sufficient notice, backed up by the fact that he refused to sign the December 2012 service agreement. He also says that if the applicant was going to demand written notice, it should have asked for it and it is now estopped (prevented) from raising a technical issue with the Agreement's termination.

21. I disagree with this submission. By continuing to accept service from the applicant throughout 2013, 2014, and most of 2015 with no new written confirmation of the terms that service, the respondent did not provide clear notice of an intention to terminate in April 2013 or thereafter. Again, I find that the parties' interactions in 2012 were negotiations of a possible new contract, but these negotiations did not result in a new contract and did not constitute notice of termination by either party. Also, clause 3 of the 2004 Agreement specifically requires written notice by registered mail, which the respondent did not provide until November 2015.

22. I acknowledge prior decisions have found disposal service contracts are onerous. However, the court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered similar 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). I agree with the above reasoning, and adopt it. While the 2004 Agreement's terms are onerous, they are enforceable.

23. For these reasons, I find that the applicant is entitled to liquidated damages under the terms of the 2004 Agreement.

24. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. Clause 11 states that if the respondent terminated the Agreement prior to the end of a 3 year term, the applicant is entitled to liquidated damages, in an amount equal to the respondent's most recent monthly charge multiplied by 6 (clause 11). The applicant claims 5 months of payments as liquidated damages, since that was the amount of time remaining in the term. This equals $3,347.19, including tax. I find the applicant is entitled to that amount, and I therefore order the respondent to pay the applicant $3,347.19. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA), from November 13, 2015.

25. The tribunal's rules provide that the successful party is generally entitled to recovery of their fees and dispute-related expenses. The applicant was successful, so I order that the respondent reimburse $175 in tribunal fees. Neither party claimed dispute-related expenses.

ORDERS

26. I order that within 30 days of this decision, the respondent pay the applicant a total of $3,578.05, broken down as follows:

    a. $3,347.19 for liquidated damages plus GST,

    b. $55.86 as prejudgment interest under the COIA, and

    c. $175 for tribunal fees.

27. The applicant is also entitled to post-judgment interest as applicable.

28. 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.

29. 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.

Kate Campbell, Tribunal Member