Civil Resolution Tribunal

Date Issued: December 18, 2018

File: SC-2017-005379

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Nineteen02 Kombucha (Canada) Inc.*, 2018 BCCRT 873

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Nineteen02 Kombucha (Canada) 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, Nineteen02 Kombucha (Canada) Inc.,breached the contract between the parties by refusing to pay the invoice for services provided. The applicant seeks an order for payment of $2,641.57 for the outstanding bill, plus $368.90 in liquidated damages.

2. The respondent disputes the amount of the invoice, and says it agreed to pay for monthly waste pickup but not the biweekly pickup service billed by the applicant. The respondent says the applicant failed to provide a copy of the contract for 8 months, and also says the applicant ended the contract on January 26, 2017, when it stopped waste pickup services.

3. The applicant is represented by an employee, Marli Griesel. The respondent is represented by Tim Hill, a principal or employee.

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 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 addressed the evidence and arguments to the extent necessary to explain my decision.

10. The evidence before me shows that on June 27, 2016, the applicant, represented by its president Su-Mari Hill, signed a service agreement with the respondent (the Agreement). The Agreement included the following terms:

    - The applicant would provide waste collection services to the respondent, for a fee of $157.15 per month, plus an administration fee of $6.85 per month and a 5% fuel surcharge.
    - The term of the Agreement was 1 year (clause 2).

- The effective date of the Agreement was June 29, 2016.
- The respondent could not terminate the Agreement except by providing written notice to the applicant via registered mail within 90 to 120 days before the end of the 1 year term (clause 2).
- 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). If this occurred, the respondent would have to pay as liquidated damages the amount of the remaining monthly charges for the remaining term, plus the sales tax (clause 11).

11. I find that this Agreement, as written and signed by the parties, constitutes a binding contract between the applicant and the respondent.

12. The parties agree that the applicant began providing service to the respondent. The applicant's records show that the service was set up as biweekly pickup, and that all the provided waste bins were picked up every 2nd week until January 26, 2017.

13. In September 2016, the applicant put a temporary hold on the respondent's services due to non-payment of account. The respondent paid the arrears of $309.29 by credit card on September 27, 2016. The applicant resumed service.

14. In October 2016, the respondent contacted the applicant and said the service should have been set up as monthly rather than biweekly pickup. In an October 13, 2016 email, the respondent said the applicant could switch to monthly service by signing some paperwork. The applicant says it sent the necessary paperwork, but the respondent did not return it. The respondent does not particularly dispute this, but says the service should have been monthly from the beginning.

15. On January 10, 2017, the respondent asked to put the service on hold until the matter was resolved. The applicant asked for payment of its overdue bill.

16. On March 9, 2017, the applicant wrote to the respondent and said waste pickup services had been suspended due to non-payment in excess of 30 days. The

applicant asked for payment of $1,915.25, and said if the respondent did not pay they would remove their bins and seek payment plus damages under clause 11 of the Agreement. The applicant removed the bins on April 11, 2017.

17. On May 15, 2017, the applicant wrote another letter stating that it was terminating the Agreement due to the respondent's breach of its terms. The applicant requested payment of the outstanding bill.

18. The respondent submits that it never agreed to pay for biweekly waste pickup, but instead only agreed to monthly pickup. I disagree. First, the pickup records provided by the applicant show that the bins were picked up biweekly from the start of the service in July 2016. The respondent paid for the service in September 2016, and did not question the charges. The respondent did not raise the issue of pickup frequency until October 2016, 3 months after the service began. I find that if the provided service were different from the agreed terms, the respondent would have raised the matter sooner.

19. Also, the agreement says that all 4 bins (glass, waste, cardboard, and organics) would be picked up with a frequency of "EOW". EOW is not defined in the Agreement, and the respondent says it did not know what EOW meant. I disagree. The respondent provided copies of emails from the applicant to the respondent in May and June 2016 setting out price quotes. These emails said that pickup would be "every other week". Based on that correspondence, I find that all parties were aware that "EOW" meant every other week (biweekly).

20. Finally, the Agreement clearly says the respondent agreed to pay $171.86 per month plus GST for waste pickup. This is effectively what the applicant billed from July 2016 January 2017 (plus some extra fees that I will discuss below). I find the respondent is obligated to pay for the services as they were provided, and as set out in the Agreement. If the parties had agreed to a less-frequent service that cost half as much, this would have been set out in the written agreement.

21. The respondent says the applicant never provided a copy of the Agreement for 8 months. However, I find this is not determinative. First, there is no direct evidence on this point from Su-Mari Hill, who signed the Agreement, so it is possible she was given a copy. Also, even if no copy was provided, it does not invalidate the Agreement that Ms. Hill signed. While the *Business Practices and Consumer Protection Act* requires copies of such contracts to be provided at the time of signing, that legislation does not apply to contracts between 2 businesses: see *Super Save Disposal v. West Coast et al*., 2011 BCPC 315.

22. The applicant claims $2,641.57 for its unpaid invoices. This amount includes contractual interest of 24%, which I find the applicant is entitled to under clause 5 of the Agreement. The respondent disputes the amount of the invoices for various reasons.

23. The respondent says the applicant increased its fees without notice or consent. This is correct, as reflected in the invoices. However, clause 4 of the Agreement contains a very expansive provision allowing the applicant to increase or add the amount it charged to the respondent without notice for fuel costs, wage costs, equipment costs, operational costs, round modifications, disposal and recycling costs, administrative costs, government fees and taxes, waste volume, and other cost increases. While this language is extremely expansive, the respondent agreed to it by signing the agreement.

24. I acknowledge prior decisions that found disposal service contracts are onerous. 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).I agree with the above reasoning, and adopt it. While the Agreement's terms are onerous, they are enforceable.

Based on the Agreement, I find the respondent must pay the invoiced amounts from July 2016 to January 2017.

25. I do not agree with the applicant's calculation of the amount owed under its invoices. The $2,641.57 figure comes from a July 19, 2017 invoice, which indicates that no payments had been made since July 31, 2016. However, the applicant's own evidence shows the respondent paid $309.29 on September 27, 2016. The applicant is entitled to its invoiced amounts from July 2016 to January 2017, which equal $1,321.30, minus the payment of $309.29, which totals $1,012.01. The applicant also billed $150 for additional pickups. The records show that the applicant picked up the same bin 4 times on December 12, 2016. The respondent disputes this, and I find that the records are likely incorrect, as the weight was exactly the same each time. On a judgment basis, I find the applicant is entitled to $60 for additional pickups.

26. The applicant billed for bin pickup fees, and service resumption fees. As these are not included in the Agreement, I find the applicant is not entitled to them. I find the applicant is entitled to payment of $1,072.01 for its outstanding invoices for service from July 2016 to January 2017. Under clause 5 of the Agreement, the applicant is entitled to 24% interest on this amount from March 1, 2017 until the date of this decision, which equals $462.40.

27. I therefore find the applicant is entitled to a total of $1,534.41 for its services from July 2016 to January 2017, including contractual interest.

28. 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 service agreement is improperly terminated by the respondent, the applicant is entitled to pay in the amount of the remaining monthly payments owing under the agreement, plus taxes. I find that by failing to pay its invoice, the respondent caused the breach, and therefore the applicant is entitled to liquidated damages. I note that in 1 email, the applicant offered to let the respondent pay a portion of the invoices until their

disagreement over service frequency was resolved, but the respondent did not do that.

29. Five months of cancelled service at $205.26 per month (the monthly charge at the time of cancellation) equals $1,026.30, including GST. The applicant is entitled to interest on this amount under the *Court Order Interest Act* (COIA). On a judgment basis, I find this interest is owed from the time of the cancellation of service, on January 27, 2017.

30. 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 $200 in tribunal fees.

31. The applicant also claims $190.75 in dispute-related expenses. Part of that amount is $73.50 for serving the Dispute Notice on the respondent. The applicant provided a receipt for this amount, which I find was justified in the circumstances. I therefore order reimbursement of $73.50.

32. The applicant also claims $117.25 for reimbursement of filing fees and service costs related to a provincial court payment hearing. That hearing was scheduled because the tribunal had issued a default decision and order regarding this dispute as the respondent had not responded to the Dispute Notice. That default decision and order was subsequently cancelled at the request of the respondent. I find that the tribunal does not have jurisdiction to order costs in relation to a Provincial Court payment hearing. In making that finding, I rely on section 49(1)(b) of the Act, which says I may order one party to pay another party reasonable expenses and charges that the tribunal considers directly relate to the conduct of the proceeding. I find the Provincial Court payment hearing was separate from this proceeding, so I do not order the requested reimbursement of $117.25.

ORDERS

33. I order that within 30 days of this decision, the respondent pay the applicant a total of $2,853.89, broken down as follows:

    a. $1,534.41 for services performed, including contractual interest,

    b. $1,026.30 for liquidated damages, including GST,

    c. $19.68 as prejudgment interest on the liquidated damages, under the COIA, and

    d. $273.50 for tribunal fees and dispute-related expenses.

34. The applicant is also entitled to post-judgment interest under the COIA.

35. 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.

36. 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