



Civil Resolution Tribunal

Date Issued: January 7, 2019

File: SC-2018-001529

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Wilsons Wheels & Truck Parts Ltd.*,
2019 BCCRT 25

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Wilsons Wheels & Truck Parts Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Megan Volk

INTRODUCTION

1. This is a dispute about a contract for waste disposal services. The applicant, Super Save Disposal Inc., says the respondent, Wilsons Wheels & Truck Parts Ltd., breached the contract between the parties by failing to pay for the service and attempting to cancel the service before the agreed term ended.

2. The applicant claims \$768.89 in debt and \$3,584.48 in liquidated damages, plus interest, under the parties' contract.
3. The applicant is represented by an employee, Marli Griesel. The respondent is represented by a principal, Scott Wilson.

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 118 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 relationships between parties that may continue after the dispute resolution process has ended.
5. The tribunal may decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. I find that I can fairly resolve this dispute by writing based on the documents and written positions before me because 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 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. The applicant bears the burden of proof on a balance of probabilities. I have commented upon the relevant evidence and submissions only to the extent necessary to give context to these reasons.
10. It is undisputed that the respondent signed a contract for waste disposal services on September 19, 2005 with a disposal and recycling company. I find the contract was for a 5-year term with automatic renewal unless cancelled. In March 2006 that contract was assigned to the applicant, as allowed under the contract.
11. On November 23, 2014 Mr. Wilson faxed the applicant to cancel the waste disposal services. The following day the applicant reminded the respondent that the contract was for 5-year terms and that the current term continued until September 19, 2015.
12. It is undisputed that following the November communication the applicant continued providing waste disposal services to the applicant until April 2016. At that time the applicant suspended service due to non-payment. When the suspension occurred, the respondent had failed to pay for the service since October 2015.
13. In August 2016 the applicant sent the respondent a statement of account for \$761.70 for service and equipment and \$3,577.39 for early termination. The early termination fee is based on 52 months for the remainder of the contract term, plus GST and a \$6.85 administration fee. The amount of the account charges are undisputed. It is also undisputed that the respondent has not paid the account.
14. Given the dates here I asked the parties for additional submissions whether the dispute was outside the limitation period. The *Limitation Act* (LA) explains how long a person has before a claim may expire. The basic limitation period outlined in

section 6 of the LA is two years. Specifically, the section says a person may not start a claim more than two years after the day it is discovered.

15. The burden of proving which limitation period applies and whether it has expired falls to the party relying on it. The applicant says that the respondent continued to use their services until March 2016. The Dispute Notice was filed in February 2018, within 2 years. The respondent did not provide submissions or evidence regarding the limitation period. As such, I accept the applicant's evidence. For these reasons, I find that the applicant's claim can move forward.
16. The applicant claims for a debt and liquidated damages under the contract, in the total amount of \$4,353.37 plus interest. The contract's relevant terms are as follows:
 - a. The respondent shall pay the applicant for services or equipment monthly.
 - b. The respondent shall pay the applicant within 30 days of receiving a statement from the applicant.
 - c. The applicant may suspend service for non-payment and doing so is not a breach of the contract.
 - d. The respondent agrees to pay a late fee for all past due payments, if the applicant charges one. The parties agree the fee will not exceed the maximum rate allowed by law.
 - e. The respondent must pay all costs incurred by the applicant if the respondent does not pay amounts due under the contract or fails to meet its obligations for the term of the contract and the applicant refers the matter to legal counsel.
 - f. The respondent may terminate the contract by providing written notice, by way of certified mail, not less than 90 days prior to the end of the term.
17. Given the above terms, I find the respondent did not cancel the contract within its cancellation terms, and that when the respondent did not pay the statements issued they breached the contract.

18. I accept that the respondent may not have wanted to continue the contract past September 19, 2015. To cancel under the contract's terms, the respondent needed to send the cancellation notice by certified mail, which I infer is registered mail, not by fax. The terms of the contract are onerous, but they are clear. I find the respondent's notice ineffective because it did not meet the contract requirements.
19. The respondent then continued to receive the service without objection. When the respondent did not pay the statements from the applicant, despite service continuing, I find the applicant was entitled to accept that non-payment as repudiation of the contract. I allow \$688.10 for past due payments set in the invoices and \$3,577.39 for liquidated damages for early termination, under the parties' contract.
20. The applicant is entitled to a late fee for all past due payments, here the \$688.10. The contract does not set the late fee except to note a maximum. The applicant's monthly statements identify a 24% per annum interest charge on overdue invoices. The applicant asks for 24% per annum and I allow it. I find the total interest owing is \$482.47, that being 24% on each past due payment to the date of this decision.
21. The applicant is also entitled to pre-judgment interest under the *Court Order Interest Act* (COIA) on the \$3,577.39, from August 17, 2016, the date the applicant accepted the respondent's repudiation of the agreement.
22. 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, as claimed. The applicant also claimed \$185.85 for dispute-related expenses. However, the applicant did not explain the expenses or provide documentation of the expenses. In the absence of such evidence, I dismiss the applicant's claim for \$185.85.

ORDER

23. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$5,005.73, broken down as follows:
- a. \$688.10 in debt,
 - b. \$482.47 in 24% annual contractual interest on the debt,
 - c. \$3,577.39 in liquidated damages under the parties' contract,
 - d. \$82.77 in pre-judgment interest under the COIA on the liquidated damages,
and
 - e. \$175 in tribunal fees.
24. The applicant is also entitled to post-judgment interest under the COIA, as applicable.
25. 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.
26. 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.

Megan Volk, Tribunal Member

