



Civil Resolution Tribunal

Date Issued: February 21, 2019

File: SC-2018-006439

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. #1 Impex Canada Ltd.*, 2019 BCCRT 205

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

#1 Impex Canada Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This is a dispute about a contract for waste disposal services. The applicant, Super Save Disposal Inc., says the respondent, #1 Impex Canada Ltd., breached the parties' contract when they failed to make payments as required and purported to

terminate the contract contrary to its terms. The applicant claims \$1,111.79 in debt and \$1,448.59 in liquidated damages.

2. The respondent says the “special instructions” in the parties’ agreement required the applicant to contact it 120 days before renewal to renegotiate new terms and pricing.
3. The applicant is represented by an employee, Marli Griesel. The respondent is represented by Parmjit Singh Sandhu, who I infer is either an employee or principal. For the reasons that follow, I dismiss the applicant’s claims.

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 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. Some of the evidence in this dispute amounts to a “she said, he said” scenario. Credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. 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 the recent decision *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the

tribunal's process and 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.

ISSUE

8. The issue in this dispute is whether the respondent breached the waste disposal 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 referenced the evidence and submissions as necessary to give context to my decision.
10. On September 27, 2012, the parties signed an agreement for waste disposal services. It was for a renewable 3-year term with an October 1, 2012 effective date. The applicant says the contract was automatically renewed and so it was in force until October 1, 2018.
11. Significantly, this particular contract included an additional handwritten term in the "special instructions" box that said the applicant "must contact customer 120 days prior to renewal to re-negotiate new terms and pricing". This meant the applicant needed to contact the respondent before June 3, 2015.

12. The applicant says that on January 27, 2015 it contacted the respondent to discuss the account. The applicant says the respondent's contact S was not available and so the applicant left a message for S to call back and discuss the account. It is undisputed that the respondent never called the applicant back. The respondent says it never received any such phone call.
13. It is undisputed that the applicant continued to provide service after June 3, 2015, which the respondent accepted and paid for.
14. The applicant says that by continuing to use its services and by not responding to its January 27, 2015 message, the respondent either expressly or tacitly consented to the automatic renewal of the agreement on October 1, 2015.
15. The respondent sent a letter by registered mail, which the applicant received on November 20, 2017, asking to cancel the agreement. In it, the respondent stated the expiry date of the contract was December 1, 2017. The respondent wanted to switch to a third party for waste disposal services, on the basis it was more environmentally conscious. The respondent expressly wrote that it "will not be exercising any Right of First Refusal with you as you cannot offer the same time of services". The applicant refused, relying on the contract's standard terms that say the customer can only cancel between 90 and 120 days before the end of the term, i.e. in 2018.
16. On December 15, 2017, the applicant wrote the respondent confirming that the agreement could not be cancelled and set out its claim for damages if the respondent persisted. The applicant also submits that the respondent breached the contract's clause 14 "right of first refusal", when the respondent failed to provide a copy of a third party offer.
17. On February 16, 2018, the applicant removed their bins from the respondent's property.

18. As noted above, the applicant claims \$1,111.79 in debt for services provided. The applicant also claims \$1,448.59 in liquidated damages, representing 10 months of service between December 2017 and September 2018.
19. As noted above, the respondent denies receiving any message on January 27, 2015. The respondent says that because the applicant did not contact it to renegotiate as required by the contract, the contract became a “minute to minute” contract after its term expired on September 30, 2015. The respondent therefore says it had the right to cancel the contract at any time. By its January 4, 2018 registered letter, the respondent also says it gave the applicant the opportunity to match the third party’s offer, but the applicant never provided the requested evidence that it could do so.
20. In reply, the applicant says the parties’ initial contract did not contemplate it ever becoming a “minute to minute” contract, and therefore its terms must have been automatically renewed when the respondent continued to accept services.
21. I turn to my analysis.
22. I find the applicant breached the contract’s “special instructions” requirement that it contact the customer 120 days before renewal to re-negotiate new terms and pricing. I say this for 2 reasons. One, the applicant has the burden of proof in this dispute and I find it has not proved it made the phone call it says it did. Second, the “special instructions” box required contact so that the renewal could be re-negotiated. An automatic renewal is an onerous term and the “special instructions” requirement was clearly intended to put the onus on the applicant to ensure the respondent wanted to renew. I find that simply leaving a voice mail message asking for a call-back, even if that voice mail was left, was insufficient.
23. Further, I do not agree with the applicant that by continuing to accept waste disposal services the respondent agreed to automatic renewal such that liquidated damages could be payable. To accept the applicant’s argument would defeat the purpose of the “special instructions” clause. My conclusion is consistent with

decisions where the court has required a party claiming liquidated damages to strictly prove a breach of contract. I find the applicant has failed to do so, given the applicant's own breach of the "special instructions" clause. For these reasons, I dismiss the applicant's liquidated damages claim.

24. Given my conclusion above that the applicant breached the contract's "special instructions" renewal clause, I find there was no obligation on the respondent to later comply with the "right of first refusal" clause.
25. What about the \$1,111.79 debt claim, for waste services actually provided? This was not detailed in the applicant's submissions. Only the total was referenced. Instead, in support the applicant provided a series of invoices and credit notes between February 2015 and February 2018, which on their face total \$900.31. The discrepancy between this sum and the \$1,111.79 claimed is not expressly explained, although it may relate to interest. However, while the applicant indicated in the Dispute Notice that it claimed 24% annual contractual interest, it made no mention of this in its submissions for this decision. There are further issues with the debt claim.
26. First, the *Limitation Act* applies to the tribunal. Generally speaking, a party has 2 years to start a proceeding from the date their cause of action arose. For the applicant's outstanding invoices, the cause of action arose when the invoice became past due. The applicant's invoices stated on their face that they were payable on receipt. The tribunal's Dispute Notice was issued on August 30, 2018, which is what stopped the limitation period from running. Therefore, the applicant is out of time to claim for any invoices that were due before August 30, 2016. Of the invoices provided, 2 are dated February 28, 2015, for a total of \$167.82. Those February 2015 invoices are out of time. This leaves a balance of \$732.49.
27. Second, the applicant provided copies of its "transaction information" for the respondent, which details payments made. In 2017, the respondent's waste and recycling services cost between \$171.65 and \$177.19 per month. The "transaction information" shows monthly payments from September 2015 to December 2017.

Based on the applicant's own documentation, the respondent does not owe anything up to December 2017.

28. Third, the respondent provided 2 of the applicant's "consolidated" invoices, dated September 24, 2017 (\$177.19) and November 24, 2017 (\$174.62), which consolidate the billings for waste and cardboard for each of those 2 months. The respondent says it paid for all services, and in particular these 2 invoices, which were for service in October and December 2017, respectively.
29. The applicant did not address the debt claim in its reply submission, which addressed only the right of first refusal issue and the liquidated damages claim. Further, in its reply the applicant provided a heading "claim" and stated that the applicant claims liquidated damages for breach of the agreement or "alternatively contractual damages". I find the applicant had the opportunity to dispute the respondent's submission that he owes nothing in debt, and chose not to do so.
30. Based on all of the evidence and the submissions before me, I accept the respondent paid for services received up to and including December 31, 2017. The respondent wrote in November 2017 that it was cancelling the contract as of December 2017, which I find was reasonably sufficient notice given my conclusion above that the applicant breached the contract and so the automatic renewal and other termination terms did not apply.
31. The applicant picked up its bins on February 16, 2018. There is no evidence before me that this was with the respondent's agreement, and again I note the respondent's requested cancellation above. I find the respondent is not obliged to pay for waste services for the months of January or February 2018.
32. In summary, the applicant breached the parties' contract first and the respondent was therefore not obliged to honour its automatic renewal or right of first refusal terms. For these reasons, I have dismissed the applicant's liquidated damages claim. The applicant has not proved its debt claim, as the evidence shows the respondent paid for the services it agreed to receive.

33. In accordance with the Act and the tribunal's rules, as the applicant was unsuccessful I find it is not entitled to reimbursement of tribunal fees or dispute-related expenses.

ORDER

34. I dismiss the applicant's claims and this dispute.

Shelley Lopez, Vice Chair