



Civil Resolution Tribunal

Date Issued: February 26, 2019

File: SC-2018-004108

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Zythos Mediterranean Grill Ltd.* 2019 BCCRT
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B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Zythos Mediterranean Grill Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Super Save Disposal Inc. says the respondent Zythos Mediterranean Grill Ltd. breached a waste disposal services agreement and now owes it \$3,099.29.

2. The applicant says either that the respondent failed to cancel the agreement properly, or that it failed to fulfil its obligations under the right of first refusal clause of the agreement.
3. The respondent says it cancelled the agreement during the cancellation window. The respondent says it does not owe the applicant any money.
4. The applicant is represented by principal or employee Marli Griesel. The respondent is represented by principal or employee Kostas Pnevmatikos.

JURISDICTION AND PROCEDURE

5. 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*. 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.
6. 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.
7. 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.
8. 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

- 9. The issue in this dispute is whether the respondent breached a waste disposal services agreement with the applicant such that it must pay debt and/or damages to the applicant.

EVIDENCE AND ANALYSIS

- 10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence, but only refer to it as necessary to explain my decision.
- 11. On June 30, 2011 the respondent entered a waste disposal services agreement (Agreement) with the respondent.
- 12. The Agreement was for a 1-year term, subject to automatic renewal unless cancelled as specified in the Agreement.
- 13. The Agreement was for the applicant to provide bi-weekly waste and cardboard removal to the respondent. The Agreement includes a \$135 removal charge for bins.
- 14. The Agreement had been renewed to run until June 30, 2017.
- 15. Clause 3 of the Agreement provides that it may not be terminated by the customer except on written notice delivered by registered mail between 120 and 90 days from the end of the term of the Agreement.
- 16. Clause 11 provides that if the customer purports to terminate the Agreement prior to the expiration of its term or any renewal thereof, which I interpret to mean that if the customer tries to cancel other than during the cancellation window in Clause 3, the

customer agrees to pay liquidated damages a sum equal to the customer's monthly billing for the most recent nine months or the sum of the amounts due for the balance of the agreement. In addition, the customer agrees to pay any amounts due for services and equipment rendered up to the date the agreement is repudiated.

17. On March 3, 2017, the applicant received a registered mail letter from the respondent cancelling the Agreement. His March 3, 2017 letter says he is unhappy with the applicant's service.
18. I find that applicant cancelled the Agreement, via his March 3, 2017 letter, because it was sent by registered mail and delivered between 90 and 120 days from the end of the term of the Agreement (June 30, 2017). That is, the Agreement would come to an end as of June 30, 2017.
19. A May 31, 2017 invoice from the applicant was paid by the respondent, in the amount of \$240.66.
20. On May 17, 2017, the applicant wrote to the respondent requesting a copy of an offer from an unnamed "competitor" who they said had solicited the respondent's place of business and made a bona fide offer to provide waste disposal services.
21. On July 6, 2017, the applicant removed the waste disposal bins from the respondent's premises.
22. On July 28, 2018⁷, the applicant wrote to the respondent saying it would now have to terminate the Agreement due to a breach of the terms of the Agreement by the applicant. I have found that, by then, the Agreement had already been cancelled.
23. Because I have found that the Agreement was cancelled through valid notice as required by Clause 3, I find that the liquidated damages clause does not apply to the respondent. I say this because Clause 11 only applies where a customer "purports" to cancel the Agreement in some way other than through Clause 3.
24. I dismiss the applicant's claim for liquidated damages owing to the cancellation of the Agreement.

25. The applicant also argues that the respondent breached Clause 14 of the Agreement, and that damages ought to flow from that breach.
26. Clause 14 provides that if, “during the currency of this Agreement”, the customer receives an offer to provide service from an arm’s length third party, or enters into an agreement with a third party service provider, the customer shall provide a copy of the offer to the applicant within five days of receiving or and in any case not less than 15 days before the Agreement expires.
27. Under the terms of the Agreement, if the customer receives an offer during the currency of the Agreement, the applicant has a right of first refusal to provide that service on the same terms and conditions set out in the third-party offer, if it notifies the customer that it wishes to do so by written notice not less than 10 days after receiving the third-party offer. The customer agrees to enter into a new service agreement on the terms of the third-party offer.
28. The respondent says, and I find, that he was unhappy with the applicant’s service. Specifically, they had switched to having customers place organic waste into the bins without bags. This was attracting flies and causing an unpleasant smell, neither of which the respondent wanted outside his restaurant business.
29. The applicant characterizes their right of first refusal as applying to any offer made by a competitor, at any time. I disagree. Clause 14 of the Agreement applies only where an offer is made during the currency of the Agreement.
30. The applicant says it requested a copy of any third-party agreement for waste disposal services from the respondent on May 17, 2017 and July 5, 2017, but that no such agreement was ever provided.
31. The applicant did not provide any evidence, other than its assertion, that the respondent received a bona fide offer from a competitor, during the currency of the Agreement. For example, the applicant did not name the competitor it said had provided the offer, nor did it provide a time frame when this offer was said to have been made. Therefore, I dismiss this aspect of its claim.

32. The applicant says the respondent failed to pay for waste disposal services rendered in the amount of \$525.74. The invoices the applicant filed in evidence do not support this claim. Since the applicant bears the burden of proving this claim, I dismiss it.

ORDER

33. I dismiss the applicant's claims and its dispute.

Julie K. Gibson, Tribunal Member