Civil Resolution Tribunal

Date Issued: March 1, 2019

File: SC-2018-005856

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MAPLE LEAF DISPOSAL LTD v. MOGA TRUCK REPAIR LTD.*, 2019 BCCRT 241

B E T W E E N :

MAPLE LEAF DISPOSAL LTD

APPLICANT

A N D :

MOGA TRUCK REPAIR LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member: Kate Campbell

INTRODUCTION

1. This dispute is about a contract for waste disposal services. The applicant, MAPLE LEAF DISPOSAL LTD, says the respondent MOGA TRUCK REPAIR LTD. breached the contract between the parties by failing to pay, failing to provide proper

cancellation notice, and blocking access to the applicant's waste disposal bins. The applicant seeks $1,785.72 for its outstanding bill, plus $237.63 in contractual interest on that amount. The applicant also seeks payment in full for the remaining term of the contract, in the amount of $2,223.01.

2. The applicant is represented by Lisa Sacher, an employee or principal. The respondent is represented by Harjit Brar, an employee or principal.

3. Mr. Brar says the respondent was not satisfied with the applicant's services or high prices, and was able to obtain disposal services from another provider for less. Mr. Brar says the applicant provided no services after the respondent's cancellation, so the respondent does not agree to pay any further fees or interest.

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. 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 parties first entered into a contract for waste disposal services in April 2004. The parties signed a new service agreement on July 8, 2009 (the Agreement). HK signed the Agreement on behalf of the respondent.

11. Mr. Brar says HK was subsequently dismissed from employment with the respondent, and "financially cheated" the respondent. However, since HK was employed as a manager by the respondent at the time he signed the Agreement, and since the respondent used the applicant's services for many years after the Agreement was signed, I find that any subsequent misconduct by HK does not change the respondent's liability under the July 8, 2009 Agreement with the applicant. In making this finding, I note there is no evidence indicating that HK's alleged misconduct was specifically related to the applicant, or to the Agreement.

12. The July 8, 2009 Agreement included the following terms:

a. The applicant would provide waste collection services to the respondent, for a basic fee of $176.30 per month, plus a fuel surcharge of 7.95%. The applicant could increase the charges for various specified reasons without the respondent's consent.

b. The term of the Agreement was 5 years (page 1, term 2).

c. The applicant had to the sole and exclusive right to collect and dispose of all the respondent's non-hazardous waste materials. The respondent agreed to make the payments as set out in the Agreement, and to provide unobstructed access to the service location.

d. The Agreement would automatically renew for successive 5 year terms without further action by the parties. The respondent could not terminate the Agreement except by providing written notice to the applicant via registered mail not less than 90 days prior to any renewal date (page 1, term 2).

e. If the respondent terminated the Agreement more than 6 months before the end of the term, the respondent must pay as liquidated damages the average monthly charge for the most recent 6 full months of service, multiplied by 6 (page 2, clause 11).

13. I find that this Agreement constituted a binding contract between the parties. The Agreement was automatically renewed in July 2014 for a second five year term, which would have expired in July 2019.

14. On April 26, 2017, Mr. Brar emailed the applicant and said it wanted to terminate the Agreement. The respondent provided a copy of a signed service contract with E for waste disposal services, dated April 20, 2017.

15. The applicant's "account notes", show that during a telephone call on April 27, 2017, the respondent complained about the applicant's price increases. The notes say the respondent had received a quote from a competitor, E, and would send it to the applicant. The notes indicate that the applicant's sales representative then spoke to

the respondent and agreed to lower its price “in order to save the account” from E. Further notes confirm the price reduction, and state that the respondent would be granted a $193.12 credit towards its past invoices.

16. The invoices provide in evidence show that the credit was applied to the respondent’s outstanding invoices, which the respondent then paid by credit card.

17. On May 3, 2017, the applicant received a letter by registered mail from the respondent. The letter said the respondent was giving 30 days’ notice to cancel the Agreement because of a change in management, and because E had offered a better price. The letter asked the applicant to remove its bins.

18. The applicant says the respondent’s May 3, 2017 cancellation notice was invalid, because it breached the right of first refusal provision in clause 9 of the Agreement. I agree.

19. Clause 9 contains 3 key points, as follows:

    a. If during the term of the Agreement the respondent received an offer from a third party for similar services, or entered into an agreement for such services, the respondent must provide a complete copy of the third party’s offer within 10 days.

    b. After receiving their copy of the third party offer, the applicant has a right of first refusal to continue providing services to the respondent upon the expiry of the term by giving notice in writing to the respondent within 30 days.

    c. The applicant may also renegotiate or extend the Agreement, including adjusting rates. The parties agree that the Agreement is amended and will continue, and will supersede any agreement with a third party or any previous agreement between the parties.

20. I accept that the respondent provided the applicant with a copy of its April 20, 2017 contract with E, as required. I find the evidence before me, including the account notes and emails between the parties, prove that the applicant renegotiated the

Agreement by agreeing to reduce its rates going forward, and by applying a retroactive credit to past invoices. Although there was no new written contract setting out the new terms, I agree with the applicant that the respondent accepted the renegotiated terms when it accepted the credits on its past invoices, and paid them on the basis of the newly negotiated price.

21. The applicant's records show that when it tried to access its bins at the respondent's location to provide service in early June 2017, it could not do so because they were blocked by E's bins. The applicant emailed E on June 8, 2017, stating that it had a binding service agreement with the respondent, and asking E to remove its bins. The email says E's bin was in front of the applicant's bin, as shown in a photo taken by the applicant's driver. E's reply confirmed that the respondent had entered into a service contract with E.

22. Mr. Brar says the applicant's bins were not blocked by E's bins. I prefer the evidence provided by the applicant on this point, including the emails with E and the photographs showing E's bin fully in front of the applicant's bin. I also note that the photo provided by Mr. Brar showing the applicant's bin has no date, and therefore could have been taken before E's bins were delivered in May or June 2017. I therefore find that the applicant's bins were blocked by E's bins.

23. Following from that, I also find that the respondent breached the terms of the Agreement with the applicant. The Agreement says the applicant had an exclusive right to provide waste removal services to the respondent during the term of the Agreement, and that the respondent would provide unobstructed access to the service location in order to provide service. By allowing E's bins to block access to the applicant's bins, the respondent breached these terms. I again note that clause 9 of the Agreement says that the renegotiated agreement between the parties supersedes any agreement between the respondent and a third party.

24. Mr. Brar says he was entitled to terminate the Agreement because the respondent was unhappy with the applicant's services, including the pickup schedule. However, Mr. Brar provided no evidence to confirm that it ever raised a scheduling issue with

the applicant. The only evidence on this point is a February 1, 2017 email from the applicant to the respondent, stating that the respondent could change its service schedule by calling the sales representative. There is no indication that such a call was made, or that a change was denied. Moreover, a disagreement about service schedule does not mean the respondent was entitled to end the Agreement with the applicant.

25. Mr. Brar's primary argument is that the applicant was entitled to terminate the Agreement because it was unhappy with the applicant's price increases, and because E offered better prices. However, as explained above, under the right of first refusal provision set out in clause 9 of the Agreement, once the respondent accepted the applicant's price refund it accepted an agreement and waived its right to cancel. I therefore find the applicant is entitled to remedies.

Debt

26. The applicant says the respondent owes $1,785.72 on outstanding invoices, plus $337.63 in contractual interest. I find the applicant has not met the burden of proving this debt.

27. The applicant's records seem to indicate the respondent owed $59.24 on the April 30, 2017 invoice, then did not pay for any invoice issued after that. Having carefully examined the billing records and invoices provided by the applicant, I could find no configuration that totalled $1,785.72, including or excluding interest and GST.

28. Also, I find the applicant continued to bill the respondent for services even when no further services were provided due to the respondent's breach and the blocked bins. I accept that applicants' bins were blocked in at the respondent's location until sometime in September 2017, and the applicant would have been entitled to a bin rental fee, if one had been charged. However, I find the applicant was not entitled to charge for full services after June 30, 2017 when such services were no longer possible due to the respondent's breach. The remedy for the period after June 30 lies in the liquidated damages provision of the Agreement, as discussed below.

29. On a judgment basis, I find the applicant is entitled to payment of its April 2017 and May 2017 invoices, which represent services until June 30, 2017. Based on the applicant's invoices, the unpaid portion of these invoices equals $461.25, including contractual interest and GST. As the applicant's invoices already include contractual interest, as allowed under the Agreement, I deny the applicant's claim for additional contractual interest.

Liquidated Damages

30. The applicant claims $2,223.01 in liquidated damages. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. Clause 11 of the Agreement says that if the respondent terminates the Agreement more than 6 months before the end of the term, as in this case, the respondent must pay as liquidated damages the average monthly charge for the most recent 6 full months of service, multiplied by 6.

31. I find the respondent terminated the agreement in May 2017. The applicant did not provide invoices for all 6 months prior to that, but I accept its evidence, as shown on its "liquidated damages worksheet", that its average monthly charge was $370.10. On that basis, and under clause 11, I find the applicant is entitled to liquidated damages in the amount of $2,220.60. The applicant is also entitled to pre-judgment interest on that amount under the *Court Order Interest Act* (COIA), from June 30, 2017.

32. Under section 49 of the Act, and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. I find the applicant is entitled to reimbursement of $175 in tribunal fees. The applicant also claims $79.07 for the cost of a process server used to provide the Dispute Notice to the respondent. I find that expense was justified in the circumstances, so I order reimbursement.

ORDERS

33. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of $2,980.08, broken down as follows:

    a. $461.25 for the debt,

    b. $2,220.60 in liquidated damages,

    c. $44.16 in pre-judgment interest under the COIA, and

    d. $254.07 for tribunal fees and dispute-related expenses.

34. The applicant is entitled to post-judgment interest, as applicable.

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