



Civil Resolution Tribunal

Date Issued: March 11, 2019

File: SC-2018-006718

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Dagsvik*, 2019 BCCRT 296

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Erik Dagsvik

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Julie K. Gibson

INTRODUCTION

1. The applicant Super Save Disposal Inc. says the respondent Erik Dagsvik breached a waste disposal services agreement with it.
2. The applicant says the respondent failed to make payments as required and purported to terminate the agreement contrary to its terms. The applicant claims

\$1,702.61 in debt and 24 % annual contractual interest, plus liquidated damages of \$1,842.34.

3. The respondent says the applicant breached the agreement first, by picking up his bins before the agreement was over. He says that because the applicant breached the agreement he does not owe money to them.
4. The applicant is represented by employee Marli Griesel. The respondent is self-represented.

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.

ISSUE

- 9. 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

- 10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have only referenced the evidence and submissions as necessary to explain my decision.
- 11. On July 28, 2014 the applicant entered a waste disposal services agreement (Agreement) with the respondent.
- 12. The effective date of the Agreement was July 29, 2014.
- 13. The Agreement was for a 5-year term, subject to automatic renewal unless cancelled as specified in the Agreement.
- 14. The applicant says the respondent failed to pay for waste disposal services as required under the Agreement in the amount of \$1,702.61.
- 15. The Agreement specifies a contractual interest rate of 24% per year for overdue accounts.
- 16. The Agreement was to run until July 29, 2019.
- 17. Clause 1 of the Agreement gives the applicant the exclusive right to provide non-hazardous solid waste disposal and recyclable collection services to the respondent during the term of the Agreement or renewal. The respondent provided a negative

covenant that it would not, for any reason, enter into another service agreement with any third party for those services, during the term of the Agreement or renewal.

18. Clause 2 provides that the Agreement may only be terminated by the customer on written notice delivered by registered mail between 120 and 90 days from the end of the term of the Agreement, which would be between late March and late April 2019 (cancellation window).
19. Clause 11 provides that if the customer tries to terminate the Agreement before the end of the term, the customer agrees to pay a sum equal to any amounts owing for services and equipment rendered up to the repudiation date, plus an amount equal to monthly charges that would become due for the balance of the term calculated from the repudiation date.
20. The respondent says the applicant breached the Agreement by failing to provide timely service and issuing bills for services that were not provided. He says the applicant routinely missed picking up his bins on Thursdays, and that he would contact them and then they would pick them up on Friday. However, they would then issue him an extra bill.
21. The respondent referred to having 8 letters and 40 phone calls to the applicant complaining about them “over billing” him. He did not file any such letters or records of any of the phone calls in evidence.
22. The applicant agrees that they tipped the wrong bins on occasion, meaning they missed the applicant’s bins. They say this was corrected by an extra pickup that was not charged to the applicant.
23. The applicant says that, on other occasions, the respondent missed the pick-up and extra pick-ups were arranged and charged to him.
24. On December 15, 2016, the applicant says, and I find, based on the photograph filed in evidence which shows the bin clearly marked with the respondent’s name,

access to the bins was blocked. The applicant could not complete pick up that date but provided an extra pick up free of charge.

25. On March 9, 2018 the respondent provided a registered mail letter to the respondent purporting to cancel the Agreement. The letter requested a copy of any current service agreement, and then said “Consider this letter as your required notice to cancel such contract on the earliest specified expiry date and/or renewal period.”
26. At the same time, it confirmed that it had signed an agreement with another waste disposal hauler, to commence upon the earliest expiry date of any existing contract.
27. I find that the March 9, 2018 letter was not the required cancellation under the Agreement, because it was delivered outside the cancellation window.
28. I also find that the respondent breached the Agreement by signing an agreement with another waste hauler during its term, contrary to its covenant at Clause 1.
29. On April 11, 2018, the applicant suspended the respondent’s waste removal services for non-payment.
30. The applicant provided an account print out showing that the respondent has failed to pay its service charges on many occasions, with multiple overdue accounts dated from 2016, 2017 and 2018 that, by July 2018, amounted to several thousand dollars in unpaid accounts.
31. I find that that the respondent was not paying his accounts to the applicant on time. This was a breach of the Agreement on his part, dating back into 2016. I find that the applicant owes the respondent \$1,702.61 in debt for services rendered.
32. In June 2018, the applicant says the respondent moved the applicant’s bin to the end of the street with a sign reading “Super Save Stinks”. While a photograph of a Super Save bin adorned with this sign was filed in evidence, the emails suggest that someone other than the respondent placed the sign. I find that I do not need to decide this point in order to resolve the dispute.

33. Around this time, the applicant removed the bins from the respondent's site.
34. Turning to the liquidated damages claim, 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 BC Supreme 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 note the *Tristar* decision overrides the Provincial Court's decision in *Super Save Disposal Inc. v. Angel Glass Corp.*, [2015] B.C.J. No. 1191, a case in which the adjudicator concluded a liquidated damages clause similar to the one before me was unconscionable. However, I also note the Provincial Court has more recently noted that *Tristar* was binding, in *Northwest Waste v. Andreas Restaurant Ltd.*, 2016 BCPC 395.
35. While the Agreement's terms are onerous, they are enforceable. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. The Agreement states that if the service agreement is improperly terminated by the respondent, the applicant is entitled to liquidated damages, in the amount of the remaining monthly payments. The respondent did not terminate the Agreement in the manner required under its terms.
36. Given my conclusions above, I find the respondent breached the Agreement with the applicant when it purported to terminate the Agreement, signed a contract with another waste hauler during the term of the Agreement, and failed to pay invoices as required.
37. This means the applicant is entitled to liquidated damages, which at the then-current rates of \$97.93 and \$37.04 per month x 13 months, for a total of \$1,754.61. However, I do not agree the applicant is entitled to GST on the liquidated damages, as no goods or services were provided to attract GST.

ORDERS

38. Within 30 days of this decision, I order the respondent to pay the applicant a total of \$4,067.12, broken down as follows:
- a. \$1,702.61 in debt,
 - b. \$408.62 in pre-judgment interest on the debt at the 24% contractual rate annually,
 - c. \$1,754.61 in liquidated damages,
 - d. \$26.28 in pre-judgement interest under the *Court Order Interest Act* on the liquidated damages amount, calculated from the applicant's invoice date of June 27, 2018 to the date of this decision, and
 - e. \$175 for tribunal fees.
39. The applicant is also entitled to post-judgement interest as applicable.
40. 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.

41. 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.

Julie K. Gibson, Tribunal Member