



Civil Resolution Tribunal

Date Issued: March 13, 2019

File: SC-2018-003651

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *MAPLE LEAF DISPOSAL LTD v. PRINS COUNTERTOPS LTD*,
2019 BCCRT 304

B E T W E E N :

MAPLE LEAF DISPOSAL LTD

APPLICANT

A N D :

PRINS COUNTERTOPS 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 PRINS COUNTERTOPS LTD breached the contract between the parties by failing to pay and failing to provide

proper cancellation notice. The applicant seeks \$117.35 for its outstanding bill, plus \$1,359.33 as payment for the remaining term of the contract.

2. The respondent says it paid for all the months of service it received, and that it tried to cancel the applicant's services for months but the applicant would not agree.
3. The applicant is represented by Lisa Sacher, an employee. The respondent is represented by a principal, Ben Prins.

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 issues in this dispute are:
 - a. Must the respondent pay \$117.35 for the applicant's outstanding invoice?
 - b. Must the respondent pay the applicant \$1,359.33 for the remaining term of the contract?

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 entered into a contract for waste disposal services on December 16, 2015. TP signed the customer service agreement (Agreement) on behalf of the respondent. The Agreement included the following terms:
 - a. The applicant would provide waste collection services to the respondent, for a basic fee of \$117 per month, plus a fuel surcharge. The applicant could increase the charges for various specified reasons without the respondent's consent.
 - b. The applicant had the exclusive right to collect and dispose of all the respondent's non-hazardous waste and recyclable materials. The respondent agreed to make the payments as set out in the Agreement, and to provide unobstructed access to the service location.

- c. The term of the Agreement was 2 years (page 1, term 2), starting December 16, 2015.
 - d. The Agreement would automatically renew for successive 2 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 before the end of its term, the respondent must pay as liquidated damages a sum equal to 50% of the average monthly charge for the most recent 6 full months of service, multiplied by the number of months remaining in the current term (page 2, clause 11).
11. I find this Agreement constituted a binding contract between the parties.
12. On January 12, 2018, TP sent a letter to the applicant stating that the respondent wanted to terminate the contract, and would no longer need the garbage bin after April 1, 2018.
13. The applicant replied with a letter stating that it did not accept the cancellation, and instead affirmed the Agreement. The applicant's letter cited the automatic renewal provision of the Agreement. It said the applicant would continue to provide services until the current contract expired on December 15, 2019 and expected payment.
14. The parties continued to correspond about the respondent's cancellation request. The respondent re-asserted its request to cancel, and the applicant cited the cancellation and liquidated damages provisions of the Agreement.
15. The respondent asserted that there was no valid contract between the parties, as the 2 year Agreement starting on December 2015 had ended. However, I agree with the applicant that under its terms, the Agreement was automatically renewed in December 2017 for a second 2 year term, which would have expired in December 2019. This is confirmed by the fact that the applicant continued to provide waste

pickup services after December 2017. Also, the respondent provided no evidence, and does not assert, that it attempted to cancel the Agreement prior to January 12, 2018.

16. On April 27, 2018, the respondent emailed the applicant and asked to have the garbage bin removed immediately. The respondent said it would not pay for any service after the end of April.
17. The applicant confirms that the respondent made a final payment on April 26, 2018. The applicant removed its bin on May 24.

Debt

18. The applicant says the respondent owes \$117.37 for its outstanding bill. However, the applicant did not provide a copy of that bill, or any documentation to support that claim. The only invoice in evidence is dated December 31, 2017, and the last record of the respondent's account payments and debits corresponds to that date. The parties agree that the respondent made a payment on April 26, 2018, and the applicant has not provided any evidence to explain its claim for \$117.37. Presumably it relates to service in May 2018, since the bin remained at the respondent's premises for most of that month. However, since the respondent had cancelled service effective April 30, I find there is no outstanding payment owed for service in May 2018. I dismiss this claim by the applicant.

Liquidated Damages

19. However, based on the terms of the Agreement, I find the respondent is entitled to liquidated damages for the period from May 1, 2018 to December 15, 2019.
20. 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 before the end of its term, it must pay as liquidated damages a sum equal to 50% of the average monthly charge for the most

recent 6 full months of service, multiplied by the number of months remaining in the current term.

21. The respondent says TP did not read the Agreement, and simply signed where she was told. However, this does not void the terms of the contract. There is no suggestion that TP was forced to sign. Also, the fact that the pre-printed form was changed to reflect 2 year rather than 5 year renewal terms confirms that the parties specifically discussed the Agreement's renewal terms.
22. The respondent says the automatic renewal and liquidated damages clauses are unfair. Prior decisions have found that disposal service contracts are onerous, but enforceable. For example, the BC Supreme Court in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690 considered similar terms in a waste disposal contract and found them 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* is binding, in *Northwest Waste v. Andreas Restaurant Ltd.*, 2016 BCPC 395.
23. Thus, while the Agreement's terms are onerous, they are enforceable.
24. I find the respondent terminated the agreement as of April 30, 2018. The applicant did not provide invoices for all 6 months prior to April 2018. The only invoice in evidence is for January 2018, and shows a charge of \$110.74, not including taxes or interest. 50% of that amount is \$55.37. \$55.37 multiplied by the 19 remaining months in the term equals \$1,052.03. Therefore, on a judgment basis, I find the applicant is entitled to \$1,052.03 in liquidated damages.

25. The applicant is also entitled to pre-judgment interest on that amount under the *Court Order Interest Act* (COIA), from May 1, 2018.
26. While the applicant initially requested an order that the respondent return its equipment, the parties' submissions indicate that the equipment was returned, and the applicant has dropped this claim. Accordingly, I make no order about equipment.
27. 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 \$125 in tribunal fees. The applicant also claims \$179.24 for costs relating to serving the Dispute Notice on the respondent, including unsuccessful registered mail attempts and a process server. I find these expenses were reasonable in the circumstances, so I order reimbursement.

ORDERS

28. I order that within 30 days of the date of this decision, the respondent pay the applicant a total of \$1,369.98, broken down as follows:
 - a. \$1,052.03 in liquidated damages,
 - b. \$13.71 in pre-judgment interest under the COIA, and
 - c. \$304.24 for tribunal fees and dispute-related expenses.
29. The applicant is entitled to post-judgment interest, as applicable.
30. 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.

31. 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