



# Civil Resolution Tribunal

Date Issued: April 18, 2019

File: SC-2018-006449

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Sound Solutions (2002) Inc.*,  
2019 BCCRT 482

B E T W E E N :

Super Save Disposal Inc.

**APPLICANT**

A N D :

Sound Solutions (2002) Inc.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Julie K. Gibson

## INTRODUCTION

1. The applicant Super Save Disposal Inc. says the respondent Sound Solutions (2002) Inc. breached a waste disposal service agreement with it.

2. The applicant says the respondent failed to make payments as required and tried to terminate the agreement contrary to its terms. The applicant claims \$2,750.17 in debt at 24% annual contractual interest, plus liquidated damages of \$1,411.64.
3. The respondent says that the applicant breached the waste service disposal agreement by failing to provide timely monthly service of picking up their 3-yard bin. The respondent says it disputed an August 30, 2016 charge when the applicant picked up a one-time tree debris clean up. The respondent says the invoiced price far exceeded the quote. The respondent says the applicant's answer that the tree debris put the bin over the weight limit was inaccurate. Subsequently, the respondent's account for monthly pick up was put on hold several times due to the dispute over the August 20, 2016 invoice. The respondent became dissatisfied with the monthly service, because it had to keep calling to reactivate its account. The respondent says the applicant's poor service ended the agreement and so it owes nothing. The respondent asks that the dispute be dismissed.
4. The applicant is represented by employee or principal Marli Griesel. The respondent is represented by employee or principal Curt Palme.

## **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 February 27, 2014 the applicant entered a waste disposal services agreement with the respondent.
12. The effective date of the agreement was February 26, 2014.
13. The agreement was for a 3-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 \$2,750.17.

15. The agreement specifies a contractual interest rate of 24% per year for overdue accounts.
16. The agreement was to run until February 27, 2020.
17. On March 22, 2018, the respondent wrote to the applicant requesting to cancel the agreement. The applicant said the respondent could not cancel the agreement because the letter was not sent in the cancellation window, which the agreement defines as between 120 and 90 days of the end of the term, in this instance between October 30, 2019 and November 29, 2019.
18. On April 11, 2018, the applicant removed their bins from the respondent's premises.
19. Clause 5 requires the respondent to pay monthly charges and other costs charged to it under the agreement, and any other additional charges, within 30 days of the invoice date. If the payment is late, the applicant can terminate the agreement for non-payment and enforce its claim for liquidated damages.
20. 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.
21. The respondent says the applicant breached the agreement by overcharging it for a 10-cubic yard bin it ordered to discard some tree debris on August 27, 2016.
22. The respondent says it filled the 10-cubic yard bin, and then ordered a 30-yard bin to replace it.
23. On August 30, 2016, the respondent says the applicant billed it \$1,535.44 for pickup of the 10-yard bin, which was recorded on the invoice as being overweight at 12020 kilos. The dump ticket from First Class Transfer Station records the weight of the contents of the bin as 12020 kg, which is consistent with the invoice.

24. The respondent argues that the 10-yard bin could not have been overweight. It says there is no practical way the contents could have weighed over 12,000 kgs, as the invoice records.
25. The respondent says the 10-yard bin and the 30-yard bin were filled with “the same materials”. Based on the photographs filed in evidence, I disagree. The 10-yard bin contains pallets in addition to tree debris, where the 30-yard bin does not.
26. The respondent says the applicant’s lawyer agreed that the bin charge was in error due to a “nearly impossible” weight. The respondent filed no evidence to prove this assertion and on the evidence before me I find no such agreement was offered.
27. I find that the respondent has not proven that the applicant or its lawyer agreed that the bin charge was in error. Based on the documentary evidence, I find the bin charge was not in error. Therefore, I find that the applicant did not breach the Agreement by placing the respondent on a credit holds for monthly service when it repeatedly failed to pay the August 30, 2016 invoice.
28. I find that the March 22, 2018 letter from the respondent did not meet the requirement to cancel without penalty under the Agreement, because it was delivered outside the cancellation window.
29. Based on the account information filed by the applicant, I find that the respondent owes \$2,750.17 in debt to the applicant. I also award \$672.70 in prejudgment interest at the 24% contractual rate calculated from April 11, 2018 to the date of this decision.
30. 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.

31. In short, 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.
32. Given my conclusions above, I find the respondent breached the Agreement with the applicant when it purported to terminate the Agreement and failed to pay invoices as required.
33. This means the applicant is entitled to liquidated damages, at the then-current rates of \$61.11 per month x 22 months, for a total of \$1,344.42, plus GST of \$67.22, following the tribunal's reasoning in *Super Save Disposal Inc. v. New Generation Concrete Ltd.* 2019 BCCRT 319, at paragraphs 33-37 regarding the tax.
34. 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.

## **ORDERS**

35. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$5,009.51, broken down as follows:

- a. \$2,750.17 in debt,
  - b. \$672.70 in pre-judgment interest at the 24% annual rate,
  - c. \$1,411.64 in liquidated damages plus GST, and
  - d. \$175 in tribunal fees.
36. The applicant is entitled to post-judgment interest, as applicable.
37. 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.
38. 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.

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Julie K. Gibson, Tribunal Member