



Civil Resolution Tribunal

Date Issued: July 19, 2019

File: SC-2018-008914

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Polo Farmers Market Ltd.*, 2019 BCCRT 877

B E T W E E N :

Super Save Disposal Inc.

APPLICANT

A N D :

Polo Farmers Market Ltd.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sarah Orr

INTRODUCTION

1. This is a dispute about a contract for waste disposal services. The applicant, Super Save Disposal Inc. says the respondent, Polo Farmers Market Ltd., breached the contract and owes \$3,888.69 in unpaid invoices and liquidated damages. The respondent says the applicant breached the contract by increasing the monthly service fees.

2. Both parties are represented by employees or principals.

JURISDICTION AND PROCEDURE

3. 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.
4. 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.
5. 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.
6. Under tribunal rule 9.3 (2), 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.

ISSUE

7. The issue in this dispute whether the respondent breached the contract, and if so, what is the amount of damages owing.

EVIDENCE AND ANALYSIS

8. In a civil claim like this one, the applicant must prove their claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
9. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision.
10. The respondent filed a Dispute Response but chose not to provide evidence or submissions, despite having the opportunity to do so. In this situation, I may draw an adverse inference against the respondent, which means it is generally reasonable to assume that the applicant's position is correct. This is similar to when a respondent fails to provide any response at all to the dispute and is in default, and in such cases, liability is assumed.
11. On June 19, 2017 the parties signed a service agreement which included the following terms:
 - a. The applicant agreed to provide waste disposal services to the respondent.
 - b. The term of the agreement was 1 year, subject to automatic renewal unless cancelled in accordance with the agreement.
 - c. The applicant reserved the right to increase the amounts charged to the respondent based on the applicant's costs associated with providing the services (Clause 4).
 - d. The applicant charged interest on overdue accounts at 24 percent per annum.
 - e. In the event of late or no payment, the applicant had the right to suspend the service to the respondent, on reasonable notice, until the account was paid. The applicant could also choose to immediately terminate the agreement for non-payment of amounts owing.

- f. If the respondent terminated the agreement before the end of the term, the applicant could accept the repudiation of the agreement and terminate the agreement.
 - g. Upon termination of the agreement, the respondent agreed to pay as liquidated damages the amount of the remaining monthly charges in the term of the agreement plus the sales tax (Clause 11).
12. I find the written service agreement is a binding contract between the parties.
13. On July 4, 2017, the applicant delivered bins to the respondent's property and started providing waste disposal services. On February 27, 2018 the applicant removed its bins from the respondent's property and stopped providing services.
14. The applicant says the respondent owes \$2,650.99 in outstanding invoices for waste disposal services and related fees between September 2017 and March 2018. The applicant also says the respondent owes \$1,237.70 in liquidated damages for early termination of the contract in accordance with clause 11.
15. The respondent's Dispute Response says that after the first few months of the contract the applicant doubled the amount of monthly charges set out in the parties' agreement. The respondent says that after numerous failed attempts at contacting the applicant they notified them that they would have difficulty paying the increased charges. The respondent says its representative left the country for several weeks and when they returned they learned the applicant had stopped providing its services. The respondent says the applicant charged them for the last few months of services in the contract despite not providing those services.
16. In its filed Dispute Response, the respondent's position was essentially that the applicant unreasonably increased the monthly fees after the contract was signed. However, I find that clause 4 of the contract clearly allows the applicant to increase its monthly fees, and therefore I find the applicant was entitled to charge increased monthly fees throughout the term of the contract.

17. Clause 11 of the contract is onerous on the respondent, especially the amount of liquidated damages the respondent is required to pay. However, in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690, the BC Supreme Court found a nearly identical contract to be enforceable, and that decision is binding on me.
18. In *Super Save Disposal Inc. v. New Generation Concrete Ltd.*, 2019 BCCRT 319, the tribunal determined that GST applied to liquidated damages claimed under a nearly identical contract. Although that decision is not binding on me, I find the analysis for including GST persuasive and I adopt it. Therefore, I find the liquidated damages claim attracts GST.
19. I have reviewed the applicant's invoices and accounting records, and I am satisfied the applicant is entitled to the amounts claimed. I also note the respondent has provided no evidence or submissions which would persuade me to decide otherwise or reduce the amount of the applicant's claims. Therefore, I find the respondent must pay the applicant \$2,650.99 in unpaid invoices and \$1,237.70 in liquidated damages, for a total of \$3,888.69.
20. Under the contract, the applicant is also entitled to 24% annual interest on the amount owing. I find the applicant is entitled to \$1,111.31 in contractual interest. The applicant did not provide an interest calculation, but calculated from April 18, 2018, which is the day after the applicant's final invoice, the interest would total over \$1,160. However, the tribunal's small claims monetary limit is \$5,000, which includes both a principal debt and contractual interest, but excludes interest under the *Court Order Interest Act* (COIA), tribunal fees, and dispute-related expenses. Interest under the COIA does not apply in cases like this one where the parties agreed on a contractual interest rate.
21. 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 has not claimed any amount for dispute-related expenses.

ORDERS

22. Within 14 days of the date of this order, I order the respondent to pay the applicant a total of \$5,175, broken down as follows:
 - a. \$3,888.69 in debt and liquidated damages,
 - b. \$1,111.31 in contractual interest at 24 % annually, and
 - c. \$175 in tribunal fees.
23. The applicant is entitled to post-judgment interest, as applicable.
24. 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.
25. 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.

Sarah Orr, Tribunal Member