



Civil Resolution Tribunal

Date Issued: September 11, 2019

File: SC-2019-002690

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Maple Leaf Disposal Ltd v. Maynard's Southlands Stables Ltd.*,
2019 BCCRT 1068

B E T W E E N :

MAPLE LEAF DISPOSAL LTD

APPLICANT

A N D :

MAYNARD'S SOUTHLANDS STABLES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This is a dispute about invoices for waste removal services. The applicant, MAPLE LEAF DISPOSAL LTD, says that it made an agreement with the respondent, MAYNARD'S SOUTHLANDS STABLES LTD., to provide them with waste bins and services. The applicant says that the respondent short paid one of its invoices and

seeks an order for the outstanding balance of \$3,035.98, plus contractual interest. The respondent says that the billing was not in accordance with the quoted price for service, and denies that it is responsible to pay the applicant any additional funds.

2. The applicant is represented by an employee. The respondent is represented by one of its directors.

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* (CRTA). 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. Some of the evidence in this dispute amounts to a "they said, they said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Here, I find that I am 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 the decision in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, in which the court recognized the tribunal's process and that oral hearings are not necessarily required where credibility is in issue.
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 make one or more of the following orders, where permitted under section 118 of the CRTA:
 - 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

7. The issue in this dispute is whether the respondent owes the applicant the amount claimed for waste disposal services.

EVIDENCE AND ANALYSIS

8. In a civil dispute such as this, an applicant bears the burden of proof on a balance of probabilities. The parties have provided submissions and evidence in support of their respective positions. I did not read the respondent's submissions that respond to comments purportedly made by the applicant during the confidential facilitation process. I considered the remainder of the information provided by the parties, but will refer to only that which is necessary to provide context to my decision.
9. The applicant has provided waste removal services to the respondent periodically since 2010. In 2018, the respondent was in need of more waste removal, and sought quotes from several companies, including the applicant. In an August 31, 2018 email message, an employee of the applicant provided the respondent with a quote of "\$100 to deliver and setup" and "\$440 flat for 40 yard bin for trucking and disposal". Although there is no written contract, it would appear that the respondent accepted this quote and the applicant commenced waste removal services.

10. The applicant issued an invoice to the respondent on September 18, 2018 in the amount of \$4,621.40. The respondent felt that this amount was in excess of the agreed-upon charges, and recalculated the invoice to remove overweight charges, facility transaction fees, and a diesel surcharge. The respondent provided the applicant with partial payment of \$1,585.50, for a shortfall of \$3,035.90.
11. The applicant says it attempted to negotiate a resolution with the respondent, without success. The applicant says the respondent also short paid its December 2018 invoice, but it has not made a claim for this amount. The applicant stated in the Dispute Notice that it sought an order for \$3,035.98 and also referenced the amount of \$3,035.90, which represents a discrepancy of 8 cents. Given my conclusion, I find that nothing turns on this.
12. The respondent's position is that the applicant charged it amounts in excess of the quoted flat rate fee. The applicant says that additional charges were related to overweight loads and the inclusion of manure in the wood bin. The respondent says the applicant did not tell it that the flat fee involved a weight limit, and did not tell it that there would be a problem or extra charges if manure was included in the loads. It says that the applicant was aware that 1 waste bin already contained a small amount of dried manure, and states that the work done in September of 2018 would not have resulted in the presence of manure or any other contaminants in the waste. The applicant says that the disposal facility assesses the load types and weights, and it simply passes on any associated costs to its customers.
13. The applicant noted that the respondent signed a June 27, 2010 Credit Application that acknowledges the credit terms of net 10 days and a service charge of 2% per month (or 26.824% per annum) on unpaid balances. While this document addresses the applicant's credit terms, it does not contain a description of services, quoted costs, or standard charges or surcharges to which the respondent agreed.
14. The parties' agreement is verbal in nature, although the emailed quote appears to be written confirmation of a portion of a telephone conversation. The email did not state that any additional or standard charges (such as facility or overweight fees or

diesel surcharges) would apply to the quoted flat rate “for trucking and disposal”, and did not specify the scope of materials that would be accepted for disposal.

15. The parties have differing views as to whether the additional fees formed part of a verbal agreement. Email messages between the applicant and respondent do not support that such charges were part of the discussion. In 2 email messages dated October 3, 2018, an employee of the applicant stated “I’m sorry if we didn’t discuss the weight allowance” and (with apparent reference to the additional charges) “I am sorry if I didn’t make it clear in my call”.
16. I find that it is more likely than not that the respondent did not agree to pay any additional amounts over the flat rate quoted to it by the applicant. I find that the applicant has not met its evidentiary burden to establish that the respondent breached the terms of their agreement. Accordingly, I dismiss its claim for payment of the balance of the amount invoiced to the respondent.
17. Under section 49 of the CRTA and tribunal rules, the tribunal will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. As the applicant was not successful, I dismiss its claim for reimbursement of tribunal fees.

ORDER

18. I dismiss the applicant’s claims and this dispute.

Lynn Scrivener, Tribunal Member