



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Parrish & Heimbecker, Limited*,

2019 BCCRT 1292

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

PARRISH & HEIMBECKER, LIMITED

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, Parrish & Heimbecker, Limited, breached the parties' contract by failing to cancel its pre-existing waste disposal services contract with a different company and by refusing delivery of waste disposal bins.

The applicant wants the respondent to pay \$2,331 in liquidated damages for breaching the contract.

2. The respondent says it signed the contract on the condition that the applicant would release the respondent from its pre-existing waste disposal contract. It says the applicant did not fulfil this term of their agreement and failed to provide waste disposal services, so it does not owe the applicant anything.
3. Both parties are represented by employees or principals.

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* (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.
5. 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.
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 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

- 8. The issue in this dispute is whether the respondent is required to pay the applicant \$2,331 in liquidated damages under the contract.

EVIDENCE AND ANALYSIS

- 9. In a civil claim like this one, the applicant must prove its claim on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
- 10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
- 11. In the summer of 2018, the parties started negotiating the terms of a waste disposal services contract. It is undisputed that the respondent already had a pre-existing waste disposal contract with a different company, which expired on November 1, 2018. That contract is not in evidence.
- 12. On September 4, 2018, the respondent emailed the applicant stating it had been unable to confirm termination of its pre-existing contract and asked the applicant to "send a registered letter to this effect." The applicant responded later that day indicating that once the parties signed a contract the applicant would "take care of the cancellation letters" on the respondent's behalf.
- 13. On September 10, 2018 the parties signed a waste disposal services contract under which the applicant agreed to provide waste disposal services to the respondent. Clause 2 of the contract states that the contract commenced on the Effective Date

as defined in clause 3 for a term of 1 year, subject to automatic renewal unless cancelled in accordance with the terms of the contract.

14. Under clause 3 of the contract, since the respondent was obligated under a pre-existing contract with a different company, the effective date of the contract was the first day after expiration or termination of the pre-existing contract. The contract was legally binding from the execution date through to the effective date and afterward until the end of the term. The respondent agreed not to renew its pre-existing contract and to take all required steps to cancel and not renew the pre-existing contract. The respondent also warranted that as of the effective date it would be free and clear of its pre-existing contract.
15. Clause 11 of the contract states that if the respondent terminated the contract before the end of the term, the applicant could accept the repudiation of the contract and terminate it. Upon termination of the contract, the respondent agreed to pay as liquidated damages the amount of the remaining monthly charges in the term of the contract plus the sales tax.
16. On September 13, 2018, the applicant sent a letter to the respondent's pre-existing waste disposal service provider on the respondent's behalf notifying them of the respondent's intention to terminate the pre-existing contract as of November 1, 2018.
17. On October 2, 2018, the respondent notified the applicant that its pre-existing waste disposal services provider received the cancellation letter too late, and the respondent's contract with that company had been automatically renewed. The respondent asked the applicant to advise them on the situation.
18. On October 5, 2018, the respondent emailed the applicant that it was required to continue its pre-existing waste disposal contract with the other company. On the same date the respondent sent a letter to the applicant by registered mail indicating that it was required to continue with its pre-existing waste disposal contract, and that it would not require the applicant's services. It said the applicant could not put a

container on its property, and that doing so would amount to trespassing and be subject to a daily rental rate of \$50.

19. On November 1, 2018, the respondent refused the applicant's delivery of 2 waste disposal bins.
20. On November 5, 2018, the applicant notified the respondent by letter that it received the respondent's notice to terminate services under the contract on November 1, 2018, and that the notice was a breach of the contract. The applicant said it was exercising its option to repudiate the contract, and that the respondent was required to pay all fees remaining in the term of the contract, for a total of \$2,331. The letter said that if the applicant did not receive a response from the respondent within 10 days it would assume the respondent no longer wished to proceed with the contract and it would initiate collections activities. There is no evidence the respondent responded to this letter.
21. The respondent says that when the applicant's representative promised in its September 4, 2018 email that she would "take care of the cancellation letters" once the parties signed the contract, it understood that to mean that the applicant would get the respondent out of its pre-existing contract. The respondent also says the parties agreed that the contract would only go into effect once it had confirmation that its pre-existing waste disposal contract was terminated.
22. On the other hand, the applicant says it sends cancellation letters as a standard business practice to assist its new customers with cancelling any pre-existing service contracts with third parties. It says it does this based on information the new customers provide, but that it is ultimately the customers' responsibility to ensure cancellation of any pre-existing contract in accordance with clause 3 of the contract. However, I find the applicant's September 4, 2018 email did not make this clear to the respondent. In the circumstances, I find the respondent reasonably understood the applicant's email to mean that the applicant had taken on the respondent's responsibility of cancelling its pre-existing contract.

23. In *Super Save Disposal v. Tristar Cap & Garment*, 2013 BCPC 0079 (affirmed on appeal, 2014 BCSC 690), the parties signed a contract for waste disposal services on January 12, 2011 that was very similar to the contract in this dispute. The claimant sent a cancellation letter to the third-party company on the defendant's behalf which they received on January 19, 2011, but it was sent too early to terminate the pre-existing contract, which did not expire until June 30, 2011. On January 24, 2011, the defendant signed a renewal contract with the third-party company and advised the applicant that it wished to cancel the contract. The claimant said the defendant breached the contract and claimed liquidated damages.
24. The defendant in *Tristar* argued that by writing the cancellation letter to the third party the claimant had absolved the defendant of its responsibility under the contract to cancel its pre-existing contract. The Provincial Court disagreed and found that the claimant had not absolved the defendant of its responsibility to cancel its pre-existing contract. However, nothing turned on that finding since the cancellation letter was sent too early so the Court found the claimant had not missed the cancellation window. The Court found that by actively renewing its pre-existing contract with the third party the defendant breached an express term of the contract prohibiting it from doing so, and awarded the claimant liquidated damages.
25. The decision in *Tristar* is binding on me, however I find it can be distinguished from the facts of this case in 3 ways. First, there was no evidentiary basis in *Tristar* for the defendant to believe that by sending a cancellation letter the claimant had taken over the defendant's responsibility under the contract to cancel its pre-existing contract. However, in this case, I have found that the applicant's September 4, 2018 email was reasonably understood by the respondent that the applicant had taken over the respondent's responsibility to cancel its pre-existing contract. Second, in *Tristar* the defendant actively signed a renewal of its pre-existing contract, whereas in this case the respondent did not do so. Third, in *Tristar* the cancellation letter was sent too early, meaning the parties had time to remedy the error, whereas in this case the cancellation letter was sent too late and the parties did not have that

opportunity. Therefore, I find the facts in this case are distinct from those in *Tristar* such that I am not bound by its findings.

26. The applicant also says there is a “special instructions” section of the contract which gave the parties a space to indicate any additions or deviations from the standard agreement. It says this section contains nothing about the contract’s effective date being conditional upon termination of the respondent’s pre-existing contract. However, I find the plain wording of clause 3 makes the effective date conditional upon termination of the pre-existing contract, so it was not necessary for the respondent to have an extra clause included in that section of the contract.
27. Clause 3 states that the contract was legally binding as of the execution date, which was September 10, 2018. However, clause 3 also states that the effective date of the contract was the first day after expiration or termination of the respondent’s pre-existing contract. The evidence before me is that the respondent’s pre-existing contract was never terminated and did not expire because it was automatically renewed. Under clause 3 the respondent also agreed not to renew its pre-existing contract and to take all required steps to cancel and not renew the pre-existing contract. However, I have found the respondent reasonably understood that the applicant agreed to take on the responsibility of cancelling its pre-existing contract, and there is no evidence the respondent actively renewed that contract. Therefore, I find the respondent did not breach its obligations under clause 3 of the contract. While I find the contract became legally binding on the parties when they executed it on September 10, 2018, based on the wording of clause 3 and the evidence before me, I find the contract never went into effect.
28. In *Super Save Disposal Inc. v. G&G Gold Company Inc.*, 2018 BCCRT 714, the parties signed a very similar contract for waste disposal services on June 30, 2016. In that case, shortly after signing the contract the respondent learned its strata corporation did not permit the use of large waste bins on its property. The respondent sent notice to the applicant that it was cancelling the contract within 24 hours of signing it. The applicant attempted to deliver bins to the respondent’s

property on July 6, 2016, but the respondent refused to accept the delivery. The applicant said this amounted to a breach of the contract and it claimed liquidated damages. The tribunal found that under the terms of the contract its effective date was July 6, 2016, the date the applicant delivered the equipment, and that the respondent had provided the applicant with reasonable notice of the cancellation before the effective date. The tribunal dismissed the applicant's claim for liquidated damages. While this decision is not binding on me, I find its reasoning persuasive.

29. In this case the applicant's November 5, 2018 letter says it did not receive notice of the respondent's cancellation until November 1, 2018. However, I find the respondent's October 5, 2018 email and letter both make it clear the respondent wished to cancel the contract. The applicant does not deny receiving the October 5, 2018 email, and the evidence indicates it received the October 5, 2018 letter on October 17, 2018, well before the attempted delivery date of November 1, 2018. In these circumstances, I find the respondent provided the applicant with reasonable notice of cancelling the contract before the contract's effective date.
30. The applicant also says the respondent's refusal to accept the applicant's waste disposal bins on November 1, 2018 amounted to a breach of the contract. However, having found the contract never took effect, I find the respondent was not obligated to accept delivery of the applicant's bins on that date.
31. I find the applicant has not established that the respondent breached the contract entitling it to liquidated damages, and I dismiss its claims.
32. 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. I see no reason in this case not to follow that general rule. Since the applicant was unsuccessful, I find it is not entitled to reimbursement of its tribunal fees. It has not claimed any dispute-related expenses.

ORDERS

33. I dismiss the applicant's claims and this dispute.

Sarah Orr, Tribunal Member