



Civil Resolution Tribunal

Date Issued: January 3, 2020

File: SC-2019-005860

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Bingo's Brake & Muffler Ltd.*,
2020 BCCRT 5

BETWEEN:

SUPER SAVE DISPOSAL INC.

APPLICANT

AND:

BINGO'S BRAKE & MUFFLER LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Andrea Ritchie, Vice Chair

INTRODUCTION

1. This dispute is about a contract for waste disposal services. The applicant, Super Save Disposal Inc., says the respondent, Bingo's Brake & Muffler Ltd., breached the parties' contract by failing to provide a copy of its pre-existing waste disposal services contract with a different company, and by refusing delivery of the

applicant's waste disposal bins. The applicant seeks \$5,000 in liquidated damages for breaching the contract.

2. The respondent says it signed the contract on the condition the applicant would release the respondent from its pre-existing waste disposal contract. It says the applicant did not do so, and so it does not owe anything under the contract.
3. The applicant is represented by business contact Marli Griesel. The respondent is represented by Donovan Sparvier, its president.

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. 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.
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. Where permitted by section 118 of the CRTA, the tribunal may order a party to do or stop doing something, pay money, or 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 \$5,000 in liquidated damages under the parties' waste disposal services contract.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof on a balance of probabilities. While I have read all of the parties' evidence and submissions, I have only addressed the evidence and arguments to the extent necessary to explain my decision.
10. It is undisputed that on November 7, 2018, the parties signed a waste disposal services contract under which the applicant agreed to provide waste disposal services to the respondent (Contract). The Contract's written "Effective Date" was January 2, 2019. The respondent says it only signed the agreement because the applicant assured it that it would terminate the pre-existing contract between the respondent and a third party waste disposal company, RRR. The respondent specifically says the applicant informed it that its contract with RRR was cancelled before it signed the Contract on November 7, 2018. The respondent does not explain how or when it was informed of this.
11. Clause 2 of the Contract states that the Contract commenced on the "Effective Date" as defined in clause 3 for a term of 5 years, subject to automatic renewal unless cancelled in accordance with the Contract's terms.
12. Clause 3 provides that if the respondent was obligated under a pre-existing service contract with a third party, the effective date would be the first day after the expiration or termination of the pre-existing third party service contract. The clause

also provides that the Contract is binding on the parties from the date it was signed through the deferred effective date.

13. Clause 3 further states that the respondent must provide a copy of any pre-existing third party service contract within 5 days of the applicant's request for same.
14. As set out in a January 14, 2019 letter from RRR, the respondent's contract with RRR is in effect until May 1, 2022. Therefore, under clause 3 of the parties' Contract, its effective date was in fact deferred to May 2, 2022, not January 2, 2019. In other words, at the time the parties signed their Contract, the respondent was under contract with RRR, until May 2022.
15. Clause 2 states that the respondent may only terminate the Contract on written notice delivered by registered mail between 120 and 90 days from the end of the Contract's term. Here, I find this would mean between January 2, 2027 and February 1, 2027 (cancellation window).
16. Clause 11 of the Contract states that if the respondent terminates the Contract before the end of the term, the applicant can 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 GST.
17. On December 13, 2018, the applicant sent a letter to RRR on the respondent's behalf, notifying it of the respondent's intention to terminate the pre-existing contract as of January 2, 2019.
18. On December 18, 2018, the applicant sent a follow up letter to RRR on the respondent's behalf, again stating its services were to be terminated as of January 2, 2019.
19. On January 2, 2019, the applicant delivered its bins to the respondent's premises. The respondent says he tried to say no to delivery as he was still under contract with RRR. On January 3, 2019, the respondent phoned the applicant advising he

was still under contract with RRR and asked the applicant to remove its bins from its premises.

20. As a result, the applicant treated the Contract as repudiated, and by letter January 7, 2019, asked to be paid liquidated damages under clause 11 of the Contract. The applicant stated the balance of monthly payments totaled \$6,109.11, including \$5,818.20 for 60 months of bin rentals and \$290.91 in tax. The applicant agreed to abandon its claims in excess of \$5,000, the tribunal's small claims limit.
21. The January 7, 2019 letter stated 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 indication the respondent responded to the letter.
22. The applicant's bins were removed from the respondent's property on January 24, 2019.
23. Although the applicant says the respondent breached clause 3 of the Contract by failing to provide it with a copy of its pre-existing service contract within 5 days of request, I disagree. The applicant did not provide any evidence showing its specific request for the contract, apart from its submission that its sales representative requested a copy "on numerous occasions". I find the respondent did not breach this aspect of the Contract.
24. Additionally, clause 3 of the Contract establishes the Contract's deferred effective date as May 2, 2022. I find the respondent's refusal to accept the applicant's bins on January 2, 2019 was not a breach of the Contract, because the Contract was not yet effective on January 2, 2019. The applicant drafted the Contract and, as noted above, it states that if the respondent is under contract with another waste disposal company at the time the Contract is signed, the effective date is the day after the termination or expiration of that third party contract. Here, the respondent was already under contract with RRR at the time the Contract was signed. There is no indication that contract was renewed after the parties' November 7, 2018 Contract

was signed. Therefore, the applicant was not entitled to place its bins at the respondent's property before May 2, 2022. As a result, I find the respondent did not breach the Contract by refusing delivery of the bins, which the applicant later terminated on January 7, 2019, when it sent its cancellation later.

25. In summary, I find the applicant has not established that the respondent breached the Contract entitling it to liquidated damages, and I dismiss its claims.

26. Under section 49 of the CRTA, and the tribunal rules, a successful party is generally entitled to the recovery of their tribunal fees and dispute-related expenses. I see no reason to deviate from that general rule. As the applicant was not successful, I find that it is not entitled to reimbursement its paid tribunal fees. No dispute-related expenses were claimed.

ORDERS

27. The applicant's claims, and this dispute, are dismissed.

Andrea Ritchie, Vice Chair