Civil Resolution Tribunal

Date Issued: January 8, 2020

File: SC-2019-005965

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Agri-Trans Services Inc.,* 2020 BCCRT 31

B E T W E E N :

SUPER SAVE DISPOSAL INC.

**APPLICANT**

A N D :

AGRI-TRANS SERVICES INC.

**RESPONDENT**

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**REASONS FOR DECISION**

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Tribunal Member: Shelley Lopez, Vice Chair

## INTRODUCTION

1. This dispute is about waste disposal services. The applicant, Super Save Disposal Inc., says the respondent, Agri-Trans Services Inc., breached the parties' contract when it terminated the parties' contract before the agreed term ended, and in

particular outside the stipulated "cancellation window". The applicant claims $885.14 in debt and $2,343.30 in liquidated damages, for a total of $3,228.44.

2. The respondent denies liability and says it cancelled the agreement as of November 1, 2018, after the applicant failed to credit it for August 2018 when no garbage pick-up was provided. The respondent says it had paid in full by November 1, 2018 when it cancelled. The applicant says it was entitled to suspend services under the contract and says the respondent was not entitled to any credit for August 2018.

3. The applicant is represented by an employee, Marli Griesel. The respondent is represented by Al Bach, who I infer is a principal or employee.

## 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. In the circumstances 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. I also note that in *Yas v. Pope*, 2018 BCSC 282 at paragraphs 32 to 38, the BC Supreme Court recognized the tribunal's process and found that oral hearings are not necessarily required where credibility is in issue.

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, 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

8. The issue is to what extent, if any, the respondent owes the applicant $3,228.44 for waste disposal services and liquidated damages.

## EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referenced the evidence and submissions as necessary to give context to my decision.

10. The background facts are largely undisputed. The parties' signed a 2-year agreement on July 30, 2015, with an August 5, 2015 effective date. The agreement was subject to automatically renewed terms. I find it renewed on July 30, 2017 with that term scheduled to end on July 30, 2019, which is undisputed.

11. I turn then to the contract's relevant terms (my bold emphasis added):

    a. The applicant has the exclusive right to provide all non-hazardous solid waste disposal, organics, and recyclable collection services (Clause 1).

    b. The "monthly charge" is for a weekly service of a 6-yard bins for waste ($139) and recycling ($35) totaled $174, plus extra lift charges of $42 for waste and $20 for recycling. **The agreement stated the price was "firm" for the term, except landfill increases, and that there would be no fuel surcharge**.

c. The respondent can terminate the contract by providing not more than 120 days and not less than 90 days written notice, by registered mail, before the end of the term or any renewal term. I refer to this as the 'cancellation window'. (Clause 2). Given the current term's end on July 30, 2019, the cancellation window was between April 1 and May 1, 2019. It is undisputed the respondent failed to cancel within the cancellation window.

d. Clause 5 says the respondent must pay its account within 30 days from the date of invoice. If **"any payment is late", the applicant may, on "reasonable notice" to the respondent, suspend service until the account is brought current. The respondent customer remains responsible for any contractual monthly charges during any suspension period**. When service is resumed, the respondent must pay a "reasonable administrative fee".

e. 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.

12. In short, the applicant suspended the respondent's waste disposal services in mid-August 2018, on the basis the respondent had failed to make payments as required. The respondent says it did pay, through pre-authorized automatic credit card withdrawals, which the applicant denies.

### *Liability*

13. I find the respondent breached the parties' agreement, by failing to pay its invoices on time and then by terminating the contract outside its permitted 'cancellation window''. I do not agree with the respondent that the applicant improperly suspended service in August 2018 or later improperly failed to credit the respondent for the August 2018 suspension. My reasons follow.

14. The applicant says contrary to the parties' agreement the respondent failed to pay the following 6 invoices dated between February 28 and June 30, 2018, within 30 days of issue:

    a. February 28, 2018, invoice #1977812

    b. April 30, 2018, invoice #1997811

    c. May 31, 2018, invoice #2008063

    d. May 31, 2018, invoice #2008064

    e. June 30, 2018, invoice #2018282

    f. June 30, 2018, invoice #2018283

15. Based on its contemporaneous business notes, on May 2, July 6, and July 23, 2018, the applicant contacted the respondent to request payment of the above outstanding invoices. There is no evidence before me that the respondent replied.

16. On July 26, 2018, the applicant suspended the respondent's waste disposal service due to non-payment, which I find was permitted under the agreement.

17. On August 17, 2018, the applicant received the respondent's late payment of $741.88 for the outstanding invoices, after service had already been suspended. This payment timing is consistent with the respondent's notes on its "payables history report", which shows it paid for the May and June 2018 invoices, by cheque, on August 15, 2018. It appears to show similar late payment for the earlier February and April 2018 invoices.

18. On August 17, 2018, the applicant lifted the respondent's suspension. However, the respondent again failed to pay for the August 31 and September 30, 2018 invoices within 30 days as required by the agreement.

19. On October 12, 2018, the applicant advised the respondent that it had failed to pay as required and so their garbage service would be suspended. The respondent did not pay by the October 29 deadline.

20. Instead, on October 29, 2018, the respondent emailed the applicant that it wanted to cancel the agreement effective November 1, on the grounds the applicant refused to pick up garbage for 2 weeks (in early August 2018). On November 2, 2018, the applicant responded that cancellation was not permitted under the agreement's terms. At the same time, the applicant confirmed that the last recorded payment was by credit card on August 17, 2018.

21. On November 5, 2018, the respondent confirmed that it no longer wanted the applicant's services and asked that it pick up their bins.

22. On November 6, 2018, the applicant wrote the respondent a letter that it was "unable" to accept the respondent's cancellation. The applicant offered options, including paying out the remainder of the term, the applicant calculated as 9 months at $189.83 per month and $44.10 per month, plus GST, for a total of $2,210.64.

23. On November 15 and 20, 2018, the respondent wrote similar confirmation emails that it no longer wanted the applicant's services, saying generally that it had made credit card payments "prior to halting of service" but that the applicant still failed to re-start service for several weeks and failed to provide a credit for the services the respondent did not receive.

24. On November 23, 2018, the applicant picked up its bins from the respondent.

25. As noted, the respondent argues that it provided automatic credit card payments and that the applicant failed to process it. I agree with the applicant that the burden is on the respondent to prove it paid for service that undisputedly was provided between June and early August 2018. I find the respondent has not done so. There is no credit card authorization form in evidence and the applicant's payment history for the respondent does not show on-time payment for the relevant invoices listed above. Further, many of the respondent's other payments were made by cheque,

according to the respondent's own evidence, which I find is inconsistent with a pre-authorized credit card payment plan.

26. On balance, I find the respondent breached the parties' agreement because it failed to pay its invoices on time, as required. The applicant was thus entitled to suspend the respondent's waste disposal service in late July 2018 and under the contract the respondent was still required to pay the associated monthly August 2018 charge. Contrary to the respondent's argument, I find it was not entitled to a credit for August 2018 during the suspension I find was justified under the agreement.

27. So, I find the respondent was not entitled in late October 2018 to terminate the contract outside the cancellation window, which is what it did. Instead, the applicant was entitled to accept the respondent's repudiation of the agreement and claim damages.

### *Damages*

28. I will deal with the applicant's liquidated damages claim first, which totals $2,343.30. It appears the applicant has added tax twice in their claim. In any event, the applicant claims 9 months "at the current rate" of $189.83 and $44.10, plus tax, under clause 11 of the agreement. I find this totals $2,210.64 as it earlier calculated in its letter to the respondent.

29. 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 identical language involving the applicant and found the contract enforceable. While I am not bound by other tribunal decisions, the court's decision in *Tristar* is binding, as noted in several tribunal decisions and in the Provincial Court's decision in *Northwest Waste v. Andreas Restaurant Ltd*., 2016 BCPC 395.

30. In short, while the contract'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 parties' contract 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 owing under the agreement.

31. I turn then to the applicant's calculation of its liquidated damages claim. The parties' 2015 agreement in evidence shows the combined monthly charge was $174, and, that the price was firm for the remainder of the term (except for landfill increases which I find are not relevant based on the invoices in issue). I have no later agreement in evidence, so I find the applicant has not shown it is entitled to anything more than $174 monthly plus tax, which totals $182.70.

32. The applicant accepted the respondent's repudiation of the agreement on November 24, 2018, after it picked its bins up. I have below allowed the applicant's debt claim for the month of November 2018. As of November 30, there was 8 months left in the parties' agreement term, which as noted was to end on July 30, 2019. So, 8 x $182.70 = $1,461.60 is what I find the applicant is entitled to for liquidated damages.

33. I turn next to the $885.14 debt claim. Based on the applicant's "outstanding transactions" document, its debt claim is for July and October 2018 waste and recycling invoices and for August and November 2018 services. The applicant does not explain why it does not claim anything for September 2018.

34. First, the invoices include a total of $290.17 in charges I find are not permitted under the parties' "price is firm" agreement (based on the somewhat illegible copy submitted in evidence by the applicant): namely $6.67 for "carbon tax cost recovery" and a $283.50 in bin removal fees. While the contract expressly provided for service resumption fees, I was not able to identify anything in the parties' contract that provided for bin removal charges.

35. The $885.14 in part relates to a $53.90 "service resumption" charge on July 26, 2018, which I allow as a "reasonable" charge provided for under the contract. For reasons set out above, I find the respondent must pay for August 2018 services,

despite the suspension during half of that month. Since the respondent did have service for most of November and the applicant did not repudiate until later in November, I find the respondent must pay for November 2018 service also. As noted, the liquidated damage claim I have allowed covers only 8 months (December through July). The question then is how much the respondent must pay in debt.

36. As noted above, the parties' agreement says it is a fixed price for the term. I have no later renewal agreement in evidence. The applicant relies on the July 2015 agreement so I find its terms continue to apply. Yet, in this dispute the applicant invoiced a higher monthly charge than permitted by the contract, which I do not allow. As noted above, I allow only $182.70 per month for the basic monthly charges, inclusive of tax. For 2 months (August and November 2018), this equals $365.40. To this I add $17.65 for overweight or "extra lift" charges that are permitted by the contract, for a total of $383.05. I do not allow the respondent any credit for the last week of November 2018, since I have calculated liquidated damages from December 2018 through July 2019, rather than 9 months as claimed by the applicant.

37. So, I find the respondent must pay the applicant a total of $436.95 in debt ($53.90 + $365.40).

38. In summary, I find the applicant is entitled to $1,461.60 for its liquidated damages claim. The applicant is entitled to $436.95 in debt. The applicant did not claim contractual interest in this dispute and so is also entitled to *Court Order Interest Act* (COIA) pre-judgment interest on the total award of $1,898.55. I find November 30, 2018 is the most reasonable date for calculation of interest, which totals $40.25.

39. As the applicant was largely successful in this dispute, in accordance with the CRTA and the tribunal's rules I find it is entitled to reimbursement of $175 in tribunal fees. The applicant did not claim dispute-related expenses.

## ORDERS

40. Within 14 days of this decision, I order the respondent to pay the applicant a total of $2,113.80, broken down as follows:

    a. $436.95 in debt,

    b. $1,461.60 in liquidated damages,

    c. $40.25 in pre-judgment interest under the COIA, and

    d. $175 in reimbursement for tribunal fees.

41. The applicant is entitled to post-judgment interest, as applicable.

42. Under section 48 of the CRTA, 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.

43. Under section 58.1 of the CRTA, 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.

Shelley Lopez, Vice Chair