



Civil Resolution Tribunal

Date Issued: May 7, 2020

File: SC-2020-000041

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Kingsway Brake & Muffler Ltd.*,
2020 BCCRT 500

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

KINGSWAY BRAKE & MUFFLER LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about waste disposal services. The applicant, Super Save Disposal Inc., says the respondent, Kingsway Brake & Muffler Ltd., breached the parties'

August 16, 2019 contract when it repudiated it before the agreed 2-year term ended, and in particular on the day after the contract's December 1, 2019 effective date. The applicant claims \$3,046.68 in liquidated damages, which covers the entire 2-year term since the respondent repudiated at the time service was first attempted.

2. The respondent denies liability and says there is no binding contract, because it signed the contract on the express condition the respondent could be released from its existing waste hauling agreement with a third party, RRR. The respondent says the applicant agreed to try and get RRR's cancellation approval, but RRR never gave that approval. So, the respondent says the contract with the applicant never took effect.
3. The applicant is represented by an employee. The respondent is represented by TL, 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 whether the parties' waste disposal contract ever took effect, and if so, to what extent, if any, the respondent owes the applicant \$3,046.68 for 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. As referenced above, the parties signed a 2-year waste services agreement on August 16, 2019, with a December 1, 2019 effective date. The agreement was subject to automatically renewed terms. Based on the parties' agreement, it was to end December 1, 2021. None of this is disputed.
11. It is also undisputed that when the applicant went to deliver the bins to the respondent on December 2, 2019, the respondent refused to accept delivery. So, the applicant returned the bins to its premises.

12. The applicant says that given the respondent's refusal to accept the bins' delivery, it was entitled under the contract to accept the respondent's repudiation and claim liquidated damages. The applicant claims 24 months of service as the basis for its \$3,046.68 liquidated damages claim, the entire 2-year term.
13. I agree with the applicant, but only if there was a binding contract between the parties. That is the issue in this dispute: whether the parties' contract took effect on December 1, 2019.
14. I find the applicant's claim must fail for the following reasons.
15. The parties agreed to a few specific handwritten amendments on the face of the applicant's otherwise 'boilerplate' or standard-text contract. One amendment was that the parties' agreement was "subject to cancellation" of the pre-existing agreement the respondent had with RRR. In its submissions, the applicant also expressly admits the parties negotiated that their agreement "would only come into effect December 1, 2019 subject to the cancellation" of the respondent's agreement with RRR.
16. However, the applicant says at the time of signing the parties' agreement, the respondent confirmed its agreement with RRR would end on December 1, 2019. The applicant says it relied on this information and so on the respondent's behalf sent RRR cancellation letters based on that end date. The applicant says the respondent's actions made it impossible for the applicant to cancel the RRR agreement as the respondent did not give the applicant the correct information. Based on the applicant's submissions, I infer it refers to the fact that the applicant did not receive a copy of the respondent's agreement with RRR, and, that the respondent did not give actual end date for the RRR agreement. In his submissions to the tribunal, the respondent says the RRR agreement's end date was January 1, 2021, which is undisputed.
17. Clause 5.2 of the parties' contract says the respondent must give the applicant a copy of any pre-existing waste services contract within 5 days of the applicant's

request for it. While the applicant says that on August 16, 2019 the respondent signed a letter saying it would provide the applicant with a copy of its RRR agreement, the applicant did not submit such a signed letter into evidence. On the evidence before me, I find the applicant never asked the respondent for a copy of its RRR agreement.

18. Despite not having a copy of the RRR agreement, the applicant sent RRR two cancellation letters signed by the respondent, which are in evidence and discussed further below. The applicant says it sent these letters to RRR within RRR's "presumed cancellation window" (meaning the timeframe permitted to cancel the agreement), on the "assumption" and alleged advice from the respondent that the RRR agreement would end on December 1, 2019.
19. I have reviewed the cancellation letters, which are undated on their face. The first says the respondent asks RRR to send a copy of its agreement if its end date was something other than December 1, 2019. The second says that not having received any records from RRR in response to the first cancellation letter, the respondent confirms RRR's services are cancelled as of December 1, 2019.
20. I do not accept the applicant's argument that it reasonably relied on the respondent's alleged confirmation that its agreement with RRR would in fact end on December 1, 2019. The face of the parties' agreement makes it clear its coming into effect was conditional on the RRR agreement being cancelled. If the respondent was sure the RRR agreement would end on December 1, there would be no need for that conditional clause to be added to the parties' contract. I find the respondent's explanation more likely, namely that when TL signed the contract with the applicant he could not remember when the RRR agreement ended. That explains the need for the conditional clause. Similarly, I find the respondent's signing the applicant's drafted cancellation letters consistent with the respondent's understanding, namely that he was uncertain about the December 1, 2019 end date and that the respondent's contract with the applicant would only be effective if the RRR agreement were cancelled. On the evidence before me, I find the applicant

has not proved the respondent ever confirmed that the RRR agreement ended on December 1, 2019.

21. In any event, the parties' agreement was based on the RRR agreement being cancelled, and it never was. I find the applicant has not proved the respondent acted in any way that amounted to a breach of contract with the applicant. I find the parties' contract never took effect, because the respondent's contract with RRR was never cancelled. To the extent the applicant argues it, I find the applicant has not shown the respondent acted in bad faith or did anything to mislead the applicant.
22. I acknowledge the contract had boilerplate terms about the respondent agreeing not to renew a contract with an existing waste hauler provider before the effective December 1, 2019 date. The evidence appears to show the respondent renegotiated its contract with RRR on September 1, 2019, because RRR met the applicant's pricing, rather than renewing its contract with RRR. In any event, I find the handwritten "subject to cancellation" contractual term takes precedence over the boilerplate term. This is because the parties' contract could not become effective unless and until the RRR agreement was cancelled. In other words, I find the respondent reasonably understood that since RRR undisputedly refused to cancel its contract with the respondent, the applicant's contract with the respondent could not take effect and so the respondent was free to renew with RRR.
23. Given my conclusions above, I find the applicant's claim for liquidated damages must be dismissed, on the basis the parties' contract never came into effect and so the respondent did not breach the contract.
24. Since the applicant was not successful, under the CRTA and the tribunal's rules I dismiss its claim for reimbursement of tribunal fees. The successful respondent did not pay fees and no dispute-related expenses were claimed.

ORDER

25. I order the applicant's claims and this dispute dismissed.

Shelley Lopez, Vice Chair