



Civil Resolution Tribunal

Date Issued: May 26, 2020

File: SC-2019-009315

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Liu*, 2020 BCCRT 574

BETWEEN:

SUPER SAVE DISPOSAL INC.

APPLICANT

AND:

JIA-MAO LIU

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about a waste disposal services agreement. The applicant, Super Save Disposal Inc., says the respondent, Jia-Mao Liu, breached their agreement.

2. The applicant says the respondent failed to make payments under the contract. The applicant also says the respondent improperly ended the contract. The applicant claims \$738.93 in debt and \$2,717.54 for liquidated damages.
3. The respondent says the applicant breached the agreement first by increasing his service fees and by not providing timely waste disposal services.
4. The applicant is represented by a business representative. The respondent is self-represented.

JURISDICTION AND PROCEDURE

5. 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.
6. 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, telephone etc.], because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. 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.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the tribunal may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUE

9. The issue in this dispute is whether the respondent breached the waste disposal contract between the parties and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

10. In this civil claim, the applicant bears the burden of proof on a balance of probabilities. I have only referenced the evidence and submissions as necessary to explain my decision. I note that the respondent did not provide any evidence despite having the opportunity to do so.
11. On January 19, 2011 the applicant entered a waste disposal services agreement (agreement) with the respondent. The agreement's effective date was January 21, 2011.
12. The applicant's Dispute Notice says the agreement had a 5-year term, subject to automatic 5-year renewals until cancelled in a specified manner. However, in their submissions, the applicant amended their original claim to say the agreement had a 1-year term, with automatic 1-year renewals.
13. The agreement includes 'boilerplate' or standard-text which says the agreement has a 5-year term, with 5-year renewals. I find that the parties changed the boilerplate text in the agreement by handwriting to a 1-year term with automatic 1-year renewals until cancelled in the manner stated in the agreement.
14. The respondent argues that the applicant did not tell him that the agreement renewed automatically. I do not find that the applicant had a duty to explain the terms of the agreement to the respondent. Based upon my finding that the parties agreed to change the term of the agreement from a 5-year to 1-year, I am satisfied that the respondent was capable of understanding the contract. The respondent acknowledges signing the agreement. I find that the respondent is bound by the terms of the written agreement, including renewal terms.

15. The respondent also says the applicant breached the agreement by increasing their service fees and by not providing timely waste disposal services which caused overweight charges. However, the respondent did not provide any details of these arguments or any supporting evidence despite having an opportunity to do so.
16. Based upon the agreement's terms and the applicant's billing invoices, I find that the respondent's monthly charge for garbage disposal had increased from \$48 per month when the agreement started to \$92.17 by September 30, 2018. However, clause 4 of the agreement says the applicant can increase their service rates based on increases on fuel costs, disposal facility costs, and transportation and equipment costs. The respondent did not provide any evidence to show that the applicant's fee increases were not permitted under the agreement. I find that the respondent has not proved that the applicant breached the agreement.
17. The respondent says he canceled the agreement by telephone in May 2018. The applicant's accounts receivable records show that the respondent called the applicant on September 19, 2018 to cancel.. However, I do not find it necessary to determine whether the respondent made this phone call in May 2018 or September 2018 because the agreement does not permit cancellation by phone.
18. Instead, I find that clause 3 of the agreement says that the respondent can only cancel the agreement with written notice delivered by registered mail between 120 and 90 days from the end of the term of the agreement. I find that the respondent's telephone notice was not an effective cancellation of the agreement and the respondent remained bound by his contractual obligations.
19. I turn then to the amounts claimed. The applicant says the respondent failed to pay for waste disposal services as required under the agreement from May 31, 2018 to September 30, 2018. I find that the applicant sent the respondent a letter on October 3, 2018, suspending the agreement for nonpayment.
20. The applicant provided the undisputed invoices and billing statements with the following unpaid charges:

- a. May 31, 2018: disposal fees \$90.68, administration fee \$9.29, service charge \$16.29
 - b. June 30, 2018: disposal fees \$97.85, administration fee \$9.29, service fee \$17.64
 - c. July 31, 2018: disposal fees \$103.89, administration fee \$9.29, service fee \$16.64
 - d. August 17, 2018: service resumption fee \$47.25, administration fee \$9.29, service charge \$7.91
 - e. August 31, 2018: disposal fees \$97.85, administration fee \$9.29, service charge \$11.76
 - f. September 30, 2018: disposal fees \$97.85, administration fee \$9.29, service charge \$11.76
 - g. October 4, 2018: bin removal fee \$141.75. administration fee \$9.29
 - h. January 28, 2019: service charge \$104.52
21. I find that that the respondent was not paying his accounts to the applicant on time. This was a breach of the agreement on his part by failing to pay the garbage disposal fees, from May 2018 to September 2018. I find that the applicant was entitled to treat the agreement as abandoned by the respondent and claim debt and damages.
22. Based on the applicant's undisputed invoices and billing statements, I find that the respondent incurred \$488.12 in garbage disposal fees from May 2018 to September 2018.
23. I note that the applicant's billing records acknowledged a payment of \$85.22 by the respondent on October 4, 2018. Based on the applicant's undisputed billing records, I find that the respondent did not make any other payments for the garbage disposal services provided from May 2018 to September 2018.

24. I find that the respondent owes \$402.90 in unpaid disposal fees.
25. Based on the applicant's undisputed invoices, I find that the respondent is responsible for the payment of the applicant's administration fee of \$9.29 for resumption of service on August 17, 2018. Clause 5 of the agreement says that the respondent is responsible for administrative costs for resumption of service.
26. I find that the respondent is not responsible any other administration fees, service charges, service resumption fees or bin removal fees stated on the applicant's invoices. This is because I find that the agreement does not include any of these charges and the respondent's obligations are limited to the terms of the agreement.
27. The applicant claims a total debt \$738.93. I find that the balance unpaid from the applicant's invoices, after deducting disallowed service charges and fees, is \$412.19. Accordingly, I find that respondent owes the applicant a debt of \$412.19 for services provided under the agreement.
28. Turning to the liquidated damages claim, 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 virtually identical language involving the applicant and found the contract enforceable. While I am not bound by other tribunal decisions, I am bound by the BC Supreme Court's decision in *Tristar* (for similar reasoning see also: *Super Save Disposal Inc. v. Paul's Metal Service Inc.*, 2018 BCCRT 191, *Super Save Disposal Inc. v. Gill's Dream Enterprise Ltd.*, 2018 BCCRT 298, and *Super Save Disposal Inc. v. K.M.I. Holdings Ltd.*, 2018 BCCRT 285). I note the *Tristar* decision overrides the Provincial Court's decision in *Super Save Disposal Inc. v. Angel Glass Corp.*, [2015] B.C.J. No. 1191, a case in which the adjudicator concluded a liquidated damages clause similar to the one before me was unconscionable. However, I also note the Provincial Court has more recently noted that *Tristar* was binding, in *Northwest Waste v. Andreas Restaurant Ltd.*, 2016 BCPC 395.

29. While the agreement'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 agreement 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. I have found the respondent did not terminate the agreement in the manner required under its terms.
30. Given my conclusions above, I find the respondent breached the agreement with the applicant when it failed to pay the applicant's invoices from May 2018 to September 2018 as required.
31. I find that the applicant accepted the termination of the agreement when they sent the respondent an invoice for the liquidated damages on January 28, 2019.
32. This means that the agreement ended on January 28, 2019 and the respondent owes the applicant liquidated damages for the duration of the time that was remaining on the agreement or 9 months, which is longer.
33. The initial agreement commenced on January 21, 2011 and renewed for consecutive 1-year terms until the agreement was terminated. I find the agreement had renewed on January 21, 2019 for a further 1-year term. Accordingly, there was 12 months remaining on the agreement when the applicant ended the agreement on January 28, 2019
34. This means the applicant is entitled to liquidated damages, at the then-current rates for disposal fees. Based upon the most recent invoice dated September 30, 2018, I find that the then-current rate of disposal fees was \$92.17 per month plus GST. This totals \$96.78.
35. I find that the respondent owes the applicant liquidated damages of \$96.78 per month for 12 months, for a total of \$1,161.36. However, I do not agree the respondent owes the applicant GST on the liquidated damages, as no goods or services were provided to attract GST.

36. Accordingly, I find that the respondent owes the applicant a debt of \$412.19 and liquidated damages of \$1,161.36. This totals \$1,518.23.
37. While the agreement permits 24% annual contractual interest on overdue accounts, the applicant did not claim interest in this dispute. So, the respondent owes the applicant pre-judgment interest under the *Court Order Interest Act* (COIA) on the total \$1,573.55, from January 28, 2019, when the contract ended, until the date of this decision. This amounts to \$40.77.
38. 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. I find the applicant is entitled to reimbursement of \$175 in tribunal fees.

ORDERS

39. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$1,789.32, broken down as follows:
 - a. \$412.19 in debt and 1,161.36 in liquidated damages,
 - b. \$40.77 in pre-judgment interest under the *Court Order Interest Act*, and
 - c. \$175 in tribunal fees.
40. The applicant is entitled to post-judgment interest, as applicable.
41. 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. The Minister of Public Safety and Solicitor General has issued a Ministerial Order under the Emergency Program Act, which says that tribunals may waive, extend or suspend a mandatory time period. The tribunal can only waive, suspend or extend mandatory time periods during the

declaration of a state of emergency. After the state of emergency ends, the tribunal will not have this ability. A party should contact the tribunal as soon as possible if they want to ask the tribunal to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.

42. 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.

Richard McAndrew, Tribunal Member