



# Civil Resolution Tribunal

Date Issued: June 4, 2020

File: SC-2019-009588

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Apex Telecom Construction Corp.*,  
2020 BCCRT 616

B E T W E E N :

SUPER SAVE DISPOSAL INC.

**APPLICANT**

A N D :

APEX TELECOM CONSTRUCTION CORP.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Chad McCarthy

### INTRODUCTION

1. This dispute is about an agreement for garbage disposal services between the applicant, Super Save Disposal Inc., and the respondent, Apex Telecom Construction Corp.

2. The applicant says the respondent breached the agreement by both renewing and failing to cancel another garbage disposal agreement between the respondent and a third party, RRR (RRR agreement). The applicant says the respondent also breached the agreement by attempting to terminate it in a way that was not permitted, and by preventing the applicant from performing it. The applicant claims \$2,797.20 in liquidated damages under the agreement.
3. The respondent says the applicant did not send a termination notice to RRR at the correct time, which meant the RRR agreement automatically renewed before the applicant's services began. The respondent says that because it then re-negotiated the RRR agreement and rejected the parties' agreement, the parties' agreement was not effective, and it owes the applicant nothing.
4. The parties are each represented by an employee.

## **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 only, as 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. Did the respondent breach the parties' agreement, and if so, how much does the respondent owe the applicant?

## **EVIDENCE AND ANALYSIS**

10. In a civil proceeding like this one, the applicant must prove its claim on a balance of probabilities. I have read all the submitted evidence, but I refer only to the evidence I find relevant to provide context for my decision.
11. The parties signed a 2-page garbage disposal agreement on March 14, 2019. The contract included the following terms:
  - a. The applicant would provide a garbage bin to the respondent and empty the bin once per week, for an initial term of one year.
  - b. The monthly fee was \$222, and the services would commence on August 13, 2019 (the "Effective Date").
  - c. If the respondent had a pre-existing garbage disposal contract with another party for the same location, then before the Effective Date the respondent must:
    - i. Not enter into any other garbage disposal contract for the same location.

- ii. Not renew any pre-existing garbage disposal contract for the same location.
    - iii. Take any and all required steps to cancel and not renew any pre-existing garbage disposal contract for the same location.
  - d. The respondent warranted that it would be free and clear of any third-party garbage disposal contracts for the same location as of the Effective Date.
  - e. The respondent acknowledged it had read, understood, and agreed to the terms, including those on the second page.
12. The agreement appears to be a pre-printed form produced by the applicant, that was filled in and annotated by the parties. The second page of the only signed copy of the agreement in evidence was poorly copied, so that second page is largely illegible except for the paragraph headings. However, the applicant provided a “clean” unsigned copy of the agreement form with a legible second page, and reproduced relevant portions of the agreement in its submissions. The respondent does not dispute that second page of the “clean” copy is the same pre-printed form used for the signed agreement. Further, the respondent does not take issue with the agreement excerpts reproduced in the applicant’s submissions. On balance, I am satisfied that the parties’ signed agreement includes the same terms as shown on the “clean” copy, except that the paragraphs titled “6. LIABILITY FOR EQUIPMENT” and “12. FORCE MAJEURE AND EXCUSED PERFORMANCE” are crossed out. But I find those crossed-out paragraphs are not relevant to this dispute.
13. The second page of the agreement includes a paragraph titled “11. FAILURE TO PERFORM”. This paragraph says that if the respondent unlawfully terminated the agreement, the applicant could accept the respondent’s repudiation and then terminate the contract. In that case, the agreement says the respondent agreed to immediately pay any amounts owing for the garbage disposal services already provided, plus the monthly charges plus tax that would have been due for the remainder of the agreement as liquidated damages. The agreement says the

respondent agreed that these liquidated damages were reasonable and were not a penalty.

14. The applicant sent a March 14, 2019 letter to the respondent, the same day the parties signed the agreement. The letter acknowledged that the respondent had a pre-existing garbage disposal agreement with a third party, and that the applicant would assist the respondent in cancelling that pre-existing agreement. The letter also said that however the applicant may assist the respondent, it was ultimately the respondent's responsibility to ensure the third party contract was cancelled prior to the Effective Date. I find this is consistent with the parties' agreement. Further, the letter said that the third party may present a new offer to the respondent to retain their business. The letter warned, in emphasized text, against signing a new agreement with the third party because it would result in the respondent being "double-contracted" for garbage disposal service. As described below, it appears that double contracting is exactly what happened.
15. The undisputed evidence is that the respondent had a pre-existing garbage disposal agreement with RRR. The parties agree that the RRR agreement would automatically renew on August 13, 2019 unless the respondent sent written notice of termination to RRR via registered mail between 90 and 120 days before that date. This means the cancellation notice needed to be provided between April 15, 2019 and May 15, 2019 (cancellation window).
16. The respondent says it relied on the applicant to provide the required cancellation notice to RRR. The evidence shows that two registered mail cancellation letters were received by RRR in March 2019. This is outside of the RRR agreement's cancellation window. The letters were pre-printed, with fields for the respondent's information and RRR agreement information completed by hand and signed by the respondent. The respondent says the applicant mailed the letters, but the evidence does not confirm this.
17. The evidence before me does not support an additional agreement by the applicant to cancel the RRR agreement on behalf of the respondent in order for the parties'

agreement to take effect. While it appears that the applicant may have provided the respondent with some assistance in writing and sending cancellation letters to RRR, I find there is no evidence that the applicant agreed to take responsibility for the cancellation. In fact, the applicant's March 14, 2019 letter says the opposite, that it was the respondent's responsibility to cancel the pre-existing third-party contract before the Effective Date of the parties' agreement. This is consistent with the parties' agreement, which said the respondent must take any and all required steps to cancel and not renew any pre-existing contract.

18. On balance, I find the respondent failed to cancel the RRR agreement within the cancellation window, and that the applicant is not responsible for this failure. I also find that failing to cancel the RRR agreement, and allowing its renewal, was a breach of the parties' contract.
19. The respondent says the RRR agreement gave RRR a right of renegotiation. So, the respondent says that after the written cancellation notices were received by RRR, the respondent renegotiated the RRR agreement. The respondent then sent a registered letter to the applicant before the Effective Date, saying that it did not require applicant's services because it was staying with RRR. The letter also said the applicant was forbidden from placing a garbage container at the respondent's premises, as the respondent would consider it to be trespassing. I find that this was the respondent's attempt to terminate the parties' contract in breach of its terms.
20. It is undisputed that the applicant delivered its garbage bin to the respondent's premises on August 13, 2019 and removed it on August 28, 2019. In an August 27, 2019 letter to the respondent, the applicant accepted the respondent's repudiation of the contract as of the Effective Date, August 13, 2019. The letter requested payment for 11 months of service remaining under the parties' 1-year contract. However, the applicant now claims monthly fees for all 12 months of the agreement, and I find there is no evidence that the respondent has paid any monthly fees.
21. It appears the respondent believes that by renegotiating or renewing the RRR agreement, the parties' agreement was cancelled. I find that is not the case. The

applicant is not a party to the RRR agreement, and did not agree that the RRR agreement supplanted the parties' agreement.

22. Having considered the evidence, I find that under the parties' agreement the applicant is entitled to an amount equal to 12 months of service fees plus GST as liquidated damages. I find that amount is a reasonable pre-estimate of what the applicant would have been paid had the respondent not broken the contract. \$222 per month plus GST for 12 months equals the \$2,797.20 claimed by the applicant.
23. I allow the applicant's claim for \$2,797.20 in liquidated damages.

### **TRIBUNAL FEES, EXPENSES, AND INTEREST**

24. The applicant is entitled to pre-judgment interest under the *Court Order Interest Act*. While the parties' agreement said liquidated damages were due immediately, the applicant's August 27, 2019 letter indicated that payment was due after 10 business days. So, I find pre-judgment interest is calculated from September 12, 2019 until the date of this decision. This equals \$39.90.
25. 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. The applicant was successful in its claims, so I find it is entitled to \$125 in tribunal fees. No dispute-related expenses were claimed.

### **ORDERS**

26. Within 30 days of the date of this order, I order the respondent to pay the applicant a total of \$2,962.10, broken down as follows:
  - a. \$2,797.20 in liquidated damages,
  - b. \$39.90 in pre-judgment interest under the *Court Order Interest Act*, and
  - c. \$125 in tribunal fees.

27. The applicant is entitled to post-judgment interest, as applicable.
28. 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.
29. 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.

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Chad McCarthy, Tribunal Member