



# Civil Resolution Tribunal

Date Issued: July 7, 2020

File: SC-2019-008940

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Ltd. v. Kwong Tak Hong Herbal Products Ltd.*, 2020  
BCCRT 754

B E T W E E N :

SUPER SAVE DISPOSAL INC.

**APPLICANT**

A N D :

KWONG TAK HONG HERBAL PRODUCTS LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Rama Sood

## INTRODUCTION

1. This dispute is about a waste removal services contract. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, Kwong Tak Hong Herbal Products Ltd. (Kwong), owes it \$3,962.30 for unpaid invoices plus 24% annual contractual interest on the outstanding amount. Super Save acknowledges Kwong already paid

Super Save \$2,495.90 for liquidated damages after Kwong terminated the parties' contract.

2. Kwong denies it owes Super Save any further amounts.
3. Super Save is represented by its employee, MG. Kwong is represented by its accountant, HY.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT 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 CRT 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 because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The CRT 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 CRT 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 CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

## **ISSUE**

8. The issue in this dispute is whether Kwong owes an additional \$3,962.30 plus interest to Super Save for unpaid invoices.

## **EVIDENCE AND ANALYSIS**

9. In this civil claim, Super Save bears the burden of proof on a balance of probabilities. I have reviewed all of the evidence but only refer to the evidence and submissions as I find necessary to provide context for my decision.
10. On August 22, 2016 the parties signed a waste disposal services agreement (agreement) which included the following terms:
  - a. The effective date of the agreement was August 22, 2016.
  - b. Super Save agreed to provide waste disposal services to Kwong.
  - c. The term of the agreement was 2 years, subject to automatic renewal unless cancelled in accordance with the agreement (paragraph 2).
  - d. Super Save could charge the customer additional costs including transportation, general operational costs, collection route changes, contaminated waste surcharges, disposal facility, landfill and recycling costs, recycling commodity fees, administrative costs, bridge and road tolls, governmental taxes and levies, provincial carbon tax and any fees charged by the government to allow equipment to be placed at the customer's location (paragraph 4).
  - e. The customer had to pay the invoices within 30 days of the invoice date and Super Save charged interest on overdue accounts at a rate of 24% per year (paragraph 5).
  - f. In the event of late or no payment, Super Save had the right to suspend the service to the customer, on reasonable notice, until the account was paid.

Super Save could also choose to immediately terminate the agreement for non-payment of amounts owing. The customer would have to pay a reasonable administrative fee to resume suspended service.

- g. If the customer terminated the agreement before the end of the term, Super Save could accept the repudiation of the agreement and terminate the agreement. Also, the customer agreed to pay a sum equal to any amounts owing for services and equipment provided up to the repudiation date. The customer also agreed to pay an amount equal to monthly charges that would become due for the balance of the term calculated from the repudiation date (paragraph 11).
11. Kwong says it moved out of its prior location by February 2019. In a March 24, 2019 email, Kwong notified Super Save that it no longer needed the disposal service and wanted to cancel it. Super Save responded in a registered letter dated March 26, 2019 that it was unable to accept Kwong's cancellation request and referred to the agreement's cancellation terms. It appears Kwong received the letter on April 2, 2019.
12. On March 28, 2019 Kwong again emailed Super Save that it wanted to cancel the contract because it no longer needed the service. Super Save responded in a registered letter dated April 29, 2019. Super Save did not explain why it waited 1 month to respond to Kwong's email. Super Save stated that if Kwong cancelled the agreement, Kwong would have to pay \$2,485.90 for the 16 monthly payments remaining on the agreement as of April 29, 2019. Kwong would also have to pay any removal charges or outstanding balances due upon cancellation. It also stated the disposal bin was scheduled to be removed on or about March 28, 2019, unless Kwong contacted Super Save within 10 business days of April 29, 2019. Otherwise it would issue a final invoice to Kwong. I find that Super Save made a typographical error in its letter about the disposal bin removal date. However, there is no evidence of what date Super Save intended to remove the bin.

13. It is undisputed that Super Save removed its bin on May 2, 2019 and that Kwong paid Super Save \$2,485.90 on May 31, 2019.

***Does Kwong owe an additional \$3,962.30 to Super Save?***

14. Super Save provided an account statement entitled “Outstanding Transactions” and dated October 29, 2019 for \$3,962.30 (account statement). It listed invoices from July 6, 2017 to May 24, 2019 that Super Save says were not paid by Kwong. Super Save also provided copies of the invoices listed in the account statement. Kwong denies it owes any further amounts to Super Save and says Super Save’s delay in responding to its termination notice caused some unnecessary charges.

15. I have reviewed the account statement and invoices provided by Super Save in detail. I find Kwong is not responsible for the “Service Charges” listed in the account statement next to each invoice. This is because I find that the agreement does not include this charge and Kwong’s obligations are limited to the terms of the agreement.

16. There are additional invoices that I find Kwong is not responsible for:

- a. January 31, 2019 invoice #2094738 for a \$722.30 “Permit Fees from January 1, 2019 to December 31, 2019” and an \$8.85 Administration Fee. Paragraph 4 of the agreement allows Super Save to charge any fees charged by the government to allow equipment to be placed at Kwong’s location. Based on a by-law violation ticket which I discuss in detail below, I infer the permit was required by the City of Vancouver (City). However, Super Save did not provide evidence about what the permit was for, proof that it paid the permit fees, or the amount charged by the City. In addition, the fact that the City issued the by-law violation ticket implies that Super Save did not pay for the permit in any event. I find Super Save failed to demonstrate that it incurred a permit fee and I find Kwong is not responsible for paying it or the Administration Fee in the invoice.

- b. April 24, 2019 invoice #596838H for a \$45 Service Resumption Fee and an \$8.85 Administration Fee. I find there is no evidence that Super Save either suspended or resumed Kwong's service. I find Kwong is not responsible for either fee in this invoice.

### ***City of Vancouver ticket***

17. In an April 23, 2019 email, the City of Vancouver notified Super Save that its container found at Kwong's address was "UNPERMITTED". The City ordered Super Save to either submit a completed Permit Application or remove the container by 3:00 PM on April 25, 2019. The City also stated that if no action was taken, Super Save would be issued a \$500 ticket for failing to comply with an order. There is no evidence that Super Save responded to the City's email before April 25, 2019.
18. I infer from the evidence before me that the City issued a \$500 municipal ticket to Super Save on May 1, 2019 for failure to obey an order (ticket). The City sent Super Save a May 24, 2019 reminder notice for the ticket. In the reminder notice, the City referred to the ticket as ticket number TA45903.
19. Super Save charged Kwong \$500 for the ticket plus a \$8.85 Administration Fee in its May 9, 2019 invoice #2136634. Paragraph 4 of the agreement permits Super Save to charge Kwong any governmental taxes, levies, or fees for equipment to be placed at Kwong's location. However, I find the ticket was for a fine and did not fall within paragraph 4 as a tax, levy, or fee. Hence, I find Kwong is not responsible for paying this invoice.
20. Super Save also invoiced Kwong \$625 plus GST for a "Permit Violation Charge" in its May 24, 2019 invoice #2135233. Super Save submitted a copy of an internal memo to charge Kwong \$625 that stated "charge out invoice from City of Vancouver #TA45903 permit revoked due to customer violating contracted svc. Added 25% 'processing'" (reproduced as written). Based on the evidence before me, I find Super Save double billed for the ticket since this invoice was for the same ticket as

the one in invoice #2136634. I find, again, Kwong is not responsible for paying this invoice.

21. The rest of Super Save's invoices listed in the account statement were for monthly service fees, administrative fees, carbon cost recovery, and recycled fibre cost recovery billed before April 29, 2019. Kwong did not provide any evidence that it already paid these invoices. Therefore, I find Kwong owes Super Save \$1,748.46 for the outstanding transactions. This amount includes GST.
22. Under the terms of the agreement, Super Save is entitled to 24% annual interest rate on overdue accounts from 30 days after the date of the invoice. I find \$1,748.46 was owed from the date of the last invoice, being April 30, 2019. I find Kwong owes Super Save contractual interest of 24% per annum on \$1,748.46 from May 30, 2019 to the date of this decision, which is \$457.74.

## **CRT FEES, AND EXPENSES**

23. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. Since Super Save was partially successful, I find it is entitled to reimbursement of 50% of the CRT fees which is \$87.50. Super Save did not claim dispute-related expenses.

## **ORDERS**

24. Within 14 days of the date of this order, I order the respondent, Kwong Tak Hong Herbal Products Ltd., to pay the applicant, Super Save Disposal Inc. a total of \$2,293.70, broken down as follows:
  - a. \$1,748.46 in debt,
  - b. \$457.74 in interest at the contractual interest rate of 24% per year, and

c. \$87.50 in CRT fees.

25. The applicant is entitled to post-judgment interest, as applicable.
26. Under section 48 of the CRTA, the CRT 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 CRT's final decision.
27. 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 CRT can only waive, suspend or extend mandatory time periods during the declaration of a state of emergency. After the state of emergency ends, the CRT will not have this ability. A party should contact the CRT as soon as possible if they want to ask the CRT to consider waiving, suspending or extending the mandatory time to file a Notice of Objection to a small claims dispute.
28. Under section 58.1 of the CRTA, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia. A CRT 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 CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

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Rama Sood, Tribunal Member