



Civil Resolution Tribunal

Date Issued: August 11, 2020

Files: SC-2020-000834 and
SC-2020-001871

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Fence Rentals Inc. v. Aliia Developments Ltd.*,
2020 BCCRT 894

B E T W E E N :

SUPER SAVE FENCE RENTALS INC.

APPLICANT

A N D :

ALIIA DEVELOPMENTS LTD.

RESPONDENT

A N D :

JESSI JOHNSON

RESPONDENT BY THIRD PARTY CLAIM

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This decision is about the responsibility to pay for rented fencing and allegedly damaged and missing fencing materials. In dispute SC-2020-000834, the applicant, Super Save Fence Rentals Inc. (Super Save), says the respondent, Aliia Developments Ltd. (Aliia), was the customer in a fencing agreement for rented fencing delivered to the construction site owned by the third party respondent, Jessi Johnson. Super Save claims for \$3,906.86, for allegedly missing and damaged fencing. Super Save also claims \$1,578.12 for the unpaid fencing rental, plus contractual interest. Super Save has reduced its total claims to \$5,000, the Civil Resolution Tribunal (CRT)'s small claims monetary limit.
2. Aliia denies responsibility for Super Save's claims. In its third party claim against Mr. Johnson (dispute SC-2020-001871), Aliia says Mr. Johnson hired Aliia to build his house, but ordered the fencing himself. Aliia also says that Mr. Johnson is responsible for all construction-related expenses under their construction agreement. Aliia asks that Mr. Johnson be ordered to pay anything Aliia is ordered to pay Super Save.
3. Mr. Johnson says he fired Aliia and denies ordering the fencing. Mr. Johnson says that if Aliia failed to remove and return the rented fencing it is not his responsibility.
4. Super Save is represented by an employee. Aliia is represented by its principal, Imran Ali. Mr. Johnson is self-represented.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. 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.

6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. In some respects, the parties call into question the credibility, or truthfulness, of another party. In the circumstances here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me.
7. 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.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
9. I note that in Super Save's claim against Aliia there is a period after the "Ltd.", whereas in Aliia's third party claim against Mr. Johnson there is no period. In context and having reviewed the evidence I am satisfied the period is the correct name and spelling, and so that is what I have used in the style of cause above.
10. I also note that Aliia's third party claim was inadvertently opened as a separate dispute, rather than as part of Super Save's dispute. Nothing turns on this administrative error, as CRT staff ensured all parties had the opportunity to review evidence in both dispute files and to make submissions accordingly.

ISSUES

11. The issues in these disputes are:
 - a. Did Aliia or Mr. Johnson order rented fencing from Super Save?

- b. To what extent, if any, are Aliia or Mr. Johnson responsible for Super Save's claimed \$5,000?

EVIDENCE AND ANALYSIS

12. In a civil claim such as this, the applicant Super Save bears the burden of proof, on a balance of probabilities. Aliia bears this same burden in its third party claim against Mr. Johnson. I have only referenced the evidence and submissions as necessary to give context to my decision.
13. It is undisputed Super Save provided rented fencing that was in October 2017 delivered to Mr. Johnson's property for his home construction. The issue here is whether Aliia or Mr. Johnson ordered the fencing and whether either of those parties is ultimately responsible for Super Save's proven debt and damages, if any.
14. Super Save says Aliia ordered the fencing and thus should be responsible to pay for it. In contrast, Aliia says that Super Save told it to have the homeowner (Mr. Johnson) call it and order the fencing, which Aliia says Mr. Johnson did. Aliia says that about 2 weeks later Mr. Johnson advised he planned to sell the property and would not continue building, and so Aliia left the site. Aliia says the fencing agreement is between Super Save and Mr. Johnson, which Mr. Johnson denies.
15. Super Save submitted a copy of its typed October 2, 2017 contract with Aliia as the customer, and Mr. Johnson's address as the site location. This was recorded as an account number ending in 564. Both Mr. Ali's and Mr. Johnson's email addresses were listed on the contract, with Mr. Ali named as the "contact".
16. Super Save submits Aliia's employee and authorized representative signed the agreement on Aliia's behalf. However, the contracts in evidence with Aliia typed in as the customer bears no signature at all for the "customer".
17. There is a separate October 3, 2017 fencing contract that shows more fencing was ordered for Mr. Johnson's property site. This contract has "Alias Construction" as the customer, but with the same Super Save employee TR acting as the "sales rep",

as with the October 2, 2017 contract. I note there is no witness statement from TR in evidence about how this account was set up and who ordered the fencing.

18. Super Save submitted a copy of an October 2, 2017 credit card receipt for \$589.51. The receipt notes it was Mr. Johnson's credit card. Super Save also submitted an October 3, 2017 credit card receipt for \$559.27 that shows it was Aliia's card. Yet, the credit card number ends with the same last four digits on both receipts, so I infer the receipts in evidence are Super Save's internal records rather than the credit card company's. I find both charges were to Mr. Johnson's credit card, which is undisputed. Notably, Mr. Johnson does not explain how Aliia had his credit card number, other than to allege Aliia routinely wanted expenses paid up front.
19. Super Save also submitted an October 1, 2019 fencing agreement with an MM as the customer, with a Manitoba Street address as the site address. Mr. Johnson's property was not on Manitoba Street. None of the parties explain who MM is, other than Super Save saying that on October 17, 2019 MM requested that the remaining fencing on site be "transferred over to him". The 2019 agreement indicated it was an "account transfer" from the account ending in 564. Under the "special instructions" box, it says "home owner taking over full fence rental from Oct 1, 2019 onward" with credit card authorization being sent separately and that "pre-transfer" a Super Save employee "Jeff" did a site check and noted 8 damaged 6-foot panels, and that the account ending in 564 needed to be billed for 4 missing panels, 8 bases, and 8 tops. Significantly, there is no witness statement in evidence from Jeff, such as to detail the allegedly missing and damaged fencing. In any event, I find I am unable to conclude based on this 2019 agreement with MM that Aliia was the contracting party in the relevant 2017 agreements.
20. In addition to its claim for the allegedly missing and damaged fencing material, Super Save submits Aliia owes \$1,578.12 in debt for services rendered between August 1, 2018 and November 1, 2019. I note Super Save submitted its various invoices issued to Aliia for fencing rental charges, which total only \$1,391. There is

no explanation for the discrepancy. Super Save also does not explain who paid for fencing rental between October 2017 and August 1, 2018.

21. Super Save does not explain why it issued invoices for a year with no attempts to communicate with Aliia, who Super Save says ordered the fencing and had not paid any invoices. At the same time, Mr. Johnson does not explain why he left the fencing in place and did not contact either Aliia or Super Save about it, for a year, when Mr. Johnson also submits that he told Aliia to remove everything from the site.
22. Super Save submits that TR was Aliia's employee and that TR ordered the fencing on October 2, 2017 for the Manitoba Street location. Super Save also says TR ordered more fencing for the same location on October 3, 2017. Yet the 2017 contracts above were for fencing delivered to Mr. Johnson's property, which as noted was not on Manitoba Street. Plus, on the contracts, TR's typed name as signatory is under Super Save's signature line, not Aliia's. Aliia submits it does not have an employee named TR and denies it ordered fencing. I find Super Save's inconsistent submissions about Aliia signing the contracts and about TR being Aliia's employee and not its own, supports a conclusion Super Save's evidence is not reliable. Similarly, the fact that Super Save did not submit evidence from any employee, including TR or Jeff, about the fencing order and damaged materials also leads me to place less weight on Super Save's evidence and arguments.
23. On balance, I find the weight of the evidence supports Aliia's position that Mr. Johnson ordered the fencing, not it. This conclusion is supported by: Mr. Johnson's credit card was used, there is no evidence Aliia ever paid anything for the fencing, there are no emails or signed contracts with Aliia, and the inconsistencies in Super Save's evidence. At the same time, Mr. Johnson's explanation for why his credit card was used is, I find, vague and not persuasive. He simply says Mr. Ali regularly wanted expenses paid, but Mr. Johnson does not explain how Mr. Ali would have had his credit number in order to place an order.
24. Given my findings above, I find Super Save has not proved it contracted with Aliia for fencing. Further, Aliia did not otherwise benefit from the fencing rental, Mr.

Johnson did. So, I find Super Save's arguments based on unjust enrichment cannot succeed as against Aliia. As noted above, Super Save chose to name only Aliia as a respondent, even though Super Save was aware from the outset of this proceeding that Aliia took the position the fencing contract was with Mr. Johnson and not it. I find Super Save's claims against Aliia must be dismissed.

25. Given my conclusion above, I find I do not need to discuss Super Save's claimed debt and damages in any detail. However, as noted Super Save's debt claim is inconsistent with the total of its outstanding invoices. Further, I would have dismissed Super Save's damages claim in any event since it provided no proof of the alleged damaged and missing panels, such as a statement from TR or Jeff, nor any photos of the allegedly damaged panels.
26. What about Aliia's agreement with Mr. Johnson? I find I do not need to address that in any detail, given the nature of Aliia's third party claim against Mr. Johnson. This is because Super Save did not succeed in its claim against Aliia, and so Aliia's third party claim against Mr. Johnson falls away. In other words, there is nothing for Mr. Johnson to indemnify Aliia for under their own agreement, because I have not ordered Aliia to pay Super Save anything. Since Super Save did not claim against Mr. Johnson, I make no findings about Mr. Johnson's liability to Super Save for the rented fencing.
27. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to the recovery of their CRT fees. Here, Super Save was unsuccessful so I dismiss its claim for reimbursement of CRT fees. Aliia paid \$125 for its third party claim against Mr. Johnson, an expense I find Aliia reasonably incurred in order to defend itself against Super Save's unsuccessful claims. CRT rule 9.5 says that the unsuccessful party usually must reimburse the successful party. So, I order Super Save to reimburse Aliia the \$125.

ORDERS

28. I dismiss Super Save's claims against Aliia.

29. Within 21 days of this decision, I order Super Save to pay Aliia \$125 as reimbursement of CRT fees paid for Aliia's third party claim against Mr. Johnson.
30. Aliia is entitled to post-judgment interest on the \$125, as applicable.
31. 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. 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.
32. 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 BC Provincial Court.

Shelley Lopez, Vice Chair