



Civil Resolution Tribunal

Date Issued: September 28, 2020

File: SC-2020-003173

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Continental Rebar Ltd.*, 2020 BCCRT 1086

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

CONTINENTAL REBAR LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Rama Sood

INTRODUCTION

1. This dispute is about waste disposal services. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, Continental Rebar Ltd. (Continental), breached the parties' contract when it terminated it before the agreed term ended, and in particular outside the stipulated "cancellation window". Super Save claims

\$2,962.81 in liquidated damages. It also seeks \$727.98 for unpaid invoices, plus 24% annual contractual interest on the outstanding debt.

2. Continental says it is not required to pay for services that were not provided after the contract was terminated. It also says Super Save is out of time to seek payment for the unpaid invoices.
3. Super Save is represented by an employee, MG. Continental is represented by an employee, DL.

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.

ISSUES

8. The issues in this dispute are:
 - a. To what extent, if any, Continental owes Super Save \$2,962.81 for liquidated damages,
 - b. To what extent, if any, Continental owes Super Save \$727.98 in debt, and
 - c. Whether Super Save is out of time to seek payment of invoices from December 2016 and January 2017.

EVIDENCE AND ANALYSIS

9. In a civil claim such as this, the applicant, Super Save, 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. Witnesses and others are identified by their initials which are known to the parties.
10. On March 23, 2012, the parties' signed a 3-year agreement. The agreement was a 1 page pre-printed form created by Super Save and filled in and signed by the parties. It included the following relevant terms:
 - a. The effective date of the agreement was April 1, 2012.
 - b. Super Save agreed to provide waste disposal services to Continental.
 - c. The term of the agreement was 3 years, subject to automatic 3 year renewals unless cancelled in accordance with the agreement.
 - d. Continental could terminate the agreement at the end of the term, or renewal term, by providing notice between 90 to 120 days before the end of the term by registered mail (known as the cancellation window).

- e. Super Save would contact Continental 4 months prior to the renewal to negotiate. The agreement did not state what terms were subject to negotiation.
 - f. Payment was due within 30 days of the invoice date and Super Save charged interest on overdue accounts at a rate of 24% per year.
 - g. If Continental terminated the agreement before the end of the term, Super Save could accept the repudiation of the agreement and terminate the agreement.
 - h. If Continental repudiated or terminated the agreement before the term or its renewal's end, it agreed to pay the greater of either the sum of the billings for the most recent 9 months, or the sum of the amounts due to Super Save for the balance of the term remaining on the agreement.
11. It is undisputed that the parties renewed the agreement on April 1, 2015 and again on April 1, 2018 with that term scheduled to end on April 1, 2021. This means that Continental would have to notify Super Save by registered mail between December 2, 2020 and January 1, 2021 if it wanted to terminate the agreement.
12. In a May 1, 2019 email, Continental's employee, JF, notified Super Save that Continental wanted to end the service effective the same day.
13. In a May 10, 2019 letter, Super Save informed Continental that if it cancelled the agreement, Continental would be responsible to pay Super Save the balance of all monthly payments for the remaining 22 months, which would be \$2,821.72 plus \$141.09 GST for a total of \$2,962.81. In addition, Super Save stated Continental would also be responsible for any removal charges or outstanding balances.
14. In a July 22, 2019 letter to Continental, Super Save terminated the agreement on the basis that Continental had breach the contract. It enclosed a copy of its account and requested immediate payment.

15. Super Save says Continental breached the agreement by terminating it before the end of the term and seeks liquidated damages and payment of Continental's outstanding account.
16. Continental denies it breached the agreement. It submitted another copy of a pre-printed agreement dated June 1, 2019. Aside from the date, the other fields in the agreement were not completed. Continental says the definition of "exclusive right" in the 2019 agreement was "expanded". I infer Continental meant that the definition of "exclusive right" was different than in the 2012 agreement. Continental did not explain the significance of the clause or how that affected Super Save's claim that Continental breached the 2012 agreement. I find at most it demonstrated that in June 2019 the parties may have discussed a new agreement. Since the 2019 agreement was not completed or signed by the parties, I find it is irrelevant and I give it no weight.
17. I find Continental breached the agreement by cancelling it before the end of the term and outside of the cancellation window. Continental also failed to notify Super Save by registered mail. Under the agreement's terms, I find Super Save is entitled to an amount equal to 22 months of service fees plus GST as liquidated damages. This equals \$2,962.81.
18. Super Save also seeks \$727.98 in debt for the following invoices which it says are still unpaid:
 - a. December 31, 2016 invoice for \$117.81 monthly service fee,
 - b. January 31, 2017 invoice for \$117.81 monthly service fee,
 - c. December 31, 2017 invoice for \$117.81 monthly service fee,
 - d. April 30, 2019 invoice for \$140.99 monthly service fee, and
 - e. May 29, 2019 for \$141.75 for bin removal fee.

19. Super Save also issued a credit note for -\$8.75 on May 29, 2019. I note that these invoices, after adjusting for the credit note, total \$627.42. Super Save did not explain the difference between the amount it seeks in debt, \$727.98, and the invoice total but I infer it is for interest expenses charged at 24% per annum.
20. Continental says that its records show that it paid for all services Super Save provided up to April 2019. However, it did not submit a copy of its records as evidence. Parties are told during the facilitation stage of a CRT dispute to provide all relevant evidence. Continental did not explain why it failed to provide this alleged evidence, which on balance I find was available to it and relevant. And so, I find Continental failed to prove it paid all invoices.
21. Continental also says the December 2016 and January 2017 invoices are statute-barred because they are over 2 years old. Under section 6 of the *Limitation Act* a court proceeding must be commenced within 2 years of a claim being discovered. Section 13.1 of the CRTA says that a limitation period stops running once an applicant submits a CRT application and pays the applicable fees. Super Save made its CRT application and paid the required fees on April 17, 2020 and so under the *Limitation Act*, its claims should be for debts from no later than April 17, 2018.
22. The court in *Walters v. Meiner*, 2004 BCSC 393 at paragraph 17 stated that where a series of debts are kept as a running account, the debtor, the creditor, or the court may determine how a payment is to be allocated. If neither the debtor or the creditor makes the allocation, then it is presumed that the oldest debt is paid first. Although *Walters* involved a loan between the parties, the court has also applied this principle to unpaid invoices for services (see *Jacquelin Siebert, dba Vancouver Homestay International v. JWS International Trade Corporation*, 2007 BCSC 1633 at paragraph 55).
23. I find Super Save did not allocate Continental's subsequent payments to the December 2016, January 2017, or December 2017 invoices since Super Save stated in Continental's March 3, 2020 outstanding transactions statement that each was more than 1,000 days overdue. Following the court's decision in *Walters*, I find

Super Save missed the limitation period for seeking payment of these 2 invoices. However, I find the same reasoning applies to the December 31, 2017 invoice.

24. I find Super Save is entitled to charge the April 2019 monthly fees of \$140.99 and also \$141.75 for the bin removal fee under the agreement's terms. In total, Super Save is entitled to \$273.99 in debt after adjusting for the credit note. 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 Continental owes Super Save contractual interest of 24% per annum on \$273.99 from 30 days after the date of each invoice, to the date of this decision, which is \$82.15.
25. I find the *Court Order Interest Act* applies to Super Save's claim for liquidated damages. It is entitled to pre-judgement interest on \$2,962.81 from May 10, 2019, the date of Super Save's demand letter to Continental, to the date of this decision. This equals \$3.02.

CRT FEES AND EXPENSES

26. 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. I find Super Save is entitled to reimbursement of \$175 in CRT fees. Super Save did not claim dispute-related expenses.

ORDERS

27. Within 14 days of the date of this order, I order Continental Rebar Ltd. to pay Super Save Disposal Inc. a total of \$3,496.97, broken down as follows:
 - a. \$273.99 in debt,
 - b. \$82.15 in 24% annual contractual interest on the debt,
 - c. \$2,962.81 in liquidated damages,

- d. \$3.02 in pre-judgment interest under the *Court Order Interest Act*, and
- e. \$175 in CRT fees.

28. Super Save Disposal Inc. is entitled to post-judgment interest, as applicable.

29. 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.

30. The Province of British Columbia has enacted a provision under the *COVID-19 Related Measures Act* which says that statutory decision makers, like the CRT, may waive, extend or suspend mandatory time periods. This provision is expected to be in effect until 90 days after the state of emergency declared on March 18, 2020 ends, but the Province may shorten or extend the 90-day timeline at any time. 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.

31. 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.

Rama Sood, Tribunal Member