



Civil Resolution Tribunal

Date Issued: December 2, 2020

File: SC-2020-004853

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Pretty*, 2020 BCCRT 1368

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

JACQUELINE PRETTY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about waste disposal services. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, Jacqueline Pretty, breached the parties' September 21, 2018 5-year contract when she failed to pay for services rendered.

Super Save claims \$1,266.39 in debt and \$4,615.34 in liquidated damages, but has reduced its total claim to \$5,000, the maximum small claims limit for the Civil Resolution Tribunal (CRT).

2. In her Dispute Response filed at the outset of this proceeding, Ms. Pretty said Super Save never told her about a 5-year contract and had said that it could be cancelled at any time. Ms. Pretty also says she gave Super Save information to withdraw monthly payments, but Super Save never did.
3. Super Save is represented by an employee. Ms. Pretty is self-represented.

JURISDICTION AND PROCEDURE

4. 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)*. Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
5. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
6. Section 42 of the CRTA says 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 the respondent Ms. Pretty breached the parties' waste disposal services contract, and if so, to what extent if any is the applicant Super Save entitled to the claimed debt and liquidated damages.

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, the applicant Super Save must prove its claims on a balance of probabilities. Ms. Pretty chose not to provide any evidence or submissions, despite the CRT giving her multiple opportunities to do so. I have read all the evidence and submissions before me but refer only to the evidence and submissions that I find relevant to provide context for my decision.
10. I find the evidence shows that on September 15, 2018 Ms. Pretty signed a 5-year renewable waste disposal services contract. The contract's effective date was September 21, 2018. While Ms. Pretty initially said she did not know it was a 5-year contract, I find the signed contract on its face makes this clear in clause 2.
11. On September 21, 2018, Super Save delivered a bin under the contract and started services, which I accept as it is undisputed and is supported by Super Save's delivery receipt for that date.
12. The evidence shows Ms. Pretty never paid anything under the contract. As provided under clause 5 of the contract, on March 8, 2019 Super Save suspended Ms. Pretty's service due to non-payment. The contract provided for continued monthly billing during the period of suspension.
13. Super Save removed its bin from Ms. Pretty's property on May 1, 2019.

14. On October 23, 2019, Super Save wrote Ms. Pretty that due to her breach of contract it was terminating the contract.
15. I find under the contract Ms. Pretty is liable for monthly services up until October 23, 2019, the date Super Save terminated the contract due to Ms. Pretty's breach for non-payment. Notably, Ms. Pretty does not deny receiving the services, and I find Super Save's records show they were provided.
16. As noted, Ms. Pretty provided no evidence or submissions in support of her position at all, including her Dispute Response assertion that she gave Super Save information to withdraw monthly payments. I find there is no evidence before me to support that assertion and I do not accept it. I find Ms. Pretty never paid.
17. In her Dispute Response, Ms. Pretty also said she understood once the bin was removed, she "would have to pay the unpaid services". I find Ms. Pretty admits she owes Super Save for services provided. Ms. Pretty's essential objection is to the liquidated damages claim, discussed below.
18. I turn next to the value of the debt claim. Among other things, the contract provided bi-weekly (or "EOW") service at a monthly charge of \$70, with \$50 for extra lifts. It also provided for a \$8.95 administration fee per invoice, an \$85 bin delivery fee, \$135 bin removal charge, plus a 5% fuel charge. It set out a 24% per year interest rate for balances outstanding after 30 days.
19. These invoices total \$1,075.48, for services between September 21, 2018 and March 31, 2019, and then on May 1, 2019 when Super Save removed its bin. Super Save does not explain the discrepancy between this figure and the claimed \$1,266.39. Apart from a January 22, 2019 invoice for \$56.54 for "service resumption" (and the permitted administration fee), the invoices all reflect monthly charges and administration fees and fuel surcharges permitted under the contract. I allow \$1,018.94 in debt, because I do not allow the \$56.54 as "service resumption" is not explained, and since that was the only reason for that invoice I also do not allow the administration fee charged on that invoice.

20. I turn to liquidated damages, which Super Save claimed in its October 22, 2019 invoice. Liquidated damages are a contractual pre-estimate of the damages suffered by a party in the event of a breach of contract. I acknowledge that this clause is onerous. However, in *Tristar Cap & Garment Ltd. v. Super Save Disposal Inc.*, 2014 BCSC 690, the British Columbia Supreme Court held that a similar contract was enforceable under similar circumstances, and this decision is binding on me.
21. I do not accept Ms. Pretty's unsupported assertion that Super Save ever told her she could cancel the contract "anytime". I also note Ms. Pretty submitted no evidence that she ever sought to cancel the contract, which required written cancellation by registered mail no more than 120 days and not less than 90 days before the contract's end (known as a cancellation window, which here would have been in 2023). So, Ms. Pretty could not have properly cancelled the contract under its terms.
22. Super Save says it is entitled to \$4,615.34, for 52 months of service. Clause 11 of the contract says Super Save can claim liquidated damages in the amount equal to monthly charges for the balance of the term, based on the monthly invoice amount immediately before the date Super Save terminated the agreement (called the Repudiation Date). The last invoice for regular monthly services was March 31, 2019 for \$108.81. Super Save ended the contract on October 23, 2019, 46 months and 29 days before the contract was to end on September 21, 2023. So, I find Super Save is entitled to \$5,005.26 in liquidated damages under the contract (46 x \$108.81).
23. However, as noted above, Super Save has reduced its total claim to \$5,000, given the CRT's small claims monetary limit of \$5,000. So, I find Ms. Pretty must pay \$1,018.94 in debt and \$3,981.06 in liquidated damages, for a total award of \$5,000. I note the monetary limit is exclusive of dispute-related expenses and interest under the *Court Order Interest Act* (COIA), discussed below.
24. Although the parties' contract allowed for contractual interest, Super Save did not make an interest claim. While the COIA applies to the CRT, I make no order for pre-judgment interest under the COIA on the \$1,018.94 award for the debt claim, because the COIA says it does not apply where there is an agreement about interest.

25. As for interest on the liquidated damages, I find the parties' agreement about interest only applied to monthly charges, not liquidated damages. So, I find Super Save is entitled to pre-judgment interest under the COIA on the \$3,981.06, from November 21, 2019 to the date of this decision. This equals \$55.02.
26. Under section 49 of the CRTA and the CRT's rules, as Super Save was successful in this dispute, I find it is entitled to reimbursement of \$175 in paid CRT fees. No dispute-related expenses were claimed.

ORDERS

27. Within 30 days of this decision, I order Ms. Pretty to pay Super Save a total of \$5,230.02, broken down as follows:
 - a. \$1,018.94 in debt,
 - b. \$3,981.06 in liquidated damages,
 - c. \$55.02 in pre-judgment COIA interest, and
 - d. \$175 in CRT fees.
28. Super Save 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. 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.

30. 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.

Shelley Lopez, Vice Chair