



Civil Resolution Tribunal

Date Issued: February 12, 2021

File: SC-2020-004699

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Huang v. Super Save Disposal Inc.*, 2021 BCCRT 171

B E T W E E N :

TIE HUA HUANG

APPLICANT

A N D :

SUPER SAVE DISPOSAL INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Richard McAndrew

INTRODUCTION

1. This dispute is about waste disposal services. The respondent, Super Save Disposal Inc. (Super Save) is a waste disposal business. The applicant, Tie Hua Huang operates a business under the name Quality Foods. Ms. Huang hired Super Save to

provide waste disposal services. Super Save originally claimed against Ms. Huang but then withdrew its claims before this dispute reached the decision stage. So, the only claim before me is Ms. Huang's claim against Super Save, as reflected in the style of cause above.

2. Ms. Huang claims that Super Save breached the parties' contract by stopping its waste disposal services. Ms. Huang claims damages of \$2,995. Ms. Huang also says that Super Save improperly charged her for a city waste disposal bin permit.
3. Super Save denies Ms. Huang's claim. Super Save says that it was entitled suspend service under the contract because of Ms. Huang's alleged non-payment.
4. Super Save is represented by an employee. Ms. Huang is self-represented.

JURISDICTION AND PROCEDURE

5. 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). 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.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, or a combination of these. Though I found that some aspects of the parties' submissions called each other's credibility into question, I find I am properly able to assess and weigh the documentary evidence and submissions before me without an oral hearing. In *Yas v. Pope*, 2018 BCSC 282, the court recognized that oral hearings are not always necessary when credibility is in issue. Further, bearing in mind the CRT's mandate of proportional and speedy dispute resolution, I decided I can fairly hear this dispute through written submissions.

7. 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.
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, pay money or make an order that includes any terms or conditions the CRT considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did Super Save properly charge Ms. Huang for the waste disposal bin permit fee?
 - b. Did Super Save breach the parties' contract by stopping its waste disposal services?
 - c. If so, how much must Super Save pay, if any, in damages to Ms. Huang?

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, the applicant, Ms. Huang, must prove her claim on a balance of probabilities. I have read all the parties' submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. Ms. Huang entered a 5-year contract with Super Save on August 16, 2012 for waste disposal services. It is undisputed that the agreement renewed for an additional 5 years to August 15, 2022.
12. Clause 5 of the contract says that Ms. Huang's payments are due within 30 days of the invoice date and Super Save can suspend service on reasonable notice for non-payment.

13. Super Save says it suspended service for non-payment. Super Save's account notes say that it mailed Ms. Huang a suspension notice on December 6, 2019 and it suspended service on December 19, 2019. It is undisputed that Super Save removed its waste disposal bin in April 2020.

Did Super Save properly charge Ms. Huang for the waste disposal bin permit fee?

14. Ms. Huang says she did not owe Super Save a debt for unpaid service when it suspended waste collection. Ms. Huang also disagrees with Super Save's January 31, 2019 invoice for \$758.42 for the 2019 city waste disposal bin permit fee. This is an annual city fee charged to place waste disposal bins on city property. Super Save purchased the permit from the city each year and then charged Ms. Huang for reimbursement of this expense.

15. Ms. Huang says she told Super Save not to purchase the city waste bin permit for 2019 because she moved her waste bin from the city alley to her business property. On December 31, 2018, HY, Ms. Huang's business' manager, emailed Super Save and told it not to apply for the 2019 city waste bin permit. On January 3, 2019, Super Save confirmed Ms. Huang's service address and on January 4, 2019, Super Save emailed HY and wrote that Ms. Huang's business was not on its 2019 permit list. Based on these emails, I find that Super Save knew that Ms. Huang did not authorize the purchase of a 2019 city waste bin permit. However, Super Save purchased the permit and invoiced her for this charge on January 31, 2019.

16. Ms. Huang provided an August 19, 2020 city email saying that the city charged Super Save \$627.30 for the 2019 permit for Ms. Huang's business. Super Save did not explain why its \$758.42 invoice differs from the \$627.30 the city says it charged. The city's email also said that Super Save notified it on August 9, 2019 that Ms. Huang's bin had been removed from the alley. The city said it refunded Super Save \$209.10 of the 2019 permit fees. Super Save's records do not show that the \$209.10 refund was credited to Ms. Huang's account. Further, Super Save did not explain why it waited until August 9, 2019 to notify the city that Ms. Huang's permit was not needed.

17. Based on the emails exchanged between parties, I find that Ms. Huang did not authorize Super Save to pay the 2019 city waste bin permit fees on her business' behalf. Further, I find that this fee is not payable under the parties' waste disposal contract. As such, I find that Ms. Huang did not have an obligation to reimburse Super Save for this expense. So, I find that Ms. Huang did not owe the \$758.42 invoiced on January 31, 2019.

18. I now turn to Super Save's suspension of service.

Did Super Save breach the contract by suspending service?

19. Super Save says that Ms. Huang did not make payments since September 2019 and it suspended service on December 19, 2019. Between September and December 2019, Super Save issued Ms. Huang invoices of \$146.14 on September 30, October 31 and November 30, 2019. This totals \$438.42.

20. Super Save's record show that Ms. Huang paid \$441.34 on December 4, 2019. This amount exceeds the \$438.42 that Ms. Huang owed for the September to November, 2019 service invoices. However, Super Save's account notes say that it applied Ms. Huang's \$441.34 December 4, 2019 payment to the January 31, 2019 invoice for the city waste bin permit. As discussed above, I find that Ms. Huang did not owe Super Save a debt for the city permit fee. So, I find that Super Save was not entitled to apply the \$441.34 payment to the January 31, 2019 invoice. Further, I find that since the \$441.34 payment exceeded the amount owed on the September to November, 2019 invoices, Ms. Huang did not owe Super Save a debt for unpaid services in December 2019. So, I find that Super Save was not entitled to suspend service for non-payment in December 2019.

21. For the above reasons, I find the Super Save breached the contract by suspending service. So, I must now determine what damages, if any, Ms. Huang is entitled to.

Did Ms. Huang suffer any damages?

22. Ms. Huang claims damages of \$2,995 for Super Save's suspension of waste disposal services. However, Ms. Huang has the burden of proving her damages and, for the following reasons, I find that she has failed to do so.
23. Although Super Save suspended service in December 2019, Super Save did not remove its waste bin until April 2020. Super Save continued to invoice Ms. Huang for waste disposal services from December 2019 to April 2020. However, Super Save says that Ms. Huang did not make any payments after her December 4, 2019 payment.
24. Ms. Huang says her business did not have sufficient space for another waste disposal bin until Super Save removed its bin. Ms. Huang says that during these 4 months she needed to take her waste to a waste disposal facility daily. However, Ms. Huang does not say that she asked Super Save to remove its waste bin earlier. Further, Super Save's customer communication notes do not have a record of such a request.
25. Ms. Huang says that it cost \$300 per month, for 4 months, to replace Super Save's waste disposal service. I infer that this amount is based on her expense of delivering waste to the waste disposal facility. However, Ms. Huang has not provided any receipts or invoices to support this amount.
26. Further, Ms. Huang claims that she spent 45 hours, at the rate of \$33.50 per hour, to resolve this matter. However, Ms. Huang does not explain the basis for her claimed \$33.50 hourly rate. Ms. Huang says this time was spent going to the city hall 3 times, making numerous attempts to contact Super Save and looking for a replacement waste disposal service. While Super Save could be responsible for Ms. Huang's expenses incurred to replace its waste disposal service, Ms. Huang did not explain what efforts she took to find a replacement service. I find that Ms. Huang has not provided sufficient evidence to prove the extent of these damages or that these damages were caused by Super Save's breach of contract.

27. I find that Ms. Huang has failed to prove that she has suffered any losses from Super Save's breach of contract. So, I dismiss her claim.

28. Since Ms. Huang was unsuccessful in her claim, I dismiss her claim for CRT fees. Super Save does not claim reimbursement of CRT fees or expenses.

ORDER

29. I dismiss Ms. Huang's claim and this dispute.

Richard McAndrew, Tribunal Member