



# Civil Resolution Tribunal

Date Issued: February 25, 2021

File: SC-2020-004748

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Two Lions Public House Ltd.*,  
2021 BCCRT 225

B E T W E E N :

SUPER SAVE DISPOSAL INC.

**APPLICANT**

A N D :

TWO LIONS PUBLIC HOUSE LTD.

**RESPONDENT**

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## REASONS FOR DECISION

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Tribunal Member:

Richard McAndrew

## INTRODUCTION

1. This dispute is about waste disposal services. The applicant, Super Save Disposal Inc. (Super Save) provided waste disposal services to the respondent, Two Lions

Public House Ltd. (Two Lions). Super Save says Two Lions breached its contract when it failed to pay for waste disposal services and attempted to improperly end the contract. Super Save claims \$2,084.44 in debt and \$2,915.56 in liquidated damages.

2. Two Lions says the company has been closed since February 4, 2020 and is unable to pay for the waste disposal services.
3. Both parties are represented by employees.

## **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). 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 properly 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 Two Lions breached the parties' waste disposal services contract, and if so, to what extent if any is 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. 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. I note that Two Lions has not provided any evidence even though it had the opportunity to do so and the CRT staff reminded it.
10. Super Save provided a May 1, 2015 contract (2015 contract) for waste disposal services. The contract was signed by KB on behalf of Two Lions. KB identified themselves as Two Lions' operations manager. Although Two Lions said in its Dispute Response that it has not seen a signed contract, I find that Two Lions submissions acknowledge that it had a contract with Super Save in its submissions. So, I find that Two Lions was bound by the 2015 contract.
11. The 2015 contract had a 1-year, non-renewable term. The contract also said interest was payable at the rate of 24% per year on overdue monthly charges.
12. The parties did not provide any submissions or evidence about whether a new contract was entered after the 2015 contract expired in 2016. However, Super Save's billing records show that it continued to provide waste disposal services from 2015 to 2020. Further, Super Save provided waste disposal lift tickets showing waste disposal collections from Two Lions from June 2019 to January 2020. Based on Super Save's undisputed service records, I find that the parties continued the 2015 contract until a new contract was entered on December 1, 2019.
13. The parties entered a new 1-year, non-renewable waste disposal services contract on December 1, 2019, with an effective date of January 1, 2020 (2020 contract). The

2020 contract also provided for interest at the rate of 24% per year on overdue monthly charges.

14. The 2020 contract was signed by JS on behalf of Two Lions. JS identified themselves as Two Lion's owner. Based on JS's signature, I find that Two Lions signed the 2020 contract and Two Lions is bound by the terms of the agreement.
15. Two Lions says its business lease was rejected and the company has been closed since February 4, 2020. Super Save says Two Lions requested cancellation on February 24, 2020. Since this is not disputed, I find that Two Lions tried to end the 2020 contract on February 24, 2020.
16. The 2020 contract says that Two Lions can only end the contract by giving written notice by registered mail no more than 120 days and not less than 90 days before the contract's end. Since the contract was due to expire on December 31, 2020, Two Lions did not attempt to end the contract less than 120 days before the contract expiration as required under the contract. So, I find that Two Lions did not properly cancel the contract under its terms.
17. Super Save sent a February 24, 2020 letter saying that Two Lions' request to end the contract repudiated the contract and that Super Save accepted the repudiation. Repudiation occurs when a party shows an intention to no longer be bound by an agreement. If the repudiation is accepted, the contract ends (See *Kuo v. Kuo*, 2017 BCCA 245). I find that Two Lions breached the contract by repudiating the contract before the expiration of the contract's term, which was to end on December 31, 2020. Based on Super Save's undisputed letter, I find that the contract ended when Super Save accepted Two Lions' repudiation of the contract on February 24, 2020.
18. Super Save says Two Lions owes \$ 2,084.44 for unpaid waste disposal services. Of this alleged debt, Super Save says Two Lions owes \$748.46 for waste disposal services provided from September 2019 to December 2019. Super Save also says Two Lions owes \$1,335.98 owed under the 2020 contract. Super Save provided supporting invoices and billing records. Two Lions does not dispute owing a debt for

unpaid work. However, it says it is only responsible for monthly service charges, not additional fees.

19. In addition to the monthly service charges, Super Save's invoices include charges for administrative fees, container maintenance, interest, carbon tax cost recovery, and bin removal. I find that the 2015 contract does not provide for administrative fees or container maintenance fees. So, I do not allow these charges on the 2019 invoices. This totals \$75.12. Although the carbon tax cost recovery charge is not included in the contract, I infer that this is a tax payable on Two Lion's behalf so I allow this charge. After deducting the \$75.12 in disallowed charges, I find that Two Lions owes \$673.48 in unpaid work for 2019.
20. I find that Super Save's administrative fees, container maintenance fees, interest, and bin removal fees are included in the 2020 contract. So, I find that Two Lions is responsible for these expenses. However, I find that Two Lions is not responsible for any monthly service fees after Super Save ended the contract on February 24, 2020. Super Save's invoices show that Two Lions owes \$749.48 for waste disposal service in January and February 2020. I find that Two Lions also owes \$141.75 for the bin removal fee on the March 6, 2020 invoice. So, I find that Two Lions owes \$891.23 for unpaid waste disposal service under the 2020 contract.
21. For the above reasons, I find that Two Lions owes \$1,564.71 in unpaid waste disposal services.
22. I turn to liquidated damages, which Super Save claimed in its April 30, 2020 invoices. 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.
23. Clause 11 of the contract says Super Save can claim liquidated damages in the amount equal to the monthly charges for the balance of the term, based on the

monthly invoice amount immediately before the date Super Save ended the agreement. The last invoices for regular monthly services were dated January 31, 2020 for \$52.92, \$132.30 and \$152.13. These invoices totaled \$337.35 in monthly service charges.

24. Super Save says it is entitled to liquidated damages of \$2,915.56. Since Super Save ended the contract 10 months and 5 days before the completion of the contract's term, I find Super Save is entitled to liquidated damages in the amount equal to \$337.35 per month, for 10 months of service under the contract. This totals \$3,373.50. However, since Super Save has only claimed liquidated damages of \$2,915.56, I find that Two Lions owes that amount.
25. Although the parties' 2015 and 2020 contracts allowed for contractual interest, Super Save did not make an interest claim. In *Super Save Disposal Inc. v. Pretty*, 2020 BCCRT 1368, the applicant did not claim for contractual interest, though as is the case here, the parties' contract allowed for it. In *Pretty*, a CRT Vice Chair noted that the *Court Order Interest Act* (COIA) does not apply where there is an agreement about interest. So, the Vice Chair did not order any interest for the unpaid monthly waste disposal services. However, the Vice Chair found that the parties' agreement about interest did not apply to liquidated damages so the applicant was awarded pre-judgment interest under the COIA for the liquidated damages.
26. Although the decision in *Pretty* is non-binding, I agree with the Vice Chair's reasoning and find it applicable to this dispute. Since the parties had an agreement about interest, I make no order for pre-judgment interest under the COIA on the \$1,564.71 debt for unpaid waste disposal services. However, I find that the parties' agreement about interest does not apply to liquidated damages. So, I find that Super Save is entitled to pre-judgment interest under the COIA on the \$2,915.56 of liquidated damages from the date of the liquidated damages invoices on April 30, 2020 to the date of this decision. This equals \$18.23.

27. 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**

28. Within 30 days of the date of this order, I order Two Lions to pay Super Save a total of \$4,673.50, broken down as follows:

- a. \$1,564.71 in debt,
- b. \$2,915.56 in liquidated damages,
- c. \$18.23 in pre-judgment COIA interest, and
- d. \$175 in CRT fees.

29. Super-Save is entitled to post-judgment interest, as applicable.

30. 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.

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.

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Richard McAndrew, Tribunal Member