



Civil Resolution Tribunal

Date Issued: February 26, 2021

File: SC-2020-004721

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. Verka Food International Limited*,
2021 BCCRT 230

B E T W E E N :

SUPER SAVE DISPOSAL INC.

APPLICANT

A N D :

VERKA FOOD INTERNATIONAL LIMITED

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

David Jiang

INTRODUCTION

1. This dispute is about an alleged breach of a waste disposal contract. The applicant, Super Save Disposal Inc. (Super Save), says it entered into a written contract with

the respondent, Verka Food International Limited (Verka). Super Save says it agreed to provide bins and remove waste for Verka. It says Verka has failed to pay its invoices and claims \$2,130.97 in debt and \$1,001.70 as liquidated damages under the contract.

2. Verka disagrees. It says an ex-employee, DP, signed the contract without authorization. Verka says it did not learn about the contract until after it terminated DP's employment.
3. An employee represents Super Save. Verka's owner, Gagan Matta, represents Verka.
4. For the reasons that follow, I find that DP did not have any actual or ostensible authority to bind Verka in a contract with Super Save. As such, I dismiss Super Save's claims and this dispute.

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. 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.

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. I find the issues in this dispute are as follows:
 - a. Did the parties enter into a binding written contract?
 - b. To what extent, if any, is Super Save entitled to the claimed debt and liquidated damages?

EVIDENCE AND ANALYSIS

10. In a civil claim such as this, the applicant Super Save bears the burden of proof, on a balance of probabilities. Though I have reviewed all the evidence and submissions, I only refer to what is necessary to explain my decision.
11. The following background facts are undisputed. On September 3, 2019, Super Save and DP signed a contract. Under its terms, Super Save agreed to provide 2 bins and remove garbage periodically for Verka.
12. DP appeared to sign the contract on behalf of Verka. As noted above, Verka agrees that DP was previously its employee, though it says he signed the contract without authorization. I will discuss this and DP's role in further detail below.
13. Two delivery slips shows Super Save delivered its bins under the agreement on September 9, 2019. It issued its first invoice to Verka on the same date. A record of

employment, referred to below, shows that DP stopped working for Verka on September 15, 2019.

14. On October 9, 2019, Verka's employee KK emailed Super Save. KK wrote that Verka received Super Save's invoice, but Mr. Matta had never agreed to switch from its waste disposal vendor to Super Save. KK asked Super Save to send a copy of the written contract.
15. Super Save's representative emailed back that same day that it would send a written copy of the contract. She also asked Verka's owner to call her. An October 9, 2019 letter to Verka and a registered mail receipt show Super Save sent Verka a copy of the written contract, and Verka received it.
16. There is no indication that Verka or Mr. Matta immediately responded. Super Save continued to provide waste disposal services and send monthly invoices to Verka. Super Save's records show the Verka did not pay any of the invoices. The parties did not directly address whether Verka used Super Save's bins, but I infer that it did not.
17. On January 20, 2020, KK emailed Super Save again. KK wrote that Verka had continued to receive invoices but reiterated that Mr. Matta never agreed to switch waste disposal vendors. KK also wrote that the contract signatory, DP, was an ex-employee. KK asked to arrange a time for them to discuss. Super Save emailed back on January 22, 2020, saying it would respond in 2 to 3 business days.
18. Super Save then sent a February 11, 2020 letter demanding payment of \$1,361.68. It warned that if the outstanding amount was not paid within 10 days, it would recover its equipment and seek damages under section 11 of the written contract. Section 11 sets out Super Save's rights to claim liquidated damages.
19. On April 21, 2020, Super Save removed the 2 bins, as shown in 2 delivery receipts. I infer from the correspondence that there were more emails and calls that are not before me. The next email in evidence is dated May 21, 2020, from KK to Super Save. KK wrote that he had been trying to contact Super Save about the contract dispute for the last few months but had not heard anything back. Super Save responded in a

May 25, 2020 email that it would forward KK's email to its retention department. Neither party provided evidence on whether they contacted each other further.

Did the parties enter into a binding written contract?

20. As noted above, Verka submits that DP did not have approval or authority to sign the contract on Verka's behalf with Super Save. The law of agency applies to this dispute.
21. In *R & B Plumbing & Heating Ltd. v Gilmour*, 2018 BCSC 1295, the court explained that under the law of agency, an employee can bind an employer when the employee has actual or ostensible authority. In summary, actual authority is the authority which an employer gives its employee under an express or implied agreement between employer and employee. Ostensible authority exists where the employer represents to third parties that another person has authority to bind the employer. The representation may take a variety of forms, including conduct. Ostensible authority is often found to exist where the act in question falls within the ordinary duties of the employee. Ostensible authority may exist in the absence of an employee's actual authority.
22. I asked the parties to provide submissions and evidence on whether DP had ostensible authority to sign the contract and bind Verka. Super Save provided copies of emails. They show that in June 2019 Verka's financial controller wrote to Super Save and included DP as a recipient. I note these emails predate the contract at issue. DP emailed Super Save a copy of a cheque to pay Super Save for money owing under a different account. DP used a Verka email account and included a signature showing his title as warehouse supervisor. Super Save provided a copy of the cheque, which shows someone other than DP signed it.
23. Verka provided a copy of DP's employment contract and record of employment, showing DP worked for Verka from June 10 to September 15, 2019. Super Save objected to this evidence as late. It was provided 2 days after a February 15, 2021 deadline. However, I Super Save had the opportunity to review it and provide submissions and evidence in response. Consistent with the CRT's mandate that

includes flexibility, I find there is no actual prejudice to Super Save and I allow the late evidence.

24. From the above I am not satisfied that DP had ostensible authority to bind Verka. The emails only show that Super Save and DP dealt with each other briefly and in very limited circumstances. They do not show any representation by Verka to Super Save that DP could bind Verka. I also find that DP's title of warehouse supervisor naturally suggests that DP's duties were limited to the warehouse. I was not provided any evidence that a warehouse supervisor like DP could ordinarily or customarily bind its employer by signing significant contracts like this one. The emails and cheques also indicate that DP did not have direct control over Verka's finances.
25. Having reviewed DP's employment contract, I am also not satisfied that DP had any actual authority to bind Verka. There is nothing in his described duties that would suggest such authority, nor would I find it reasonable to imply it in the circumstances.
26. Although I do not find it necessary for my decision, I note that Verka explained why DP signed the contract. It says that DP was friends with Super Save's representative.
27. As I have found DP signed the contract without actual or ostensible authority from Verka, it follows that the contract is not binding on Verka.
28. I might have reached a different conclusion if Verka had ratified the contract. This is one manner in which actual authority can be found to exist after an originally unauthorized act of an agent: *G.R.A.M. Contracting Ltd. v. Biosource Power*, 2014 BCSC 350 at paragraph 28. However, Verka objected to Super Save's invoices starting in October 2019. At no point did it say it was in a binding contract with Super Save. Verka remained silent in November and December 2019 but it renewed its objections in January 2020. I cannot conclude from this that Verka ever ratified the contract.
29. As I have found the contract is not binding, I dismiss Super Save's claims and this dispute.

30. 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. Verka is the successful party. It paid no CRT fees and claimed no dispute-related expenses. I therefore do not order any reimbursement for the parties.

ORDER

31. I dismiss Super Save's claims and this dispute.

David Jiang, Tribunal Member