



Civil Resolution Tribunal

Date Issued: March 9, 2021

File: SC-2020-009074

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Super Save Disposal Inc. v. What Key Auto Sales Ltd.*, 2021 BCCRT 258

BETWEEN:

SUPER SAVE DISPOSAL INC.

APPLICANT

AND:

WHAT KEY AUTO SALES LTD.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Leah Volkers

INTRODUCTION

1. This dispute is about a waste disposal services contract.
2. The applicant, Super Save Disposal Inc. (Super Save), says the respondent, What Key Auto Sales Ltd. (What Key), breached their agreement for waste disposal

services by failing to cancel as required by the agreement. Super Save also claims What Key failed to pay for services rendered. Super Save claims \$267.26 in debt and \$1,003.82 in liquidated damages.

3. What Key says it notified Super Save that it was cancelling the agreement because What Key was moving. What Key says that Super Save's waste disposal services were substandard.
4. Super Save is represented by an employee. What Key is represented by WW who I infer is a principal or employee.

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. The issues are to what extent, if any, What Key owes Super Save:
 - a. \$267.26 in debt for unpaid waste disposal services, and
 - b. \$1,003.82 in liquidated damages.

EVIDENCE AND ANALYSIS

10. In a civil proceeding like this one, as the applicant Super Save bears the burden of proof on a balance of probabilities. I have reviewed the evidence and submissions but refer only to the evidence and argument that I find relevant to provide context for my decision.
11. I note that What Key chose not to file any evidence in this dispute, despite being given reminders of the opportunities to do so by CRT staff.
12. On September 29, 2009, Super Save and What Key entered into a written service agreement (agreement) for waste disposal services, effective the same day. WW signed the agreement on behalf of What Key. The standard form agreement used by Super Save had a 5-year term. It is undisputed that the parties amended and initialed the agreement to reduce the term to 2 years.
13. The agreement was subject to automatic renewal for subsequent 2-year terms, unless cancelled by written notice sent by registered mail not less than 60 days before the end of any 2-year period (cancellation window). The agreement automatically renewed on September 29, 2019 for a term ending September 28, 2021. So, the cancellation window extended from September 2019 to July 2021.

14. The agreement provides, at paragraph 11, that if What Key cancels the agreement before the term's end, What Key will pay liquidated damages to Super Save equivalent to the greater of either:
 - a. The service charges for the most recent 9 months, or
 - b. The service charges for the term's balance.
15. On July 29, 2020, What Key sent an email to Super Save cancelling the agreement because What Key was leaving its current location. What Key's email was delivered to Super Save during the cancellation window. However, I find that What Key's email was not cancellation in the form required under the agreement because the email sought to cancel the agreement before the term's end and was not delivered by registered mail.
16. On August 17, 2020, Super Save wrote to What Key to say that the agreement's term remained in effect until a "future date" and rejected What Key's cancellation request. Super Save noted that if What Key purported to cancel the agreement before the term's end, Super Save could repudiate the agreement and make all monthly payments for the remaining term due, totaling \$1,003.82. Super Save based this calculation on 13 months' worth of service charges.
17. As of September 1, 2020, I agree that 13 months remained in the term.
18. On September 3, 2020, Super Save removed their bin from What Key's premises.
19. What Key does not dispute that it entered into the agreement with Super Save. However, What Key says that it is absurd for Super Save to claim liquidated damages from What Key for cancelling the agreement. What Key says Super Save's waste disposal services were substandard and What Key had several service issues that Super Save did not deal with. What Key did not provide further details or evidence in support of these submissions, and so I find I cannot accept them.

Liquidated Damages

20. I find What Key breached the agreement by cancelling it before the end of the term. What Key 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 13 months of service charges plus GST as liquidated damages. This equals \$1,003.82.

Unpaid Waste Disposal Services

21. Super Save also seeks \$267.26 in debt for unpaid invoices. What Key admits it owes Super Save for the unpaid invoices. I find this debt claim is proven by the uncontested invoices and statement of account that Super Save filed in evidence.

CRT Fees, Dispute-Related Expenses and Interest

22. Super Save did not claim contractual interest.

23. The *Court Order Interest Act (COIA)* applies to the CRT. Under section 2(b) of the *COIA*, court order interest must not be awarded if there is "an agreement about interest between the parties." Here, the agreement contained a 24% annual interest rate for overdue payments, which I find was an agreement about interest between the parties. Therefore, I am unable award interest under the *COIA* to Super Save.

24. 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 \$125 in CRT fees. Super Save did not claim any dispute-related expenses, and I award none.

ORDERS

25. Within 30 days of the date of this order, I order What Key to pay Super Save a total of \$1,396.08, broken down as follows:

- a. \$267.26 in debt,

- b. \$1,003.82 in liquidated damages for breach of contract, and
- c. \$125 in CRT fees.

26. Super Save is entitled to post-judgment interest, as applicable.
27. 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.
28. 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.

Leah Volkens, Tribunal Member